



Bernard J. Sadusky, Ed.D.  
Interim State Superintendent of Schools

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January 31, 2012

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Mrs. Joan Rothgeb  
Director of Special Education  
Prince George's County Public Schools  
John Carroll Elementary School  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: XXXXXX  
Reference: #12-040

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATION:**

On December 7, 2011, the MSDE received a complaint from Mr. XXXXXXXX, hereafter, “the complainant,” on behalf of his son. In that correspondence, the complainant alleged that the Prince George’s County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the allegation that the PGCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his identified needs in handwriting since November 2011, in accordance with 34 CFR §300.324.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.

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2. On December 7, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone to clarify the allegation to be investigated.
3. On December 8, 2011, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Ms. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
4. On December 13, 2011, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Mrs. Rothgeb of the allegation and requested that her office review the alleged violation.
5. On December 21, 2011, the MSDE requested documentation from the student's educational record. The PGCPS provided the documentation on January 2, 2012, via electronic mail (e-mail).
6. On January 5, 2012, Ms. Stump and Ms. Mandis conducted a site visit at XXXXXXXX XXXX to review the student's educational record and interviewed the following school staff:
  - a. Ms. XXXXXXXX, Registered Nurse;
  - b. Ms. XXXXXXXXXXXX, Special Education Community-Referenced Instruction Teacher;
  - c. Ms. XXXXXXXXXXXXXXXX, Special Education Chairperson;
  - d. Ms. XXXXXXXXXXXXXXXXXXXX, Occupational Therapist; and
  - e. Ms. XXXXXXXXXXXXXXXX, Assistant Principal.

Ms. Morrison attended the site visit as a representative of the PGCPS and to provide information on the PGCPS policies and procedures, as needed.

7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence alleging violations of the IDEA and attachments received from the complainant by MSDE on December 7, 2011;
  - b. IEP, dated May 16, 2011;
  - c. Invitation to the October 26, 2011 IEP team meeting;
  - d. IEP, dated October 26, 2011;
  - e. Report of a PGCPS Handwriting Observation, dated November 28, 2011;
  - f. IEP, dated January 3, 2012;
  - g. IEP, dated January 20, 2012; and

- h. Occupational Therapist service provider log for the 2011-2012 school year.

**BACKGROUND:**

The student is fifteen (15) years old and is identified as a student with multiple disabilities under the IDEA (intellectual disability and an “Other Health Impairment,” related to diabetes and cerebral palsy). The student attends XXXXXXXXXXXX (XXXXXX), where he receives special education instruction and related services. During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a, b, d, f, and g).

**FINDINGS OF FACTS:**

1. The IEP in effect at the start of the 2011-2012 school year states that the student was identified with an intellectual disability that impacts written language mechanics. The IEP contains a statement that the student has difficulty writing certain letters, such as “u,” “s,” and “w,” as well as difficulty writing basic words and information, and that he needs to work on these skills “to prepare him for independent living and job-related skills” (Docs. b and d).
2. The IEP includes an annual goal for the student to improve his written language mechanics, including the writing of words and numbers within a specified space. In order to assist the student with achieving the annual goal, the IEP requires that the student be provided with special education instruction in the Community-Referenced Instruction (CRI) program<sup>1</sup> and occupational therapy as a related service (Docs b and d).
3. The IEP indicates that the occupational therapy will be provided in order to assist the student to “focus on organizational skills and independent living skills and will include classroom observation, consultation, record review, and data collection” (Docs. b and d).
4. The IEP team convened on October 26, 2011, at the request of the complainant. The team recommended a classroom observation by the occupational therapist (OT) and decided to reconvene on November 30, 2011 to consider the results (Docs. c and d).
5. On November 30, 2011, the IEP team reconvened and reviewed the results of the observation and the student’s progress toward achieving the annual goals. The results of the observation indicate that the student “continues to print in various directions and is not consistent in how he shapes his letters.” The observation report states that the student’s written language mechanics may not improve because the student is “so

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<sup>1</sup> The CRI Program is a PGCPs program that serves students with severe cognitive and physical disabilities, ranging from 5-21 years of age. The program includes a small student to teacher ratio and instruction is provided in a separate special education classroom ([www1.pgcp.org/central/](http://www1.pgcp.org/central/)).

- engrained in his approach to printing” and contains a recommendation that the student be provided with instruction in using a keyboard (Docs. e and f).
6. Information obtained by the OT service provider during three (3) sessions of direct occupational therapy services to the student indicates that the student can print seven (7) letters of the alphabet and that some of his numbers are illegible. This information also indicates that the student has difficulty with the angles in letters and has difficulty controlling the pencil in order to make letters. Based on this data, the OT service provider recommended that the student learn keyboarding skills (Doc. h).
  7. School staff report that based on the information considered, the team decided that direct occupational therapy services would be discontinued and that the OT would provide consultative occupational therapy services and “train” the student’s one-to-one assistant to work with the student on his handwriting skills. School staff also report that the team decided that the student would be provided with instruction in keyboarding and other assistive technology devices and services in order to address the identified handwriting needs (Docs. f, g, and interview with school staff).
  8. After the November 30, 2011 meeting, the IEP team did not revise the IEP to reflect the decisions made by the team, to reflect the information contained in the OT’s service provider notes or in the report of the classroom observation, or to reflect the recommendation regarding the use of assistive technology services and devices in order to address the identified handwriting needs. Additionally, the team did not document the basis for the team’s determination that the student no longer requires *direct* occupational therapy services (Docs. f and g).
  9. While school system staff acknowledge that the complainant disagreed with the IEP team’s recommendations related to the change in occupational therapy services, the IEP team did not document the complainant’s disagreement or how the team addressed the complainant’s concerns (Docs. f, g, and interview with school staff).
  10. On January 3, 2012, the IEP was revised to reflect the change in occupational therapy services, but there is no documentation of the basis for the team’s decisions. Additionally, the IEP has not been revised to reflect the decision that the student would be provided with assistive technology services. There is no documentation that the complainant was provided with a copy of the revised IEP (Docs. f, g, and interview with school staff).
  11. On January 18, 2012, the IEP team reconvened to conduct an “annual review.” At this meeting, the IEP team determined that the student continues to have needs in written language mechanics. The IEP team revised the student’s annual goal related to written language mechanics and determined that the student continues to require special

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education instruction in the CRI program<sup>1</sup> and consultative occupational therapy as a supplementary aid and service (Doc. g).

### **DISCUSSION/CONCLUSIONS:**

The IEP must include annual goals and services designed to address the needs that arise from the disability, which are identified from information about the student's present levels of performance (34 CFR §300.320). When determining the present levels of performance, the team must consider the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

During the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the United States Department of Education, Office of Special Education Programs requires that the State Educational Agency (SEA) review the procedures used by a school system to reach determinations about the program. Additionally, the SEA must review the evaluative data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46601, August 14, 2006).

Based on the Findings of Facts #1 - #6, the MSDE finds that the student continues to have needs related to handwriting and there is an annual goal related to assisting the student with improving this skill. Further, based on the Findings of Facts #5 and #6, the MSDE finds that the data indicates that the student's ability to write has not improved. However, based on the Findings of Facts #7, #10 and #11, the MSDE finds that the IEP team reduced the amount of services designed to assist the student with achieving the annual goal related to handwriting without documenting the basis for that decision. Therefore, the MSDE finds that there is no documentation that the decision is consistent with the data. As a result, the MSDE finds a violation regarding this aspect of the allegation since November 2011.

### **ADDITIONAL VIOLATIONS:**

#### **Prior Written Notice**

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, an explanation of the action, and a description of each evaluation procedure, assessment, record, or report used as a basis for the decision (34 CFR §300.503).

Based on the Findings of Facts #8 and #9, the MSDE finds that the IEP team has not provided the complainant with written notice of the basis of the determination to reduce the amount of occupational therapy services. Therefore, the MSDE finds that a violation has occurred.

### **Provision of Completed IEP**

The public agency must provide the parent of a student with a disability a copy of the completed IEP no later than five (5) business days after the IEP team meeting (Md. Code, Ann., Educ. §8-405(d) (2010) and COMAR 13A.05.01.07). Based on the Finding of Fact #10, the MSDE finds that the complainant was not provided with a copy of the completed IEP within five (5) business days of the November 30, 2011 IEP team meeting. Therefore, the MSDE finds that a violation has occurred.

### **IEP Content**

The public agency must ensure that the IEP includes a statement of the special education and related services and supplementary aids and services to be provided to the student (34 CFR §300.320). Based on the Findings of Facts #8, 10, and 11, the MSDE finds that the OT's service provider log and the classroom observation report contain recommendations regarding the use of assistive technology services and devices in order to address the handwriting needs; the IEP team reported that the student would be provided with these assistive technology services. However, the student's program has not reflected this determination since November 2011. Therefore, the MSDE finds a violation has occurred.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student specific**

The MSDE requires the PGCPS to provide documentation by April 1, 2012, that the IEP team has reviewed and revised the student's program, as appropriate, to ensure that the student's handwriting needs are addressed consistent with the data and that the IEP includes all required services, including assistive technology services and devices. Additionally, the IEP team must determine the nature and amount of *compensatory services*<sup>2</sup> or other remedy necessary to redress the violations identified in this Letter of Findings.

The PGCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations,

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<sup>2</sup> Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

he maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

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### **School-based**

The MSDE requires the PGCPS to provide documentation by May 1, 2012, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXX.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the findings in the Letter of Findings will be shared with the Office of Quality Assurance and Monitoring, MSDE, for its consideration during present or future monitoring of the PGCPS.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision

on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

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Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a free appropriate public education for the student, including issues subject to a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/Early Intervention Services

MEF:ks

cc : William R. Hite  
Bonita Coleman-Potter  
Gail Viens  
LaRhonda Owens  
Kerry Morrison  
XXXXXXXXXXXX  
Martha J. Arthur  
Kathy Stump