



June 17, 2013

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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: XXXXX
Reference: #13-081

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.

ALLEGATIONS:

On April 18, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXXXXXX, hereafter, "the complainant," on behalf of her son, the above-referenced student. 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 student. The MSDE investigated the allegations listed below.

1. The PGCPS did not ensure that the Individualized Education Program (IEP) team convened to review the student's IEP before July 7, 2012 in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.
2. The PGCPS did not consider the student's need for Extended School Year (ESY) services for the summer of 2012, in accordance with 34 CFR §300.106, COMAR 13A.05.01.07B(2) and COMAR 13A.05.01.08B(2).

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.

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2. On April 19, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On April 26, 2013, Ms. Moyo conducted a telephone interview with the complainant. On the same day, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
4. On May 7 and 23, 2013, Ms. Moyo contacted the PGCPS staff via electronic mail correspondence to request information and documentation.
5. On May 29, 2013, Ms. Moyo met with Ms. Morrison at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) and reviewed the student's educational record. On the same date, the PGCPS staff provided Ms. Moyo with documentation from the student's educational record.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated July 7, 2011;
 - b. IEP team meeting notice, dated October 12, 2011;
 - c. IEP, dated October 24, 2011;
 - d. IEP team meeting notice, dated November 18, 2011;
 - e. IEP, dated December 8, 2011;
 - f. Correspondence from the PGCPS to the complainant and the student's father, dated December 9, 2011;
 - g. IEP team meeting notice, dated June 7, 2012;
 - h. IEP and IEP team meeting notes, dated June 21, 2012 and August 24, 2012;
 - i. Expedited IEP team meeting notice, dated August 24, 2012;
 - j. IEP team meeting notes, dated October 23, 2012;
 - k. IEP team meeting notes, dated March 26, 2013;
 - l. Correspondence and attachments from the complainant to the MSDE, received on April 18, 2013; and
 - m. IEP and IEP team meeting notes, dated May 1 and 30, 2013, and June 4, 2013.

BACKGROUND:

The student is eleven (11) years old, is identified as a student with a Specific Learning Disability under the IDEA, and receives special education instruction and related services. During the 2011-2012 school year, the student attended XXXXXXXXXXXXXXXXXXXX (XXXXXX). At the start of the 2012-2013 school year, the student began attending XXXXXXXXXXXX, where the student's program can be implemented, as a result of a change in educational placement made by the IEP team (Docs. a - m).

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FINDINGS OF FACTS:

1. There is documentation that the IEP team reviewed the IEP and made determinations about the program and placement at meetings held on July 7, 2011 and December 8, 2011, as well as at a meeting that started on June 21, 2012 and was finished on August 24, 2012 (Docs. a – e and g - i).
2. There is documentation that the IEP team considered the student's need for ESY services at IEP team meeting held on July 7, 2011 and April 30, 2013 (Docs. a and m).

DISCUSSION/CONCLUSIONS:

The IEP team must review the IEP periodically, but not less than annually, to ensure that it continues to address the student's identified needs (34 CFR §§300.320 and .324). In addition, **at least annually** [emphasis added], the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of a Free Appropriate Public Education (FAPE) by virtue of the normal break in the regular school year (34 CFR §300.106 and Md. Ann. Code, Education Art. §8-405(b)).

In this case, the complainant alleges that the IEP team did not conduct the student's "annual review" in a timely manner and as a result, the team did not consider the student's need for ESY services for the summer of 2012.

Allegation #1

Based on the Finding of Fact #1, the MSDE finds that the IEP was reviewed at least annually. Therefore, the MSDE finds that no violation occurred with respect to the allegation.

Allegation #2

Based on the Findings of Facts #2 and #3, the MSDE finds that the IEP team did not consider the student's need for ESY at least annually following the July 7, 2011 IEP team meeting. Therefore, the MSDE finds that a violation occurred with respect allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The MSDE requires the PGCPS to provide documentation by the start of the 2013-2014 school year that the IEP team has convened and determined whether the violation related to the ESY determination had a negative impact on the student's ability to benefit from the education

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program, and if so, determined the nature and amount of *compensatory services*¹ necessary to redress the violation.

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

School-based

The MSDE requires the PGCPS to provide documentation by the start of 2013-2014 school year of the steps it has taken to determine if the violation identified in this Letter of Findings is unique to this case or if it represents a pattern of noncompliance at XXXXXXXX. 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. 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 United States Department of Education, Office of Special Education Programs (OSEP). Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the HCPS.

Documentation of all corrective action taken must be submitted to this office no later than the start of the 2013-2014 school year, to the attention of the Chief, Family Support and Dispute Resolution 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.

¹ 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).

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Please be advised that the complainant and the school system 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.

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 FAPE for the student, including issues subject to this 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/km

cc: Alvin Crawley
A. Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXX
XXXXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Koliwe Moyo