



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

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June 28, 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: # 13-084

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 April 29, 2013, the MSDE received a complaint from Ms. XXXXXXXX, 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 above-referenced student.

The MSDE investigated the allegation that the PGCPS has not ensured that the student has been consistently provided with the special education instruction required by the Individualized Education Program (IEP) during the 2012-2013 school year, in accordance with 34 CFR §§300.101 and .323, as indicated below.

- a. The student has not been consistently provided with the required amount of special education instruction, supplementary aids and services, accommodations, and other supports in the general education classroom because:

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- i. The general education teacher was not informed of her role in implementing the IEP from the beginning of the 2012 – 2013 school year until October 3, 2012; and
  - ii. The general education teacher has been on leave since October 3, 2012.
- b. The student has not been provided with the required amount of special education instruction in the separate special education classroom since the start of the 2012-2013 school year.

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 3, 2013, 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.
3. On May 10, 20, and 21, 2013, Ms. Williams conducted telephone interviews with the complainant to clarify the allegation to be investigated.
4. On May 30, 2013, 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 the PGCPs of the allegation and requested that the PGCPs review the alleged violation.
5. On May 30, 2013 and June 6, 19, and 21, 2013, Ms. Williams conducted telephone interviews with the complainant.
6. On June 5 and 6, 2013, the PGCPs sent the MSDE electronic mail correspondence with information to be considered for the investigation.
7. Documentation provided by the parties was reviewed. The documents relevant to the findings and conclusions referenced in this Letter of Findings are listed below.
  - a. Correspondence and attachments from the complainant to the MSDE, received on April 29, 2013;
  - b. IEP, dated November 4, 2011;
  - c. IEP, dated October 25, 2012;
  - d. IEP team meeting invitation, dated May 21, 2013;
  - e. IEP team meeting notes, dated May 28, 2013; and
  - f. Correspondence from the PGCPs to the complainant, dated June 4, 2013.

**BACKGROUND:**

The student is eleven (11) years old. He is identified as a student with a Specific Learning Disability under the IDEA and attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX). He has an IEP that requires the provision of special education instruction.

There is documentation that, during the time period covered 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, c, and e).

**FINDINGS OF FACTS:**

1. There is no documentation that the student was provided with the special education services required by the IEP during the 2012 - 2013 school year (Review of the educational record).
2. On May 21, 2013, the IEP team met to address the complainant's concerns about the implementation of the student's IEP. The IEP team determined that special education services were not provided consistent with the IEP while a substitute teacher was assigned in the absence of the student's general education teacher. The IEP team decided that the student would be provided with tutoring services during the summer of 2013 by a tutor chosen by the complainant in order to remediate the violation (Docs. d and e).
3. In correspondence dated June 4, 2013, addressed to the complainant, the PGCPS acknowledges that, in addition to the violation related to the implementation of the IEP by the substitute teacher, the special education services had not been provided consistent with the IEP in the educational placements required during the 2012-2013 school year. As the result of these determinations, the correspondence states that these violations resulted in a loss of a Free Appropriate Public Education (FAPE) to the student (Doc. f).
4. The PGCPS correspondence also describes the remedy that will be provided to the student to remediate the loss of provision of a FAPE. However, the information regarding the remedy in the correspondence is not consistent with the documented remedy determinations made by the IEP team on May 21, 2013 (Docs. b, c, e, and f).

**DISCUSSION/CONCLUSION:**

The public agency must ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323). Based on the Findings of Facts #1-#3, the MSDE finds that the student was not provided with special education services consistent with the IEP during the 2012-2013 school year, and that a violation occurred with respect to this allegation.

Further, based on the Finding of Fact #2, the MSDE finds that the remedy determined by the IEP team was related to the lack of IEP implementation during the period of time that the student was taught by a substitute teacher. However, based on the Finding of Fact #1, the MSDE finds the

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violation occurred throughout the 2012-2013 school year. Therefore, this office finds that the IEP team has not determined the remedy for the entire time period during which the violation occurred. Finally, based on the Finding of Fact #4, the MSDE finds that the remedy that PGCPS has indicated that it will provide is not consistent with the remedy determined by the IEP team on May 21, 2013.

### **CORRECTIVE ACTIONS/TIMELINE:**

#### **Student Specific**

The MSDE appreciates the action taken by the PGCPS to remediate the violation. However, the MSDE also requires the PGCPS to ensure that the student is provided with the remedy determined by the IEP team on May 21, 2013, including providing the tutoring services specified.

The MSDE also requires that the PGCPS provide documentation that the IEP team has determined the *compensatory services*<sup>1</sup> or other remedy for the portion of the violation not related to implementation of the IEP by the substitute teacher.

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 the IDEA.

#### **Similarly-Situated Students**

The MSDE requires the PGCPS to provide documentation by the start of the 2013-2014 school year that it has identified all similarly-situated students at XXXXXX XXXXXX ES who did not consistently receive the amount of special education instruction, supplementary aids and services, and accommodations in the educational placement required by their IEP during the 2012-2013 school year. For each student identified, the PGCPS must provide documentation that an IEP team has convened and determined whether the violation had a negative impact on the student's ability to benefit from the education program, and if so, the amount and nature of *compensatory services*<sup>1</sup> to be provided to the student to remediate the violation.

#### **School-Based**

The MSDE requires the PGCPS to provide documentation by the start of the 2013-2014 school year 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 XXXXXXXXXXXX. 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

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<sup>1</sup> Compensatory services, for the purposes of this letter, means the determinations 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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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. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for their consideration during monitoring of the PGCPS in the future.

Documentation of all corrective action taken must be submitted to this office no later than the beginning of the 2012-2013 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.

Please be advised that the complainant and the PGCPS 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 Facts 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 Findings and 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.

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The MSDE recommends that this Letter of Findings be included with any request for mediation or due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:tw

cc: Dr. Lillian E. Lowery  
Dr. Alvin Crawley  
Dr. Duane Arbogast  
Ms. Gail Viens  
Dr. LaRhonda Owens  
Ms. Kerry Morrison  
XXXXXXXXXXXX  
Ms. Anita Mandis  
Ms. Tyra Williams