



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: #13-087

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 May 7, 2013, the MSDE received a complaint from Ms. XXXXXXXX, hereafter, "the complainant," on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Prince George's Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the PGCPS has not ensured that the student received special education instruction from a highly qualified special education teacher, as required by the Individualized Education Program (IEP), from May 7, 2012 to the end of the 2011-2012 school year, in accordance with 34 CFR §§300.18, .101, .156, and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.

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2. On May 10, 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 21, 2013, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On June 3, 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 June 5, 7, 17, 21, 25, and 26, 2013, the MSDE requested information and documents from the PGCPS, via email.
6. On June 6, 7, 17, 18, 24, 25, and 26, 2013, the PGCPS provided the MSDE with information and documentation related to the allegation being investigated.
7. On June 25, 2013, Ms. Hartman requested documentation from the MSDE, Division of Certification and Accreditation, regarding the certification status of the new PGCPS teacher, and was provided access to that documentation on the same date.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on May 7, 2013;
 - b. IEP, dated March 29, 2012;
 - c. Prior Written Notice documents, dated June 15 and 28, 2012 and July 25, 2012;
 - d. IEP, dated February 25, 2013;
 - e. Email correspondences between the PGCPS staff, dated April 16 and 18, 2012, July 16 and 25, 2012, and August 7, 2012; and
 - f. Email correspondences from the PGCPS staff to the MSDE staff, dated June 6 and 24, 2012.

BACKGROUND:

The student is eight (8) years old. She is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education instruction and related services.

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During the time period covered by this investigation (the 2011-2012 school year), the student attended XXXXXXXX XXXXXXXX, which is a public school. Since the start of the 2012-2013 school year, the student has been attending XXXXXXXXXXXXXXXXXXXX, another public school, as a result of the complainant's request that the student be transferred.

The complainant participated in the education decision-making process during the time period covered by this investigation, and was provided with written notice of the procedural safeguards (Docs. a-e).

FINDINGS OF FACTS:

1. The IEP in effect during the time period covered by this investigation was developed on March 29, 2012, and required that the student receive ten (10) hours per week of special education instruction in a separate special education classroom by a special education teacher. The IEP also required the student receive twenty (20) hours per week of special education instruction in a general education classroom provided by a special education teacher, a general education teacher, or an instructional assistant (Doc. b).
2. There is documentation that the special education teacher assigned to provide the student with special education instruction, in both the general education and separate special education classrooms, was on leave from her position beginning April 10, 2012, and resigned from her position effective May 10, 2012. There is also documentation that another special education teacher had been hired to replace the teacher at the start of the 2012-2013 school year (Docs. e and f, review of the Automated Substitute Placement and Absence Management [AESOP] database, review of the leave records for the prior special education teacher, and review of the current special education teacher's Maryland Educator Certificate).
3. There is documentation that a substitute teacher was assigned during the special education teacher's absence during the fourth quarter of the 2011-2012 school year, and that this individual held a Bachelor's Degree (Docs. a and f, and review of the substitute teacher's resume).
4. While the PGCPs staff report that the substitute teacher was supervised by a highly qualified teacher, there is no documentation of this supervision (Doc. f).
5. The reports of the student's progress toward achieving the annual IEP goals, dated June 2012, report that the student made sufficient progress toward achievement of the annual IEP goals during the period of time that the substitute teacher was assigned (Doc. b).

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DISCUSSION/CONCLUSIONS:

The IDEA requires that each person employed as a public school special education teacher is highly qualified as a special education teacher (34 CFR §300.156). The United States Department of Education, Office of Special Education Programs (OSEP), explained that the qualifications of personnel other than teachers “are appropriately left to the States” in light of the variability of each state’s circumstances (34 CFR §300, Appendix A, p. 46609).

In Maryland, each local school system is required to establish qualifications for substitute teachers. The PGCPs requires that substitute teachers have earned at least sixty (60) undergraduate credits from an institution of higher education (See, <http://www1.pgcp.org/substituteteacher>). In the PGCPs, when a substitute teacher is responsible for teaching students with disabilities under the IDEA, a highly qualified teacher must provide training and oversight to the substitute teacher in order to ensure the continued implementation of the student’s IEP (*Department of Special Education Process Guide*, PGCPs).

In this case, the complainant alleges that, because of the lack of a highly qualified teacher during the fourth quarter of the 2011-2012 school year, the student was referred to the school nurse by a substitute teacher unnecessarily, which has resulted in a deterioration of the relationship between the complainant and school staff (Doc. a).

Based on the Findings of Facts #1 - #4, the MSDE finds that there is no documentation that PGCPs followed proper procedures to ensure that the substitute teacher assigned during the fourth quarter of the 2011-2012 school year had been provided with the training and oversight required to ensure that she was qualified to provide special education services to the student. Therefore, the MSDE finds that a violation occurred regarding the allegation.

Notwithstanding the violation, the IDEA does not provide a right of action for individual students for the lack of assignment of highly qualified special education teachers (34 CFR §300.156). Further, based on the Finding of Fact #5, the MSDE finds that there is documentation that the student made progress toward achievement of the annual IEP goals during the time period she received instruction from the substitute teacher. Therefore, no student-specific corrective action is required to redress the violation.

Based on the Finding of Fact #2, the MSDE finds that, from May 11, 2012 through the end of the 2011-2012 school year, the PGCPs did not ensure that a highly qualified special education teacher was hired to fill the vacancy created by the previous special education teacher’s resignation. However, based on the same Finding of Fact, the MSDE finds that a highly qualified special education teacher was hired to fill the position for the start of the 2012-2013 school year. Therefore, no corrective action pertaining to staffing will be required.

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CORRECTIVE ACTIONS/TIMELINES:

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 violation related to the provision of training and oversight to substitute teachers, as required by the PGCPS procedures, is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXX. If the school system reports compliance with the PGCPS procedural requirements, the MSDE staff will verify compliance with the determinations found in this initial report.

If the school system determines that substitute teachers are not receiving training and oversight from qualified teachers, 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 verify the data to ensure continued compliance with the PGCPS procedural requirements, consistent with the requirements of the 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 PGCPS.

Documentation of all Corrective Actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

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

Please be advised that both 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 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 (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 a due process complaint.

Sincerely,

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

MEF/ch

cc: Alvin Crawley
Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison

XXXXXXXXXX
Dori Wilson
Martha J. Arthur
Anita Mandis
Christine Hartman