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State Superintendent of Schools

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July 11, 2013

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1500 Union Avenue, Suite 2000
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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: #13-094

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 May 14, 2013, the MSDE received a complaint from Mr. Robert Berlow, hereafter, “the complainant,” on behalf of the above-referenced student and his parents, Mr. XXXXXXXX and Mrs. XXXXXXXX. 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 following allegations:

1. The PGCPS did not ensure that the student’s parents were provided with accessible copies of each assessment, report, data chart, draft Individualized Education Program (IEP), or other document the IEP team planned to discuss at the February 28, 2013 IEP team meeting at least five (5) business days before the scheduled meeting, in accordance with Md. Code Ann., Educ., § 8-405 (2010) and COMAR 13A.05.01.07;

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2. The PGCPS has not ensured that the student's IEP includes the required content since February 28, 2013, in accordance with 34 CFR §300.320. Specifically, the IEP does not include:
 - a. A clearly written statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects his involvement and progress in the general education curriculum; and
 - b. A clearly written statement of the speech-language services to be provided to the student;
3. The PGCPS did not follow proper procedures when responding to a request from the student's father, made on March 12, 2013, to amend the student's educational record, in accordance with 34 CFR §§300.618-.621; and
4. The PGCPS did not ensure that the student was provided with social skills training required by the IEP between March 2013 and May 2013, in accordance with 34 CFR §300.101.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 16, 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 that same date, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On May 17, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Mrs. Rothgeb of the allegations and requested that her office review the alleged violations.
5. On May 22, 2013, the complainant provided the MSDE with documentation to be considered in the investigation, via electronic mail (e-mail).

6. On May 30, 2013, Ms. Stump and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXX, Guidance Counselor;
 - b. Ms. XXXXXXXXXXX, Special Education Resource Chairperson;
 - c. Ms. XXXXXXXXXXX, Special Education Case Manager; and
 - d. Ms. XXXXXXX, Special Education Instructional Specialist, PGCPs.

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 and attachments from the complainant to the MSDE, received on May 14, 2013;
 - b. Receipt of Parental Rights form, dated February 6, 2013;
 - c. PGCPs *Evaluation Report and Determination of Initial Eligibility* form, dated February 6, 2013;
 - d. IEP, dated February 28, 2013;
 - e. E-mail correspondence from the complainant to school staff, dated March 5, 2013;
 - f. E-mail correspondence from the student's parents to school staff, dated March 12, 2013;
 - g. IEP, amended April 16, 2013;
 - h. E-mail correspondence from the student's parents to school staff, dated April 29, 2013;
 - i. IEP, dated May 30, 2013;
 - j. Prior Written Notice form, dated May 30, 2013; and
 - k. Speech-Language Pathologist's service provider log for the 2012-2013 school year.

BACKGROUND:

The student is thirteen (13) years old, is identified as a student with an Other Health Impairment under the IDEA, related to a diagnosis of Attention Deficit/Hyperactivity Disorder, and has an IEP that requires the provision of special education instruction and related services. The student attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX). During the period of time addressed by this investigation, the student's parents participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. a, b, c, d, i, and j).

ALLEGATION #1: **PROVISION OF DOCUMENTS PRIOR TO THE**
FEBRUARY 28, 2013 IEP TEAM MEETING

Findings of Facts:

1. The school staff acknowledges that they did not provide the student's parents with the draft IEP, which they planned to consider at the February 28, 2013 IEP team meeting, at least five (5) business days prior to the meeting. The school staff assert that there was a malfunction with the school's computers and that, as a result, they could not open the computer program in order to access or print the draft until three (3) days before the meeting (Interview with school staff).
2. The school staff further report that they informed the student's parents of the situation and provided them with a copy of the draft IEP three (3) days before the meeting, as soon as the computer problem was resolved. They also acknowledge that there is no documentation to support their assertions and that they did not discuss the issue at the February 28, 2013 IEP team meeting (Interview with school staff).

Discussion/Conclusions:

At least five (5) business days before a scheduled IEP team meeting, the student's parent must receive an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at the meeting. While the school personnel are not required to provide the documents in the event of an extenuating circumstance, they must document the extenuating circumstance and communicate that information to the student's parent (Md. Code Ann., Educ., §8-405 [2012] and COMAR 13A.05.01.07).

An "extenuating circumstance" means a death in the family, a personal emergency, a natural disaster, or any other similar situation as defined by the MSDE (Md. Code Ann., Educ., §8-405 [2012]). The MSDE has stated that an "extenuating circumstance" also includes any unforeseen event that occurs for which delivery of the documents would not be possible prior to five (5) business days before the meeting (*Child with a Disability – Individualized Education Program Meeting – Document Access, Technical Assistance Bulletin 20*, September 2012).

Based on the Findings of Facts #1 and #2, the MSDE finds that the PGCPs did not ensure that the draft IEP was provided at least five (5) business days prior to the February 28, 2013 IEP team meeting and did not document the existence of an extenuating circumstance. Therefore, the MSDE finds a violation regarding this allegation.

ALLEGATIONS #2 AND #3: **IEP CONTENT AND RESPONDING TO THE
MARCH 12, 2013 REQUEST TO AMEND THE
STUDENT'S EDUCATIONAL RECORD**

Findings of Facts:

3. On February 28, 2013, the IEP team convened and developed an initial IEP for the student, who had been found eligible for special education instruction and related services under the IDEA at an IEP team meeting on February 6, 2013. The IEP included the statement that the student's "greatest strength lies in his ability to be able to apply social skills with peers appropriately." However, the IEP also includes the statements that "Though he does have some pragmatic language strengths, the breakdown seems to occur in the application of social rules, understanding perspectives, and abstract communication difficulties" and "Though he has difficulties, his pragmatic weaknesses do not occur in all environments (*i.e.*, with adults). It was recommended that since [the student] does show some weaknesses in the area of social applications, social skills training would be beneficial" (Docs. c and d).
4. In order to address this identified need, the IEP includes annual goals for the student to improve his social interaction skills and appropriate interaction with peers (Doc. d).
5. The IEP also states that the student will receive speech-language therapy as a related service for three (3) thirty (30)-minute sessions per month from a speech-language pathologist or the special education teacher. The IEP states that the service will be provided "inside/outside of general education as needed" until the end of the 2012-2013 school year (Doc. d).
6. On March 5, 2013, the complainant sent a request, via e-mail, to school staff that the IEP be amended because he believed that the statement of the speech-language service did not accurately reflect the IEP team's decision regarding how the service would be provided (Doc. e).
7. On March 12, 2013, the student's parents sent a request, via e-mail, to school staff that the IEP be amended because they believed that the statement related to speech-language services did not accurately reflect the IEP team's decision regarding how the service would be provided. They also indicated that the statement related to the student's present levels of academic achievement and functional performance regarding the student's speech and language pragmatics is misleading because the information is internally inconsistent. The correspondence also identified several other changes that the student's parents believed needed to be made in order for the IEP to accurately reflect what occurred at the February 28, 2013 IEP team meeting (Doc. f).

8. On April 16, 2013, school staff amended the statement related to the provision of speech-language services. The amended statement indicates that the student would be provided speech-language therapy as a related service for three (3) thirty (30)-minute sessions per month from a speech-language pathologist. The IEP states that the service will be provided “during the annual review year” and will be provided outside of general education as needed (Doc. g).
9. School staff did not amend the statement related to the student’s present levels of academic achievement and functional performance regarding the student’s speech and language pragmatics and did not make the other changes requested by the student’s parents. There is no documentation that school staff informed the student’s parents of their refusal to amend the remaining information and there is no documentation that school staff advised the student’s parents of their right to a hearing before school system personnel to challenge the information (Doc. g and review of educational record).
10. On April 29, 2013, the student’s parents again expressed their belief that the student’s IEP contained inaccurate information and requested that it be amended (Doc. h).
11. On May 30, 2013, the IEP team convened to address the concerns of the student’s parents regarding the accuracy of the statements in the student’s IEP. The documentation of the meeting indicates that, after considering the concerns of the student’s parents and the input of the student’s teachers and service providers, the IEP team clarified that the statement about his strength was related to his performance on the assessment. The team clarified the seeming inconsistency in the IEP by adding the statement that the student “can solve problems on assessments but has difficulty doing so with real life applications” (Docs. i and j).
12. The documentation of the meeting also indicates that the team further clarified the statement related to the provision of speech-language services. The amended statement indicates that the student would be provided speech-language therapy as a related service for three (3) thirty (30)-minute sessions per month from a speech-language pathologist. The IEP states that the service will be provided “during the annual review year” and will be provided outside of general education (Doc. i).
13. There is no documentation that the remaining changes, requested on March 12 and April 29, 2013 were made to the IEP or that the school staff informed the student’s parents of their refusal to amend the remaining information and there is no documentation that school staff advised the student’s parents of their right to a hearing before school system personnel to challenge the information (Docs. i and j).
14. There is documentation that the student was provided with speech-language therapy as a related service, between March 2013 and the end of the 2012-2013 school year, in accordance with the IEP team’s decision made at the February 28, 2013 IEP team meeting

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regarding how the service would be provided, which is reflected in the language of the May 30, 2013 IEP (Doc. k).

Discussion/Conclusions:

The IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects his involvement and progress in the general education curriculum. The IEP must also include a statement of the special education and related services to be provided to the student and the projected date for the beginning of the services and the anticipated frequency, location, and duration of those services (34 CFR §300.320).

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).¹

A parent who believes that information in the student's educational record is inaccurate or misleading may request that the public agency amend the information. Upon receipt of such a request, the public agency must decide, within a reasonable period time of the receipt of the request, whether to amend the information. If the public agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing before school system personnel to challenge the information (34 CFR §§300.618 and .619).

Allegation #2a: Statement of the student's present levels of academic achievement and functional performance

Based on the Findings of Facts #3, #4, #7, #9, and #10, the MSDE finds that there is documentation that after the IEP team developed the student's initial IEP, the student's parents expressed concern about the accuracy of the statement related to the student's present levels of academic achievement and functional performance related to speech-language pragmatics. However, based on the Finding of Fact #11, the MSDE also finds that there is documentation that school staff amended the IEP in response to their concerns. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

Allegation #2b: Statement of the speech-language services to be provided to the student

Based on the Findings of Facts #5-#7, the MSDE finds that there is documentation that after the IEP team developed the student's initial IEP, the student's parents expressed concern about the accuracy of the statement related to the provision of speech-language therapy as a related service. Based on the Findings of Facts #8 and #10, the MSDE finds that the student's parents expressed their continuing concerns regarding the accuracy of the statements after school staff made the

¹ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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changes. Based on the Finding of Fact #12, the MSDE finds that there is documentation that the IEP team convened and further clarified the statement, in response to the continuing concerns.

Based on the Finding of Fact #14, the MSDE finds that there is documentation that the speech-language therapy services were provided to the student from March 2013 until the end of the 2012-2013 school year in accordance with the IEP team's decision made at the February 28, 2013 IEP team meeting. Therefore, the MSDE finds no violation regarding this allegation.

Allegation #3: Responding to Requests for Amendments to the Educational Record

Based on the Findings of Facts #6-#9 and #13, the MSDE finds that school staff responded, in part, to the request of the student's parents to amend the student's educational record, but did not inform them of the refusal to amend the remaining information and did not advise them of the right to a hearing before school system personnel to challenge the information. Therefore, the MSDE finds a violation regarding this allegation.

ALLEGATION #4: **PROVISION OF SOCIAL SKILLS TRAINING REQUIRED BY THE IEP BETWEEN MARCH 2013 AND MAY 2013**

Findings of Facts:

15. The school staff acknowledge that, due to their difficulty with forming an appropriate social skills group, the student did not begin receiving the social skills training required by the IEP until April 26, 2013 (Interview with school staff).
16. The documentation of the May 30, 2013 IEP team meeting indicates that the IEP team considered this information and that school staff offered compensatory services to redress the missed services, but that the student's parents rejected the offer (Doc. j).

Discussion/Conclusions:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). Based on the Finding of Fact #15, the MSDE finds that school staff have acknowledged a delay in implementing the social skills training. Therefore, the MSDE finds a violation regarding this allegation.

Notwithstanding the violation, based on the Finding of Fact #16, the MSDE finds that compensatory services were offered but the student's parents rejected them. Therefore, no additional student-specific corrective action to address this violation will be required.

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CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The MSDE requires the PGCPS to provide documentation by July 30, 2013, that the school system has followed proper procedures to respond to the request for amendment of the student's educational record.

School-based

The MSDE also 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 XXXXXX XXXXXXXX.

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. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement 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, 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 school system have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date

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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.

Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. The student's parents 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 due process.

Sincerely,

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

MEF:ks

cc : Alvin L. Crawley
Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXX
Martha J. Arthur
Dori Wilson
Anita Mandis
Kathy Stump