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State Superintendent of Schools

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August 19, 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: #13-108

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 June 20, 2013, the MSDE received a complaint from Ms. XXXXXXXXX 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 complainant alleged that the PGCPS did not ensure that the student was provided with the special education instruction and supports required by the Individualized Education Program, in accordance with 34 CFR §§300.18, .101, .156, and .323. Specifically, the MSDE investigated the following:

1. The PGCPS did not ensure that the student was provided with special education instruction by a special education teacher in reading and social studies from August 2012 until December 2012;

XXX

Mrs. Joan Rothgeb

August 19, 2013

Page 2

2. The PGCPS did not ensure that the student was provided with special education instruction by a highly qualified special education teacher in reading and social studies from December 2012 until the end of the 2012-2013 school year;
3. The PGCPS did not ensure that the student was provided with special education instruction in the general education classroom for math and science, during the 2012-2013 school year;
4. The PGCPS did not ensure that the student was provided with adult support during transitions and in class, during the 2012-2013 school year; and
5. The PGCPS did not ensure that the student was provided with sensory breaks and sensory materials during the 2012–2013 school year.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 24, 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 July 2 and 17, 2013, Ms. Moyo conducted telephone interviews with the complainant. On July 17, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. The MSDE also notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
4. On July 31, 2013, Ms. Moyo and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to conduct a review of the student's educational record, and interviewed Mr. XXXXXXXXXXXXXXX, Principal, and Ms. XXXXXXXXXXXXXXX, Special Education Chairperson.

Ms. Morrison attended the site visit and Ms. XXXXXXXXXXXXXXX, Autism Specialist, PGCPS participated by telephone in order to provide information on the PGCPS policies and procedures, as needed.

5. On August 13, 2013, the PGCPS staff provided the MSDE with additional documentation, via electronic mail (email).

XXX

Mrs. Joan Rothgeb

August 19, 2013

Page 3

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP and meeting notes, dated March 1, 2012;
 - b. Emails between the complainant and school staff, dated August 31, 2012;
 - c. Emails between the complainant and school staff, dated September 5, 2012;
 - d. Emails between the complainant and school staff, dated September 12 and 13, 2012;
 - e. Emails between the complainant and school staff, dated September 14 and 19, 2012;
 - f. Emails between the complainant and school staff, dated October 12 and 13, 2012;
 - g. Emails between the complainant and school staff, dated October 24 - 26, 2012;
 - h. Reports of progress towards achieving the IEP goals, dated October 29, 2012;
 - i. Emails from the complainant to school staff, dated November 2, 2012;
 - j. Emails between the complainant and school staff, dated November 19 and 20, 2012;
 - k. Emails between the complainant and school staff, dated January 14 and 19, 2013;
 - l. Emails between the complainant and school staff, dated January 28 and 29, 2013;
 - m. Reports of progress towards achieving the IEP goals, dated February 4, 2013;
 - n. IEP and meeting notes, dated February 19, 2013;
 - o. IEP team meeting notes, dated February 26, 2013;
 - p. Emails between the complainant and school staff, dated March 8 and 9, 2013;
 - q. Reports of progress towards achieving the IEP goals, dated April 18, 2013;
 - r. Reports of progress towards achieving the IEP goals, dated June 4, 2013;
 - s. IEP team meeting notes, dated June 6, 2013;
 - t. IEP team meeting notes, dated June 10, 2013;
 - u. Correspondence and attachments from the complainant to the MSDE, received on June 20, 2013;
 - v. IEP team meeting notes and consent for assessment, dated July 11, 2013; and
 - w. Report card for the 2012-2013 school year.

BACKGROUND:

The student is eleven (11) years old. During the 2012-2013 school year he attended the XXXXXXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA, and 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 IEP team decisions and notice of the procedural safeguards (Docs. a, h, m – o, and q - w).

**ALLEGATIONS #1 AND #2: SPECIAL EDUCATION INSTRUCTION IN
READING AND SOCIAL STUDIES**

Findings of Facts:

1. The IEP in effect during the 2012-2013 school year required that the student be provided with specialized instruction in both the general and special education classrooms.

XXX

Mrs. Joan Rothgeb

August 19, 2013

Page 4

Specifically, the IEP requires that reading and social studies instruction be provided by a special education teacher in a separate special education classroom (Docs. a and n).

2. There is documentation that, during the 2012-2013 school year, the student received special education instruction in reading and social studies in a separate special education classroom from a teacher certified in the areas of elementary education, middle school, and “generic special education infant to three (3)”. However, there is no documentation indicating that the student’s teacher is certified as a “highly qualified special education teacher” (Doc. a, review of teacher certification, and interview with school staff).
3. The reports of the student’s progress toward achieving the annual goals, document that the student made progress toward all of the annual goals during the 2012-2013 school year. His report card from the 2012-2013 school year documents that the student passed all of his classes with either an “A” or “B” (Docs. h, m, q, r, and w).

Discussion/Conclusions:

The public agency is required to ensure that students are provided with the special education and related services required by the IEP (34 CFR §300.101 and .323). The IDEA also requires that highly qualified personnel provide special education services. The public agency must ensure that personnel are appropriately and adequately prepared and trained. The federal regulations contain specific requirements for personnel who provide special education services in core academic subjects (including language arts, mathematics, science, civics and government, economics, arts, and history) consistent with Section 1119(a)(2) of the Elementary and Secondary Education Act of 1965 (No Child Left Behind Act).

Maryland teachers can meet these requirements by holding at least a Bachelor’s Degree, holding a valid Maryland Standard Professional Certificate or Resident Teacher Certificate, and passing applicable State content tests in each subject in which the teacher is assigned and/or have completed an academic major or equivalent in each of the subject areas (Using Maryland’s High, Objective, Uniform State Standard of Evaluation, March 2005).

In this case, the complainant alleges that there was not a special education teacher in the student’s special education classroom from the start of the 2012-2013 school year until December 2012. She further alleges that although a teacher was assigned to the classroom in December 2012, that teacher was not a highly qualified special education teacher.

Based on the Finding of Fact #1, the MSDE finds that during the 2012-2013 school year, the student was provided with special education instruction in reading and social studies, by a special education teacher, in a separate special education classroom. However, based on the Findings of Facts #2 and #3, the MSDE further finds that while a special education teacher provided instruction, there is no documentation that this teacher met the requirements to be considered a highly qualified special education teacher. Therefore, the MSDE finds that a violation occurred with regard to these allegations.

XXX

Mrs. Joan Rothgeb

August 19, 2013

Page 5

Notwithstanding the violation, based on the Finding of Fact #3, the MSDE finds that there is documentation that the student made progress toward achieving the annual IEP goals related to reading and social studies. As a result, no student-specific corrective action is necessary to address this matter.

ALLEGATION #3: **SPECIAL EDUCATION INSTRUCTION IN THE GENERAL EDUCATION CLASSROOM FOR MATH AND SCIENCE**

Findings of Facts:

4. The IEP in effect during the 2012-2013 school year required that the student receive his math instruction in the general education classroom (Docs. a and n).
5. There is documentation that during the 2012-2013 school year the student occasionally missed math class; the school staff reported that when the paraprofessional was unavailable to assist in the math class the student would not attend. However, there is no documentation of the specific dates when this occurred (Docs. f, l and review of the educational record).
6. The IEP also requires that, with the exception of math class, the student be provided with special education instruction in a separate special education classroom for all of his other academic classes, including science class (Docs. a and n).
7. The reports of the student's progress toward achieving the annual goals document that the student made progress toward all of the annual goals in math (Docs. h, m, q, and r).

Discussion/Conclusions:

In this case, the complainant alleges that, for both math and science, the student was supposed to receive special education instruction in the general education but this did not occur.

Based on the Finding of Fact #4, the MSDE finds that the IEP required that the student be provided with special education instruction in math in the general education classroom, with the provision of adult support. However, based on the Finding of Fact #5 and #7, the MSDE finds that there is documentation that, while the student made progress toward achieving the annual goals in math, the student was not consistently provided with instruction in math in the general education classroom because there were instances when the student missed class due to the unavailability of adult support. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #6, the MSDE further finds that the IEP did not require that the student receive instruction in science in the general education classroom. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

ALLEGATION # 4: **PROVISION OF ADULT SUPPORT**

Findings of Facts:

8. As indicated above, the IEP required that the student be provided with math instruction in the general education classroom. It also required that he be provided with support from a special education teacher or paraprofessional while in the general education classroom setting (Docs. a and n).
9. There is documentation indicating that when the student attended his math class, a paraprofessional provided him with the adult support required (Docs. i and l).
10. The IEP does not require that the student be provided with adult support during periods of transition during the school day (Docs. a and n).

Discussion/Conclusions:

In this case, the complainant alleges that the student was not provided with adult support when he was in the general education classroom. She further alleges that he did not receive this support when transitioning to his music class.

Based on the Findings of Facts #8 and #9, the MSDE finds that the student was provided with the adult support while receiving instruction in math, which was provided in the general education classroom. Based on the Finding of Fact #10, the MSDE finds that the IEP did not require that the student be provided with adult support during transitions. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION # 5: **PROVISION OF SENSORY BREAKS AND MATERIALS**

Findings of Facts:

11. In order to assist the student with achieving the annual goals, the IEP requires that he be provided with instructional accommodations and supports, including movement or sensory breaks and “sensory-behavior based strategies,” including, deep pressure and calming activities (Docs. a and p).
12. The IEP further requires that the occupational therapist provide consultative services to the classroom teachers on these “sensory-behavior based strategies” to “assist the student with attention and on-task behavior to address difficulties with engagement and participation in accessing the general curriculum” (Docs. a and n).
13. There was adaptive equipment, such as a “move and sit cushion” available at the start of the 2012-2013 school year. There is also documentation that this equipment was made available to the student throughout the school day in both the general and special education classrooms (Docs. b, c, g, and j).

XXX

Mrs. Joan Rothgeb

August 19, 2013

Page 7

14. While there is documentation that the adapted equipment was available for the student's use, there is no documentation of the consistent provision of sensory breaks. Further, there is no documentation of consultative services between the occupational therapist and the student's teachers regarding the use of "sensory-behavior based strategies" with the student while he was in class (Docs. d and e).

Discussion/Conclusions:

In this case, the complainant alleges that there was a delay in the provision of the sensory materials at the start of the 2012-2013 school year. She further alleges that the student was not provided with sensory breaks while in the general education classroom.

Based on the Finding of Fact #13, the MSDE finds that sensory materials were made available for the student's use throughout the 2012-2013 school year. However, based on the Findings of Facts #11 - #13, the MSDE further finds there is no documentation that the student was consistently provided with sensory breaks or that school staff met with the occupational therapist regarding the provision of sensory strategies with the student. Therefore, the MSDE finds that violations occurred with regard to this allegation.

CORRECTIVE ACTION/TIMELINES:

Student-Specific

The MSDE requires the PGCPS provide documentation no later than October 15, 2013 that the IEP team has convened to consider whether the violations identified in this Letter of Findings negatively impacted the student's ability to benefit from his educational program during the 2012-2013 school year. If the team determines that there was a negative impact, then the PGCPS must determine the nature and amount of *compensatory services*¹ or other remedy to be provided to the student.

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.

School-Based

The MSDE requires the PGCPS to provide documentation by November 1, 2013 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 at XXXXXXXXXXXXXXXXXXXX. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to

¹ Compensatory services, for the purpose of this letter, mean the determination regarding how to remediate the denial of appropriate services to the student (34 CFR §300.151).

XXX

Mrs. Joan Rothgeb

August 19, 2013

Page 8

determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to 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 PGCPS.

Documentation of the corrective action taken is to be submitted to this office to the attention of 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 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

XXX

Mrs. Joan Rothgeb

August 19, 2013

Page 9

identification, evaluation, placement, or provision of a Free Appropriate Public Education 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: Duane Arbogast
Joan Rothgeb
Gail Viens
LaRhonda Owens
Kerry Morrison
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Koliwe Moyo