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State Superintendent of Schools

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October 1, 2013

Wayne D. Steedman, Esquire  
Callegary & Steedman, P.A.  
201 N. Charles Street, Suite 1402  
Baltimore, Maryland 21201

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: 14-007

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 August 2, 2013, the MSDE received a complaint from Wayne D. Steedman, Esquire, hereafter, "the complainant," on behalf of above-referenced student and his parents, Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX. 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 allegations listed below.

1. The PGCPS did not provide the student with Home and Hospital Teaching (HHT) services upon the receipt of verifications, on February 6 and 22, 2013, from the student's psychiatrist, which indicated that the student had an emotional condition that prevented him from participating in school, in accordance with COMAR 13A.03.05.03 and 13A.05.01.10(C)(5).
2. The PGCPS did not follow proper procedures in responding to the request of the student's father to review the student's educational record on May 10, 2013, in accordance with 34 CFR §§99.10 and 300.613.

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Wayne D. Steedman, Esquire

Mrs. Joan Rothgeb

October 1, 2013

Page 2

**INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 5, 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 August 9, 2013, Ms. Hartman spoke with a member of the complainant's staff concerning the allegations contained in the complaint, via telephone.
4. On August 12, 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 PGCPs of the allegations and requested that the PGCPs review the alleged violations.
5. On August 13 and 28, 2013, and September 6, 10, 13, 17, 18, 20, and 27, 2013, the MSDE received information and documentation from the PGCPs regarding the allegations contained in the complaint.
6. On September 3, 2013, Ms. Hartman conducted a telephone interview with the complainant regarding the allegations contained in the complaint.
7. On September 5, 9, and 10, 2013, the MSDE received additional information from the complainant regarding the allegations contained in the complaint.
8. On September 13, 2013, Ms. Hartman and Ms. Anita Mandis, Chief, Complaint Section, Family Support and Dispute Resolution Branch, MSDE, discussed the allegations contained in the complaint with Ms. Viens and Ms. Morrison, via telephone.
9. On September 16, 2013, Ms. Hartman and Ms. Mandis conducted interviews, via teleconference, with Mr. XXXXXXXXX, Special Education Department Chairperson, XXXXXXXXXXXXXXXXXXXXXXXX, PGCPs, and Ms. XXXXXXXXX, Principal, XXXXXXXXXXXXXXXXXXXXXXXX, PGCPs. Ms. Viens and Ms. Morrison participated in the teleconference as representatives of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.
10. On September 17 and 20, 2013, the MSDE received documentation from the student's father regarding the allegations contained in the complaint, via electronic mail (email).
11. On September 18 and 19, 2013, Ms. Hartman conducted telephone interviews with the student's father regarding the allegations contained in the complaint.

XXX

Wayne D. Steedman, Esquire

Mrs. Joan Rothgeb

October 1, 2013

Page 3

12. On September 18, 25, and 27, 2013, Ms. Hartman requested that the PGCPS provide additional information and documentation related to the allegations contained in the complaint, via email.
13. 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 August 2, 2013;
  - b. Individualized Education Program (IEP), dated May 15, 2013;
  - c. Prior Written Notice documents, dated May 5 and 20, 2013;
  - d. The student's attendance record for the 2012-2013 school year;
  - e. Email correspondences between the student's parents and the PGCPS staff, dated between October 8, 2012 and June 17, 2013;
  - f. Email correspondence from the PGCPS to the MSDE, dated September 20, 2013;
  - g. Email correspondence from the PGCPS to the student's father, dated September 27, 2013; and
  - h. The PGCPS Administrative Procedure No. 5011, Home and Hospital Teaching, dated September 2, 2008.

### **BACKGROUND:**

The student is fifteen (15) years old and is identified as a student with an Other Health Impairment under the IDEA related to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). During the 2012-2013 school year, the student was enrolled in XXXXXXXXXXXX XXXXXXXX, where he received special education and related services.

The student was parentally placed in a private school at the start of the 2013-2014 school year. There is documentation that the student's parents were provided with notice of the procedural safeguards during the 2012-2013 school year (Docs. a-d, and interviews with the complainant and the PGCPS staff).

### **ALLEGATION #1: HOME AND HOSPITAL TEACHING (HHT) SERVICES**

#### **Findings of Facts:**

1. On February 6 and 20, 2013, the complainant submitted applications for HHT services and the verification of the student's need for the services to the school staff (Doc. a and interviews with the PGCPS staff).
2. The school system has a procedure for processing HHT applications, but acknowledges that the school staff did not follow the procedures. As a result, there was a loss of special education instruction and related services while the student was not able to attend a school-based educational program. The PGCPS staff report that, in order to ensure that this misinterpretation of the requirements does not occur in the future at other schools, the

XXX

Wayne D. Steedman, Esquire

Mrs. Joan Rothgeb

October 1, 2013

Page 4

PGCPS Central Office staff is reviewing and revising the HHT procedures to clarify the requirements (Docs. d, f, and h, and interviews with the PGCPS staff).

3. There is documentation that, at IEP team meetings held on May 5 and 15, 2013, services were proposed to compensate the student for the loss of services while he was unable to attend a school-based program (Docs. b and c).
4. In an email correspondence to the PGCPS staff, dated May 17, 2013, the student's parents rejected the offer to continue discussion about how to remediate the loss of services, stating that they do not believe that the compensatory services offered by the PGCPS "would undo the suffering (i.e., discrimination, continued harassment and hostile learning environment and suffering)." The parents indicated in this and in other correspondence with school staff that the only acceptable remedy would be to promote the student to the 10<sup>th</sup> grade with "at least an 85% average for the school year for each class currently projected to be below 85%," and placement in a private school at public expense (Doc. e).

#### **Discussion/Conclusions:**

In Maryland, each local school systems is required to make HHT services available to students who are unable to participate in their school of enrollment due to a physical or emotional condition that has been verified by a licensed physician, psychologist or psychiatrist. The HHT services must begin no more than ten (10) school calendar days following the school system's receipt of notification that the student is unable to attend the school of enrollment and verification of the need for HHT services (COMAR 13A.03.05.03 and 13A.03.05.04).

Based on the Findings of Facts #1 and #2, the MSDE concurs with the PGCPS' determination that a violation occurred with respect to this allegation. Notwithstanding the violation, based on the Findings of Facts #3 and #4, the MSDE finds that, although the student's parents did not accept them, the IEP team determined the services to compensate the student for the loss of services that resulted from the violation. Therefore, no additional student-specific corrective action is required.

#### **ALLEGATION #2: ACCESS TO THE STUDENT'S EDUCATIONAL RECORD**

##### **Findings of Facts:**

5. On May 10 and 31, 2013, and June 5, 2013, the student's father requested to review the student's educational record. The PGCPS acknowledges that, while the student's father was able to inspect a part of the record at that time, he was not provided access to all of the documents that constitute the educational record (Docs. e and f, and interviews with the PGCPS staff).
6. On September 27, 2013, the PGCPS staff sent the student's father copies of documents that were withheld during his inspection of the record (Doc. g).

XXX

Wayne D. Steedman, Esquire

Mrs. Joan Rothgeb

October 1, 2013

Page 5

7. The PGCPS staff report that, in order to ensure that no future misunderstandings of the requirements occur, training on the requirements related to access to educational records will be conducted when clarification of the HHT requirements is provided (Doc. f).

**Discussion/Conclusions:**

The IDEA requires that each public agency permit parents to inspect and review any educational records regarding their children that are “collected, maintained, or used by the agency,” consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.10 and 34 CFR §613).

In this case, the complainant alleges that, while the student’s father was permitted to inspect and review portions of the student’s educational record, he was not able to review all of the documents that comprise the educational record (Doc. a).

Based on the Findings of Facts #5 - #7, the MSDE concurs with the PGCPS’ determination that a violation occurred with respect to this allegation, and appreciates the information provided by the school system. Based on the Finding of Fact #6, the MSDE further finds that the documents that were withheld from the student’s father have subsequently been provided to him. Therefore, no student-specific corrective action is required.

**CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the PGCPS to provide documentation, by January 1, 2014, that the school system’s HHT services procedures have been clarified and that school system staff have been informed of the revised procedures. In addition, the PGCPS must provide documentation of the steps that have been taken to ensure that school system staff are informed of the requirements for responding to requests for access to student educational records.

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.

XXX

Wayne D. Steedman, Esquire

Mrs. Joan Rothgeb

October 1, 2013

Page 6

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 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: XXXXXXXXXXXX  
XXXXXX  
Kevin W. Maxwell  
Monique Whittington Davis  
Duane Arbogast  
Gail Viens  
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