



November 26, 2013

XXXXXXX
XXXXXXX
XXXXXXX
XXXXXXX

Mrs. Joan Rothgeb
Director of Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXXXXXXXXX
Reference: #14-023

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 September 30, 2013, the MSDE received a complaint from Mr. XXXXXXXXXXXXXXXX, hereafter, "the complainant," on behalf of his 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 MSDE investigated the allegations listed below:

1. The PGCPS did not ensure that the Individualized Education Program (IEP) includes measurable annual goals for the student to improve his self-management skills from October 2012 through September 25, 2013, in accordance with 34 CFR §§300.320 and .324.
2. The PGCPS did not ensure that the IEP team determined the services needed to address the student's identified needs when conducting a reevaluation in October and November 2012,

Mr. XXXXXXXXXXXXXXXX

Mrs. Joan Rothgeb

November 26, 2013

Page 2

consistent with the data, because no revisions were made to the IEP despite lack of sufficient progress, in accordance with 34 CFR §§300.303, .320, and .324.

3. The PGCPs did not ensure that the IEP team that convened on November 7 and 12, 2012 included a representative of the school system who was knowledgeable about the available resources with regard to placement options, in accordance with 34 CFR §300.321.
4. The PGCPs did not ensure that the complainant was provided with copies of reports, other than a speech/language assessment report, at least five (5) business days in advance of the November 7, 2012 IEP team meeting, in accordance with Md. Code. Ann. Educ. §8-405 (2010) and COMAR 13A.05.01.07D(3).
5. The PGCPs did not ensure that the complainant was provided with a copy of the proposed IEP at least five (5) business days prior to the November 12, 2012 IEP team meeting, in accordance with Md. Code. Ann. Educ. §8-405 (2010) and COMAR 13A.05.01.07D(3).

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On October 1, 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 October 2, 2013, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated. On the same date, the MSDE received electronic mail (email) correspondence from the complainant regarding the issues contained in the State complaint that were not identified as allegations to be investigated.
4. On October 3, 2013, the MSDE sent correspondences to the complainant that acknowledged receipt of the complaint, as well as the October 2, 2013 email, and identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPs of the allegations and requested that the PGCPs review the alleged violations.
5. On October 7, 9, and 20, 2013, and November 3, 11, and 18, 2013, the MSDE received additional information from the complainant, via email.
6. On October 10, 2013, Ms. Hartman and Ms. Anita Mandis, Chief, Complaint Section, Family Support and Dispute Resolution Branch, MSDE, conducted an interview with the complainant, via teleconference, concerning the issues contained in the State complaint that were not identified as allegations to be investigated.
7. On October 11, 2013, the MSDE sent correspondence to the complainant summarizing the substance of the October 10, 2013 teleconference, via email.

Mr. XXXXXXXXXXXXXXXX

Mrs. Joan Rothgeb

November 26, 2013

Page 3

8. On October 23, 2013, the MSDE sent correspondence to the complainant explaining the basis for how the allegations were identified.
9. On November 18, 2013, the MSDE requested additional information from the complainant, via email.
10. On November 18, 21, and 22, 2013, the MSDE requested additional information from the PGCPs, via email.
11. 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 September 30, 2013;
 - b. IEP, dated September 10, 2012, Behavior Intervention Plan (BIP), dated March 27, 2012, and Prior Written Notice document, dated September 19, 2012;
 - c. Notice and Consent for Assessments, dated September 10, 2012;
 - d. Notice of IEP Team Meeting, dated September 19, 2012;
 - e. Functional Behavior Assessment (FBA) and BIP, dated September 10, 2012 and approved October 3, 2012;
 - f. Prior Written Notice document, dated October 16, 2012;
 - g. Notices of IEP Team Meeting, dated October 26, 2012 and November 9, 2012;
 - h. Report of Speech/Language Assessment, dated October 30, 2012;
 - i. Report of Educational Assessment, dated November 1, 2012;
 - j. Report of Adapted Physical Education Assessment, dated November 1, 2012;
 - k. Report of Psychological Assessment, dated November 7, 2012;
 - l. Prior Written Notice document, dated November 7, 2012;
 - m. IEP and Prior Written Notice document, dated November 12, 2012;
 - n. IEP, dated January 15, 2013, and Prior Written Notice document, dated January 22, 2013;
 - o. Prior Written Notice document, dated June 5, 2013;
 - p. IEP and Prior Written Notice document, dated June 13, 2013;
 - q. Report of Assistive Technology Assessment, dated July 29, 2013;
 - r. Prior Written Notice document, dated September 4, 2013;
 - s. IEP and Prior Written Notice document, dated September 26, 2013; and
 - t. Email correspondence from the complainant to the MSDE, dated November 18, 2013.

BACKGROUND:

The student is eight (8) years old and is identified as a student with Autism under the IDEA. From the start of the 2011-2012 school year until March 8, 2013, the student attended XXXXXXXXXXXX XXXXXX. As the result of a change in placement made by the IEP team, the student has attended The XXXXXXXXXXXX, XXXXXXXXXXXX, a nonpublic, separate, special education school, where he was placed by the PGCPs since March 11, 2013.

During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a-s).

**ALLEGATIONS #1 - #3 MEASURABLE ANNUAL SELF-MANAGEMENT GOALS;
IDENTIFICATION OF NEEDS AS THE RESULT OF THE
REEVALUATION; AND PUBLIC AGENCY
REPRESENTATIVE PARTICIPATION AT THE
NOVEMBER 7 AND 12, 2012 IEP TEAM MEETING**

FINDINGS OF FACTS:

September 10, 2012 IEP Team Meeting

1. The IEP in effect at the start of October 2012 was developed on September 10, 2012 and reflects that the student was identified with needs related to reading comprehension, math calculation, receptive and expressive language, social interaction, gross motor, and self-management skills related to attending to task and the independent initiation of tasks (Doc. b).
2. The documentation from the September 10, 2012 IEP team meeting reflects that the team considered existing evaluation data. The documents reflect that the student was not making progress on the annual IEP goals which were designed to increase his engagement in tasks. The team also considered information that the student had begun exhibiting aggressive behaviors, despite the provision of extensive supports. Therefore, the IEP team recommended updated assessments in the areas of academic performance, expressive/receptive language skills, cognitive functioning, social/emotional/behavioral skills, and gross motor skills. The team also recommended an updated Functional Behavioral Assessment (FBA) in order to ensure that the student's Behavioral Intervention Plan (BIP) remained appropriate (Docs. b and c).
3. At the September 10, 2012 IEP team meeting, the annual IEP goals were revised based on the reports of the student's progress. The IEP included goals for the student to improve reading comprehension, math calculation, receptive and expressive language, social interaction, and gross motor skills with the provision of accommodations to assist him to increase his engagement in tasks. The goals indicate that the student's progress would be measured through data collected on his performance of specific tasks (Doc. b).
4. The IEP developed on September 10, 2012 required the provision of special education instruction in a separate special education classroom to assist him in achieving the annual goals, and speech/language therapy as a related service (Doc. b).

October 3, 2012 IEP Team Meeting

5. On October 3, 2012, the IEP team convened to review the results of the FBA and consider a draft BIP. The results of the FBA identified interfering aggressive behaviors towards school staff and peers that are exhibited when the student does not want to complete his work.

Other aggressive behaviors were identified, but the cause of those behaviors could not be identified. The student's BIP was revised to include the use of "fidget" items (e.g., oral motor sensory objects, stress ball, etc.) while the student is working, incentives for the student to complete his work, and the use of specific responses by teachers (Docs. d-f).

November 7 and 12, 2012 IEP Team Meeting

6. On November 7, 2012, the IEP team convened and reviewed the assessment data. The report of the educational assessment indicates that the student performs in the "low" to "very low" range in reading, writing, and math skills, requires "a lot of redirection," and needs "significant modification" of his work. The speech/language assessment was considered invalid due to the amount of behavior supports the student needed in order to complete the testing, but shows that, even with supports, the student was testing at the 4 year, 6 month age level. The psychological assessment, which was considered invalid as a measure of the student's cognitive functioning due to behaviors exhibited during testing that affected the reliability of the data, recommended a "small, structured educational setting" that offers "direct instruction in social and play skills" (Docs. g-l).
7. On November 7, 2012, the team also considered that the student was not making academic progress despite "significant modifications and behavior supports." Because the IEP team was unable to complete the review and revision of the student's program at the meeting, it decided to continue the meeting to November 12, 2012. The team also decided that another IEP team meeting would need to be convened after the completion of the review and revision of the program in order to consider the student's educational placement. The team decided that there would be participation by the PGCPs' Central Office staff at that meeting (Docs. g and l).
8. On November 12, 2012, the IEP team reconvened to continue the meeting that began on November 7, 2012. At that time, the IEP team revised the student's present levels of performance based on the evaluation data, which included information that the student displayed interfering behaviors in the classroom and during the provision speech/language therapy sessions. The IEP team revised the annual goals to improve expressive and receptive language skills based on the evaluation data. The IEP team also developed a goal for the student to decrease his aggressive behaviors. At the meeting, it was also decided that the student would be provided with immediate incentives when he completes his work, pictures to accompany reading passages, social skills training, and the use of noise reduction headphones (Docs. g and m).
9. At the meeting, the complainant requested that the IEP be revised to require an increase in the amount of speech/language therapy that is provided as a related service to assist the student to improve his communication skills. The IEP team rejected the request based on the school staff reports that the student "needs to be in his classroom environment for as much time as possible to address his academic and behavioral needs" (Doc. m).

Mr. XXXXXXXXXXXXXXX

Mrs. Joan Rothgeb

November 26, 2013

Page 6

January 15, 2013 IEP Team Meeting

10. On January 15, 2013, the IEP team reconvened and considered that the student continued to make insufficient progress even with the increased supports. Based on this data, the IEP team decided that the student requires additional special education instruction in order to achieve the goals, and that the least restrictive environment (LRE) in which the IEP can be implemented is a nonpublic, separate, special education school (Doc. n).
11. On March 11, 2013, the PGCPs placed the student at The XXXXXXXXXXXXXXX, XXXXXXXXXXXXXXX, a nonpublic, separate, special education school (Doc. p).

June 5 and 13, 2013, and September 4, 2013, IEP Team Meetings

12. On June 5 and 13, 2013, and September 4, 2013, IEP team meetings were conducted in accordance with corrective actions required by the MSDE as a result of investigations into other State complaints concerning the student (State Complaints #13-043, #13-064, #13-069, and #13-086). During the June 13, 2013 IEP team meeting, the complainant requested that, in addition to making decisions required in order to complete the corrective actions, the team conduct another review of the annual goals. The IEP team rejected the request based on information from school staff that the student was beginning to make progress on the goals (Docs. o and p).
13. On September 4, 2013, the IEP team reviewed the report of an assistive technology assessment dated July 29, 2013 which had been obtained as a result of a corrective action issued by the MSDE in State Complaint #13-069. The Assistive Technology Report indicates that, because the student is verbal, an augmentative alternative communication device would hinder his continued language acquisition. Based on this data, the IEP team determined that an assistive technology referral was not recommended for the student at the time (Docs. q and r).

September 26, 2013 IEP Team Meeting

14. On September 26, 2013, the IEP team convened to review the student's IEP. At this meeting, the team reviewed the results of classroom based assessments and considered information provided by the student's teachers and the complainant, which included information that the student was no longer making progress toward achievement of the annual IEP goals. The IEP team revised the annual goals based on the reports of the student's progress, increased the amount of speech/language therapy, and added weekly occupational therapy services to the IEP (Doc. s).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that includes a statement of the student's present levels of academic and functional performance, including how the disability affects the student's progress in the general curriculum, which is based on the evaluation data. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the

Mr. XXXXXXXXXXXXXXX

Mrs. Joan Rothgeb

November 26, 2013

Page 7

special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101, .320, and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46662, August 14, 2006).

Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to make progress in the general curriculum, the annual IEP goals must be aligned with the student's present levels of academic and functional performance (34 CFR §§300.101, .320, and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46662, August 14, 2006).

Allegation #1 Measurable Annual Goals to Address Self Management Skills from October, 2012 through September 25, 2013

In this case, the complainant alleges that the IEP did not include measurable annual goals for the student to improve identified self management skills, including independent initiation of tasks and remaining focused on tasks, from October 2012 to September 25, 2013 (Doc. a).

Based on the Findings of Facts #1 - #14, the MSDE finds that goals were designed to assist the student to improve skills with supports to address his need to increase his engagement in tasks. Based on those same Findings of Facts, the MSDE finds that the goals described the data that would be used to determine whether they were being achieved. Therefore, the MSDE finds that the goals were measurable and does not find that a violation has occurred with regard to this allegation.

Allegation #2 Services Needed to Address the Student's Needs Identified as a Result of a Reevaluation in October and November, 2012, Consistent with the Data

In this case, the complainant alleges that the IEP team did not review and revise the IEP consistent with the data that the student was not making sufficient progress towards achievement of the annual IEP goals when it conducted a reevaluation in October and November, 2012 (Doc. a).

Based on the Findings of Facts #2 and #5 - #9, the MSDE finds that the IEP team considered all of the evaluation data, including the student's lack of expected progress toward achieving the annual IEP goals, considered the concerns of the complainant, and revised the IEP consistent with the data. Therefore, the MSDE does not find that a violation has occurred with regard to this allegation.

Allegation #3 Participation by a Public Agency Representative Who is Knowledgeable About the Placement Options at the IEP Team Meeting on November 7 and 12, 2012

When determining a student's educational placement, the public agency must ensure that the IEP team bases the decision on the student's IEP, and that the determination of the placement is based on the LRE in which the program can be implemented (34 CFR §300.116). Therefore, the IEP team must develop the program before determining the educational placement.

In this case, the complainant alleges that there was a delay in determining an appropriate educational placement because the IEP team did not include an agency representative who was knowledgeable about the available placement resources until the January 15, 2013 meeting (Doc. a).

Mr. XXXXXXXXXXXXXXX

Mrs. Joan Rothgeb

November 26, 2013

Page 8

Based on the Findings of Facts #6 - #11, the MSDE finds that, since the review of the student's program was not completed until January 15, 2013, an educational placement could not be determined until that time. Therefore, the MSDE does not find that a violation has occurred with regard to this allegation.

ALLEGATION #4 PROVISION OF DOCUMENTS FIVE (5) BUSINESS DAYS BEFORE NOVEMBER 7, 2012

15. On November 7, 2012, the IEP team considered reports of an educational assessment, a psychological assessment, an adaptive physical education assessment, and a speech/language assessment (Docs. g-l).
16. There is no documentation that the complainant was provided with copies of the reports of the educational, psychological, and adaptive physical education assessments by October 31, 2012, the date that is five (5) business days prior to November 7, 2012¹ (Review of the student's educational record and the PGCPs school calendar).
17. The documentation reflects that the reports of the educational, psychological, and adaptive physical education assessments were not completed until after October 31, 2012. However, there is no documentation that the school system staff documented and communicated to the complainant that an extenuating circumstance existed that prevented the provision of a copy of the documents to him within the five (5) business day time frame (Docs. i-k and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

The public agency must take steps to ensure that a parent is present at each IEP team meeting or is afforded the opportunity to participate (34 CFR §300.322). In order to ensure that parents are provided with the opportunity to fully participate in discussions during an IEP team meeting, the public agency must ensure that they are provided with a copy of each assessment, report, data chart, and draft IEP (to the extent one has been developed) which will to be discussed at a scheduled IEP team meeting (Md. Code Ann., Educ., §8-405 (2010), COMAR 13A.05.01.07D(3), and the MSDE *Technical Assistance Bulletin #20*, dated September 2012).

These documents must be provided to the parent at least five (5) business days prior to the meeting, unless there are extenuating circumstances that prevent the public agency from doing so. An extenuating circumstance is any unforeseen event that occurs for which delivery of the document would not be possible prior to five (5) business days before the meeting, which can include documents that were created within the five (5) day window (Md. Code Ann., Educ., §8-405 (2010), COMAR 13A.05.01.07D(3), and the MSDE *Technical Assistance Bulletin #20*, dated September 2012).

¹ The complainant acknowledges that he received a copy of the speech/language assessment report within the required timeline (Doc. a and interviews with the complainant).

Mr. XXXXXXXXXXXXXXX

Mrs. Joan Rothgeb

November 26, 2013

Page 9

If an extenuating circumstance prevents the provision of the documents to the parent, appropriate school staff must document the extenuating circumstance and communicate that information to the parent. However, failure to provide parents with copies of documents at least five (5) business days prior to an IEP team meeting without the presence of an extenuating circumstance does not constitute a substantive violation of the requirement to provide a student with a FAPE (Md. Code Ann., Educ., §8-405 (2010), COMAR 13A.05.01.07D(3), and the MSDE *Technical Assistance Bulletin #20*, dated September 2012).

In this case, the complainant alleges that, with the exception of a report of the speech/language assessment, he was not provided with copies of assessment reports considered by the IEP team at least five (5) business days prior to the IEP team meeting that began on November 7, 2012. The complainant asserts that, as a result, he was unable to provide input into the IEP team's decisions because he did not have sufficient time to consider the assessment results (Doc. a).

Based on the Findings of Facts #15 - #17, the MSDE finds that the remaining assessment reports reviewed on November 7, 2012 were not completed within five (5) business days of the IEP team meeting. However, based on the Finding of Fact #17, the MSDE finds that the PGCPS did not document the nature of this extenuating circumstance and did not communicate this information to the complainant. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

Notwithstanding the violation, because the failure to provide copies of documents to parents at least five (5) business days prior to an IEP team meeting does not constitute a substantive denial of a FAPE, no student-specific corrective action is required.

**ALLEGATION #5 PROVISION OF THE DRAFT IEP FIVE (5) BUSINESS DAYS
BEFORE NOVEMBER 12, 2012**

FINDINGS OF FACTS:

18. The documentation reflects that, on November 7, 2012, the IEP team decided to complete the review of the educational program November 12, 2012, and that a proposed IEP would be developed and provided to the complainant on November 9, 2012 since they would be reconvening in less than five (5) business days (Docs. g and l).
19. The complainant acknowledges that he received a copy of the proposed IEP on November 9, 2012 (Doc. t and interviews with the complainant).

DISCUSSION/CONCLUSIONS:

As discussed above, the public agency must ensure that parents are provided with a copy of each document to be discussed at an IEP team meeting at least five (5) business days prior to the meeting, unless there are extenuating circumstances that prevent the public agency from doing so. If there is an extenuating circumstance that prevents the provision of the documents to the parents, at least five (5) business days prior to an IEP team meeting, such as documents that have not yet been completed, appropriate school staff must document the extenuating circumstance and communicate that information to the parents (Md. Code Ann., Educ., §8-405 (2010), COMAR 13A.05.01.07D(3), and the MSDE *Technical Assistance Bulletin #20*, dated September 2012).

Mr. XXXXXXXXXXXXXXX

Mrs. Joan Rothgeb

November 26, 2013

Page 10

In this case, the complainant alleges that the school system was required to provide him with a copy of the proposed IEP at least five (5) business days prior to November 12, 2012, the date on which it was reviewed, but did not do so (Doc. a).

Based on the Findings of Facts #18 and #19, the MSDE finds that the documentation indicates that the proposed IEP did not exist five (5) business days prior to November 12, 2012 and, therefore, that extenuating circumstances existed excusing the PGCPS from the requirement to provide the complainant with a copy of it during that time frame. Based on the same Findings of Facts, the MSDE further finds that the PGCPS documented the nature of the extenuating circumstance, notified the complainant of the reason the document was not being provided within the required timelines, and provided the complainant with a copy of the document as soon as it was available. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the PGCPS to provide documentation by March 1, 2014, that it has procedures in place to ensure the documentation of compliance by the school staff with the requirements related to the provision of documents to be discussed at IEP team meetings at least five (5) business days prior to the meetings.

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.

Mr. XXXXXXXXXXXXXXXX

Mrs. Joan Rothgeb

November 26, 2013

Page 11

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. 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: Kevin W. Maxwell
Monique Whittington Davis
Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXX
Dori Wilson
Anita Mandis
Christine Hartman
Martha J. Arthur

bc: Donna Riley
Marjorie Shulbank
Kim Marchman
Demetria Tobias
File