



January 13, 2014

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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: #14-040

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 November 18, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 above-referenced student. The MSDE investigated the allegations listed below.

1. The PGCPS has not ensured that the Individualized Education Program (IEP) team reviewed the student's IEP at least annually, in accordance with 34 CFR §300.324 and COMAR 13A.05.01.08B;
2. The PGCPS has not followed proper procedures to identify and address the student's assistive technology needs since the beginning of the 2013-2014 school year, in accordance with 34 CFR §300.324;
3. The PGCPS did not ensure that each service provider responsible for the implementation of the student's IEP was informed of their specific responsibilities related to implementing the IEP from the beginning of the 2013-2014 school year until

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September 25, 2013, in accordance with 34 CFR §300.323 and COMAR 13A.05.02.09D(5);

4. The PGCPS has not ensured that the student has been provided with supports and accommodations in mathematics and science classes, since the beginning of the 2013-2014 school year. Specifically, that the verbatim reading of tests, notes and outlines, a scribe, extended time to complete assignments and assessments, frequent breaks, reduced distractions, and organizational aids have not been provided, in accordance with 34 CFR §§300.101 and .323;
5. The PGCPS has not ensured that the student has been provided with the assistive technology devices required by his IEP since the beginning of the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323;
6. The PGCPS did not ensure that the student was provided with the special education instruction required by the IEP from a highly qualified special education teacher in mathematics and science from the beginning of the 2013-2014 school year through November 5, 2013, in accordance with 34 CFR §§300.18 and .156;
7. The PGCPS did not provide the complainant with a copy of the completed IEP document within five (5) business days after the September 25, 2013 IEP team meeting, in accordance with Md. Code Ann., Educ., §8-405(e) (2013) and COMAR 13A.05.01.07D(3); and
8. The PGCPS did not provide the complainant with a written invitation at least ten (10) days in advance of the IEP team meeting held on November 6, 2013, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 20, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Dr. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On November 22, 2013, Ms. Tyra Williams, Education Program Specialist, MSDE, contacted the complainant by telephone and clarified the allegations to be investigated.
4. On November 27, 2013, the MSDE received electronic mail (email) correspondence from the complainant regarding the complaint investigation.
5. On December 18, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation.

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6. On December 30, 2013 and January 6, 2013, the MSDE sent the PGCPS email correspondence to request information and documentation to be considered in conducting the investigation.
7. On January 7, 2014, the MSDE received information and documentation from the PGCPS regarding the allegations contained in the complaint, via email correspondence.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, listed below.
 - a. Correspondence and attachments from the complainant to the MSDE, received on November 18, 2013;
 - b. IEP, dated September 26, 2012;
 - c. IEP team meeting invitation, dated September 24, 2013;
 - d. IEP, dated September 25, 2013;
 - e. IEP team meeting attendance and sign-in form, dated September 25, 2013;
 - f. Signed receipt of the procedural safeguards, dated September 25, 2013;
 - g. Email correspondence from the PGCPS to the complainant, sent September 30, 2013.
 - h. Email correspondence between the PGCPS staff, sent November 5, 2013;
 - i. IEP team meeting invitation, dated November 6, 2013
 - j. IEP, dated November 6, 2013; and
 - k. IEP team meeting attendance and sign-in form, dated November 6, 2013.

BACKGROUND:

The student is twelve (12) years old. He is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services. He attends XXXXXXXXXXXXXXXXXXXX (XXXX XXXXXX). During the period of time addressed by this investigation the complainant was provided with written notice of the procedural safeguards (Docs. b, d, and g).

ALLEGATIONS #1 AND #2

REVIEW OF THE IEP AT LEAST ANNUALLY AND AN IEP THAT ADDRESSES ASSISTIVE TECHNOLOGY NEEDS

FINDINGS OF FACTS:

1. There is documentation that the IEP team conducted a review of the IEP on September 26, 2012 and September 25, 2013 (Docs. b, c, f and j).
2. The IEP identifies needs in the area of written expression related to the use of phonetics in the spelling of words. In order to address this need, the IEP requires the provision of assistive technology devices, including an electronic speller and personal word processor (Docs. b, d, e, and j).

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3. A September 30, 2013 email from the school staff to the complainant documents that the school staff unilaterally decided that the student would no longer be provided with the use of the assistive technology devices and that they should have been removed from the IEP. The email indicates that the assistive technology devices were ineffective, due to the student's weak and/or low spelling ability. Also, the school staff indicate in the email that if the complainant wants to address the concerns regarding the discontinued provision of the assistive technology devices, then an IEP team meeting can be convened (Doc. g).
4. There is no documentation that the decision to discontinue the use of the assistive technology devices was made by an IEP team or that the complainant agreed to amend the IEP to discontinue the use of the devices without convening the IEP team (Review of the educational record).

DISCUSSION/CONCLUSIONS:

In order to provide a Free Appropriate Public Education (FAPE) to a student with a disability, the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. The IEP team must also specifically consider whether the student needs assistive technology devices and services in order to access special education instruction (34 CFR §§300.101, .320, and .324).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved in order to ensure that the IEP remains appropriate. The IEP team must also revise the IEP to address any lack of expected progress towards achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324 and COMAR 13A.05.01.08B).

When making changes to the IEP after the annual IEP team meeting for a school year, the parent and the public agency may agree not to convene an IEP team meeting for the purpose of making those changes (34 CFR §300.324).

Allegation #1 Annual Review of the IEP

Based on the Finding of Fact #1, the MSDE finds that the IEP team reviewed and revised the September 25, 2013 IEP within twelve (12) months since the last review held on September 26, 2012. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2 IEP That Addresses Assistive Technology Needs

Based on the Findings of Facts #2-#4, the MSDE finds that the school staff unilaterally decided that the student no longer requires the provision of assistive technology devices, and that this determination was made with neither the agreement of the complainant nor through the IEP team process. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATIONS #3 - #5 IEP IMPLEMENTATION

FINDINGS OF FACTS:

5. There is no documentation that the student's teachers and service providers responsible for implementing the IEP were informed of either the requirements of the IEP or of their roles in the implementation of the program from the beginning of the 2013-2014 school year until September 25, 2013 (Review of the educational record).
6. The IEP requires that accommodations and supports be provided in all of the student's academic classes. These supports and accommodations include verbatim reading, notes and outlines, use of a scribe, extended time, breaks, reduced distractions, and organizational aids (Docs. b, d, and j).
7. There is no documentation that the accommodations and supports required by the IEP have been provided to the student in his mathematics and science classes since the start of the 2013-2014 school year (Review of the educational record).
8. The IEP states that the student requires the provision of an electronic speller and a personal word processor to assist him with written expression (Docs. b, d, and j).
9. A September 30, 2013 email from school staff to the complainant, documents that the school staff unilaterally decided that the student would no longer be provided with the use of assistive technology devices (Doc. g).
10. There is no documentation that the student has been provided with the use of assistive technology devices during the 2013-2014 school year (Review of the educational record).

DISCUSSION/CONCLUSIONS:

Each public agency must ensure that students with a disability receive the special education instruction and related services required by the IEP. In order to do so, the public agency must ensure that the IEP is accessible to each teacher and service provider responsible for the implementation of the program and that they are informed of their responsibilities for implementing the IEP 34 CFR §§300.101 and 323 and COMAR 13A.05.01.09D(5).

The public agency must also ensure that documentation of compliance with the IDEA is maintained for three (3) years (34 CFR §§76.1, 76.731, and 80.42).

**Allegation # 3 Access to the IEP by the Student's Teachers and Service Providers
From the Start of the 2013-2014 School Year Until September 25, 2013**

Based on the Finding of Fact #5, the MSDE finds that there is no documentation that the teachers and service providers responsible for implementing the IEP were informed of the requirements of the IEP and their respective roles in the implementation of the program from the beginning of the 2013-2014 school year until September 25, 2013. Therefore, this office finds that a violation occurred with respect to the allegation.

**Allegation #4 Provision of Supports and Accommodations in Mathematics and Science
Classes Since the Start of the 2013-2014 School Year**

Based on the Findings of Facts #6 and #7, the MSDE finds that there is no documentation of the provision of supports and accommodations in the student's mathematics and science classes since the start of the 2013-2014 school year. Therefore, this office finds that a violation occurred with respect to the allegation.

**Allegation #5 Provision of Assistive Technology Devices Since the Start of the 2013-2014
School Year**

Based on the Findings of Facts #8-#10, the MSDE finds that there is documentation that the school staff discontinued the provision of the assistive technology devices required by the IEP during the 2013-2014 school year. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #6 PROVISION OF SPECIAL EDUCATION INSTRUCTION IN
MATHEMATICS AND SCIENCE BY HIGHLY QUALIFIED
TEACHERS FROM THE START OF THE 2013-2014
SCHOOL YEAR UNTIL NOVEMBER 5, 2013**

FINDINGS OF FACTS:

11. The IEP requires that the student be provided with special education instruction in all academic areas (Docs. b, d, and j).
12. There is no documentation that the student has been provided with special education instruction in mathematics and science classes by qualified teachers or that the instruction is provided under the supervision of qualified teachers from the beginning of the 2013-2014 school year until November 5, 2013 (Review of the educational record).

DISCUSSION/CONCLUSION:

The IDEA requires that public agencies ensure that personnel providing special education services are appropriately and adequately prepared and trained, and incorporates the requirements of the Elementary and Secondary Education Act of 1965 (ESEA). These requirements include that teachers be fully licensed or certified to teach, and that they demonstrate subject matter knowledge in the core academic subjects that they teach. In addition,

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school staff who are appropriately trained and supervised by highly qualified staff may be used to assist in the provision of special education and related services. However, this requirement does not create a right of action on behalf of an individual student or class of students for the lack of the provision of instruction by an individual who is not highly qualified (34 CFR §§200.18 and .156).

Based on the Findings of Facts #11 and #12, the MSDE finds that there is no documentation that from the beginning of the school year until November 5, 2013 the student was provided with special education instruction in mathematics and science classes by qualified teachers or that the instruction was provided under the supervision of qualified teachers. Therefore, this office finds that a violation occurred with respect to the allegation. Notwithstanding the violation, because there is no individual student right to the provision of special education instruction from qualified teachers, no student-specific corrective action is required.

ALLEGATION #7

PROVISION OF THE COMPLETED IEP FOLLOWING THE SEPTEMBER 25, 2013 IEP TEAM MEETING

FINDINGS OF FACTS:

13. On September 25, 2013, the IEP team convened and made revisions to the IEP, including revisions to the annual goals related to speech and language articulation, and documented that the complainant was provided with a copy of the IEP (Docs. c and d).
14. On November 6, 2013, the IEP team reconvened to continue discussion of concerns that had been raised by the complainant at the September 25, 2013 IEP team meeting. At the November 6, 2013 IEP team meeting, the team documented that it had completed the revisions to the draft IEP which was developed on September 25, 2013 and that the complainant was provided with a copy of the finalized IEP (Docs. h, i, and j).

DISCUSSION/CONCLUSION:

Not later than five (5) business days after a scheduled IEP team meeting, school personnel must provide a copy of the completed IEP to the parent. If the IEP has not been completed by the fifth (5th) business day after the meeting, a draft copy of the IEP must be provided (Md. Code Ann., Educ., § 8-405(c) (2010) and COMAR 13A.05.01.07D, and the MSDE's *Technical Assistance Bulletin 20*, dated September 2012).

In this case, the complainant alleges that because she was not provided with the final IEP until the November 6, 2013 IEP team meeting, the school system did not comply with the requirement to provide her with the completed IEP within five (5) business days of the September 25, 2013 meeting.

Based on the Finding of Fact #13 and #14, the MSDE finds that there is documentation that the complainant was provided with a draft IEP within five (5) business days of the IEP team meeting and that she was provided with another copy once it was finalized on November 6, 2013. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #8

**WRITTEN INVITATION TO THE NOVEMBER 6, 2013
IEP TEAM MEETING**

FINDINGS OF FACTS:

15. A November 5, 2013 email between school staff indicates that the school staff forgot to contact the complainant regarding the IEP team meeting scheduled for November 6, 2013, and there is no documentation that the complainant was provided with a written invitation in advance of the scheduled meeting (Doc. h).
16. There is documentation that on November 5, 2013 the school staff informed the complainant of the IEP team meeting by telephone and despite the lack of notice, the complainant agreed to, and did, participate in the November 6, 2013 IEP team meeting via telephone (Docs. f, h, k, and interview with the complainant).

DISCUSSION/CONCLUSION:

The public agency is required to take steps to ensure that a parent has the opportunity to participate in IEP team meetings. To ensure that parents are afforded with this opportunity, a written invitation must be sent to the parent at least ten (10) days in advance of the meeting, unless an expedited meeting is being conducted to address urgent needs of the student to ensure the provision of a FAPE (34 CFR §300.322 and COMAR 13A.05.01.07D).

Based on the Findings of Facts #15 and #16, the MSDE finds that the complainant was not provided with written invitation of the November 6, 2013 IEP team meeting at least ten (10) days before the meeting, and that a violation occurred with respect to the allegation. Notwithstanding the violation, based on the Finding of Fact #16, the MSDE finds that the complainant was able to participate in the meeting and therefore, no student-specific corrective action is required.

CORRECTIVE ACTION/TIMELINE:

Student-Specific

The MSDE requires the PGCPs to provide documentation by February 28, 2014, that the student is being provided with the assistive technology devices and accommodations required by the IEP. The PGCPs must also provide documentation that the IEP team determined *compensatory services*¹ or other remedy for the loss of services resulting from the violations identified in this investigation.

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, the complainant maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

¹ Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

School-Based

The MSDE requires the PGCPS to provide documentation by March 31, 2014, 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 XXXXXXXXXX.

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 this 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 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 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 the Corrective Action consistent with the timeline requirement 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 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:tw

cc : Kevin M. Maxwell
Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXX
Dori Wilson
Anita Mandis
Tyra Williams
Martha J. Arthur