



March 6, 2014

XXX
XXX
XXX
XXX
XXX

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: #14-053

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.

ALLEGATION:

On January 6, 2014, the MSDE received a complaint from XXXXXXXXXXXX., Esq., hereafter, "the complainant" on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX, as their legal representative. 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 allegation that the PGCPS has not fulfilled its Child Find obligation to ensure that the student has been evaluated and identified as a student with a disability under the IDEA since January 2013, in accordance with 34 CFR §§300.8 and .111.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.

XXX

Mrs. Joan Rothgeb

March 6, 2014

Page 2

2. On January 9, 2014, 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 January 10, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the PGCPs of the allegation and requested that the PGCPs review the alleged violation.
4. On February 10 and 21, 2014, the PGCPs sent the MSDE documentation to be considered during the investigation.
5. On February 19, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, and Ms. Williams conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXX, School Nurse;
 - b. Mr. XXXXXXXXXXX, Pupil Personnel Worker;
 - c. Ms. XXXXXXXXXXX, Special Education Department Chairperson; and
 - d. Ms. XXXXXXXXXXX, Principal.

Ms. Kerry Morrison attended the site visit as a representative of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.
6. On February 27, 2014, Ms. Mandis and Ms. Williams conducted a telephone interview with the complainant, the student, and his mother. On the same date, the complainant sent the MSDE documentation for the MSDE to consider during the complaint investigation.
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 January 6, 2014;
 - b. The PGCPs Administrative Procedure: Student Attendance, Absence, and Truancy (#5113), dated July 1, 2007;
 - c. The student's Transcripts, from the 2008-2009 through 2012-2013 school years;
 - d. The PGCPs Administrative Procedure: Proactive Student Services Intervention (#5124), dated November 1, 2009;
 - e. School Nurse notes, dated August 30, 2010 through May 9, 2011;
 - f. Individual Health Care Plan, dated September 1, 2010;
 - g. Student Emergency Plan, dated January 21, 2011;
 - h. Student Report Card for the 2010-2011 school year;
 - i. School Nurse notes, dated August 25, 2011 through March 27, 2012;
 - j. Emergency Care Plan, dated August 31, 2011;

XXX

Mrs. Joan Rothgeb

March 6, 2014

Page 3

- k. Individual Health Care Plan, reviewed August 31, 2011;
- l. Student Report Card for the 2011-2012 school year;
- m. The PGCPS Administrative Procedure: XXXXXXXXXXXX (#XXXX), dated July 1, 2012;
- n. Incident reports, dated August 21, 2012;
- o. Notification of Request for Expulsion, dated August 21, 2012;
- p. Security Incident Report, dated August 21, 2012;
- q. School Administrative Conference Sign-in, dated September 11, 2012;
- r. School Behavioral and Academic Agreement, dated September 12, 2012;
- s. Alternative School Application, signed by the student's mother September 12, 2012;
- t. Emergency Care Plan, dated September 12, 2012;
- u. School Nurse notes, dated September 13, 2012 through January 7, 2013;
- v. Attendance Meeting minutes, dated October 9, 2012;
- w. Diabetes management instructions from the student's physician, dated November 19, 2012;
- x. Student Instructional Team/Supplemental Services Team meeting notes, dated January 16, 2013;
- y. Withdrawal or Transfer Request Form, dated January 22, 2013;
- z. The Student's Withdrawal/Transfer Record, dated January 22, 2013;
- aa. Emergency Care Plan, dated September 1, 2013; and
- bb. Private Physician treatment verification, dated August 16, 2013.

BACKGROUND:

The student is seventeen (17) years old and is not identified as a student with a disability under the IDEA. The student attended XXXXXXXXXXXX (XXXXXXX) from the start of the 2010-2011 school year until January 22, 2013, when he was withdrawn from the school and subsequently began attending XXXXXXXXXXXX at XXXXXXXXXXXXXXXXXXXX (XXXXXXX XX)¹ (Docs. e, y, and z, and interviews with the complainant, student, and PGCPS staff).

FINDINGS OF FACTS:

School System Interventions

1. The PGCPS requires teachers to maintain daily attendance records for each student and to report tardiness or absence as it occurs. Students who may be "at-risk" are to be referred to an administrator, school counselor, the pupil personnel worker, or other school professional or team for appropriate intervention. Such interventions include notifying parents, providing appropriate services, and taking disciplinary action (Docs. b and d).

¹ XXXXXXXXXXXX is an optional high school instructional program that is conducted in the evenings, where students can complete courses in order to fulfill the requirements for obtaining a Maryland High School Diploma (Doc. m).

XXX

Mrs. Joan Rothgeb

March 6, 2014

Page 4

2. Services to be considered include referrals for school counseling, home visits, recommendations for community-based medical or mental health services, referral to juvenile services, referral to an appropriate school team to determine supports to be provided, and referral to an Individualized Education Program team if a disability is suspected. A student sixteen (16) years of age² or older may be withdrawn from school after unsuccessful attempts have been made to improve the student's attendance (Docs. b and d).

2010-2011 School Year

3. The student was enrolled in the ninth (9th) grade at XXXXXXXX during the 2010-2011, 2011-2012, and 2012-2013 school years until January 22, 2013, when he was withdrawn from the school. The student's transcripts reflect that he earned only one and a half (1.5) credits during the 2010-2011 and 2011-2012 school years combined. The student's attendance records reflect that he did not consistently attend classes and that this behavior continued during the 2012-2013 school year (Docs. c, h, and l).
4. The student's educational record reflects that a health plan was developed at XXXXXXXX upon the student's enrollment for the 2010-2011 school year. The health plan was designed to keep the student's blood glucose levels stable, and required daily testing of the student's blood glucose levels and administration of insulin, as needed, in the health room (Docs. e, f, and g).
5. There is documentation that the student did not consistently report to the health room in accordance with the health plan. The student reports that the school staff required him to test his blood glucose levels and administer insulin prior to lunch, but that he did not find it helpful to do so because he needs to know what he will be eating for lunch in order to determine the correct amount of insulin to administer. He also indicates that he did not like reporting to the health room because he was required to remain there to rest for fifteen (15) minutes if his blood glucose levels were low, which made him late for lunch, and subsequently late for the class period after lunch (Doc. e and interview with the student).
6. There is documentation that in May 2011, the school staff contacted the student's mother because he had stopped attending school altogether. The student's mother reported that the student indicated that he was too sick to return to school and that he was refusing to leave the house, even to visit the doctor. In response to this information, a pupil personnel worker and member of the school nursing staff conducted a home visit in order to assess the student's needs. At that time, they were informed that the student's medication had been changed, and made arrangements for the student's private physician to provide new orders for medication reflecting the changes (Doc. e).

² While the age of compulsory school attendance in Maryland is set to be raised on July 1, 2015, as of the date of this Letter of Findings, students are required to attend school until sixteen (16) years old (Md. Code, Ann., Educ. §7-301(2013)).

XXX

Mrs. Joan Rothgeb

March 6, 2014

Page5

7. The school staff documented that during the home visit, the student shared information about an “incident” that occurred between his parents in the home in 2010. The school staff documented their impression that the student had “suppressed anger” about the incident. In response, the school staff made arrangements for the crisis intervention team to visit the family. An August 16, 2013 Verification of Treatment form completed by the student’s private physician documents that the incident “caused significant psychological stress” on the student and that he “has undergone counseling” and “is doing much better” (Docs. e and bb).

2011-2012 School Year

8. There is documentation that the student was once again attending school at the start of the 2011-2012 school year. However, the attendance data reflect that he continued to skip classes and that he was not consistently reporting to the health room. The student reports that he was unable to attend class consistently because he was in other areas of the school attempting to stabilize his blood sugar. He reports that he became weak, confused, and irritated when this occurred and that he had to use the restroom frequently. However, he indicates that he did not share this information with the nursing or other school staff (Docs. i, j, k, and l).

2012 – 2013 School Year

9. There is documentation that, at the start of the 2012-2013 school year, interventions had been attempted to address the student’s lack of regular class attendance. These interventions included conferences with the student and parent, program adjustments such as health plans and a pass to leave class to visit the health room, referrals to student services and psychological services, and development of a behavior contract that was signed by the student and his mother on September 12, 2012 (Docs. n, o, p, q, r, t, u, v, and w).
10. At the start of the 2012-2013 school year, a referral was also made for the student to an alternative high school program that provides a small class setting with an emphasis on behavior modification and goal setting. However, the student reports that he did not agree to participate in the program because of the stigma of attending an alternative school (Doc. s and interview with the student).
11. On January 22, 2013, the student was withdrawn from XXXXXXXX and subsequently began attending the XXXXXXXXXXXX. To date, the student has earned one (1) credit in the program at XXXXXXXXXXXX (Docs. x, y, z, and aa, and student interview).
12. There is no documentation that a written referral has been made for an IDEA evaluation for the student and the school staff report that they do not suspect that the student has a disability that is impacting his ability to progress through the general curriculum (Review of the educational record).

XXX

Mrs. Joan Rothgeb

March 6, 2014

Page 6

DISCUSSION/CONCLUSIONS:

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR § 300.111). It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services.

To meet this expectation, school staff may review a student's academic and behavioral performance and determine teaching strategies, modifications to instruction, and behavior management techniques, which will appropriately assist the student. However, the public agency must ensure that implementation of intervention strategies do not delay or deny a student's access to special education services under the IDEA (34 CFR §300.111).

In this case, the complainant alleges that the student has been diagnosed with Diabetes and Post Traumatic Stress Disorder, and that these conditions have prevented him from accessing instruction. The complainant specifically asserts that the student spent most of the school day in the health room attempting to regulate his blood glucose levels, which is why he had inconsistent class attendance. The complainant also asserts that the school staff did not communicate with the student and his family to ascertain the reason for his lack of class attendance, and that had they done so, they would have suspected a disability and conducted an evaluation in order to determine his need for special education and related services (Doc. a and interview with the complainant).

Based on the Findings of Facts #3-#8, the MSDE finds that the documentation does not support the assertion that the student was unable to attend class due to his need to address his medical issues. Based on the Findings of Facts #9 and #10, the MSDE further finds that the documentation does not support the assertion that the school staff did not take steps to determine the reason for the student's lack of regular class attendance.

Based on the Findings of Facts #1 and #2, the MSDE finds that the PGCPs has procedures in place for providing interventions in the general education program to address both academic and behavioral needs, for monitoring student responses to those interventions, and for referring a student for an IDEA evaluation if the student is suspected of being a student with a disability.

Based on the Findings of Facts #9-#12, the MSDE finds that there is documentation that interventions were provided to the student in the general education program in order to address his behavioral needs and there is no documentation that a disability is suspected. Therefore, the MSDE does not find that a violation occurred.

Please be advised that the student's parent 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

XXX

Mrs. Joan Rothgeb

March 6, 2014

Page 7

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 identification, evaluation, placement, or provision of a Free Appropriate Public Education for the student, including issues subject to a 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 : XXXXXXXXX
 Kevin M. Maxwell
 Gail Viens
 LaRhonda Owens
 Kerry Morrison
 XXXXXXXXXXXXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Tyra Williams
 Martha J. Arthur