



April 1, 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: #14-063

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 January 31, 2014, 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 MSDE investigated the allegations listed below:

1. The PGCPS should have suspected that the student is a student with a disability and conducted an evaluation since January 31, 2013,¹ in accordance with 34 CFR §300.111.
2. The PGCPS did not follow proper procedures when conducting an evaluation since January 31, 2013,¹ in accordance with 34 CFR §§300.301-.311, and COMAR 13A.05.01.06(A). Specifically, the PGCPS did not ensure that the evaluation was sufficiently comprehensive to identify all the areas of suspected disability.

¹ The complaint included allegations of violations that occurred more than a year before the date it was received. The complainant was advised, in writing, on February 27, 2014, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

XXX

Mrs. Joan Rothgeb

April 1, 2014

Page 2

3. The PGCPS has not followed proper procedures when responding to the complainant's requests for an Independent Education Evaluation (IEE) since the start of the 2013-2014 school year, in accordance with 34 CFR §300.502.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 3, 2014, 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 February 21, 2014, the PGCPS provided documentation to the MSDE related to the allegations being investigated.
4. On February 26, 2014, Ms. Moyo attempted to contact the complainant, by telephone, to clarify the allegations to be investigated, but was unable to reach her.
5. On February 27, 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 the PGCPS of the allegations and requested that the PGCPS office review the alleged violations.
6. On March 14, 2014, Ms. Moyo and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXX XX) to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, XXXXXXXX;
 - b. Ms. Jean McKinley-Vargas, Occupational Therapist, PGCPS;
 - c. Ms. XXXXXXXX, Teacher, XXXXXXXX; and
 - d. Ms. XXXXXXXX, Special Education Teacher, XXXXXXXX.

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.

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(s) to the MSDE, received on January 31, 2014;
 - b. Report card from the 2012-2013 school year;
 - c. *The PGCPS Administrative Procedures (#5124) Proactive Student Services Intervention*, dated November 1, 2009;
 - d. Referral for an evaluation, dated October 10, 2013;

XXX

Mrs. Joan Rothgeb

April 1, 2014

Page 3

- e. IEP team meeting invitation, dated October 10, 2013;
- f. Child Find Referral, dated October 22, 2013;
- g. Individualized Education Program (IEP) meeting notes/prior written notice, October 22, 2013 and December 3, 2013;
- h. Consent for assessment, dated October 22, 2013;
- i. School staff meeting notes, dated October 22, 2013;
- j. Educational assessment report, dated November 19, 2013;
- k. Speech/Language assessment report, dated December 2, 2013;
- l. Psychological assessment report, dated December 10, 2013;
- m. Occupational therapy consultation report, dated December 17, 2013;
- n. IEP evaluation report, dated December 17, 2013;
- o. Specific learning disability team report, December 17, 2013;
- p. Individualized Education Program (IEP) meeting notes/prior written notice, dated December 17, 2013;
- q. Consent for assessment, dated January 13, 2014;
- r. IEP, dated January 13, 2014;
- s. Occupational Therapy assessment report, dated March 4, 2014;
- t. Individualized Education Program (IEP) meeting notes/prior written notice, dated March 11, 2014; and
- u. Parent contact log from the 2013-2014 school year.

BACKGROUND:

The student is twelve (12) years old and he attends XXXXXXXXXXXXXXXXXXXX. On December 17, 2013, he was identified as a student with a Specific Learning Disorder under the IDEA and receives special education 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 procedural safeguards (Docs. a, d –i, n – r, and t).

FINDINGS OF FACTS:

1. The *PGCPS Administrative Procedures for Proactive Student Services Intervention* indicates that the PGCPS utilizes a Response to Intervention (RTI) Three Tier School-Wide Intervention process to provide research-based interventions to “improve student outcomes for students who are at risk for learning challenges.” The School Instructional Team (SIT) and the Supplemental Services Team (SST) are designed to assist school staff with determining the resources that can be used with students experiencing difficulty in school. The SIT consists of school based staff that meet on a weekly basis to review the effectiveness of the interventions being provided, identify students who may need additional support, and screen for referrals to the SST. The SST is a team that consists of school based and non-school based staff that meet on a monthly basis to review the progress data collected by the SIT, consult with school staff about available resources to assist students, and discuss discipline and attendance concerns (Doc. c and interview with school staff).

2. The first level of intervention requires that the student receive additional support in the general education classroom. The length of time that these supports are to be provided is based on the expected rate of skill acquisition and the results of benchmark assessments. The student's progress is monitored by continued growth and improvement based on instructional approaches and on evidence-based interventions used in the curriculum. If the student does not exhibit progress within the expected time period, the SIT will determine whether more intensive supports are necessary. If the team determines additional interventions are required, the student will be provided with more intensive supports for a nine (9) to twelve (12) week period. The progress is monitored on a weekly basis (Doc. c).
3. Following the required time period, the SIT will again review the student's progress and determine if additional supports are required or if the student is meeting expectations. If the student is not progressing, the SIT may determine that the student requires even more intensive supports, for another nine (9) to twelve (12) week period with daily monitoring of progress. After this period, the SIT will review the student's progress and if the student has not progressed despite the provision of the interventions, the SIT may refer the student to the SST. The SST will review the data provided by the SIT and determine whether the student needs more intensive research-based interventions or may refer the student to the Individual Education Program (IEP) team to consider if the student is suspected of having a disability under the IDEA (Doc. c and interview with school staff).
4. There is documentation that during the 2012-2013 school year, as a result of being identified as a student at-risk for poor learning outcomes related to reading, the student was provided with supports in the general education program. He was provided with interventions, including reading instruction in a small group, and peer tutoring. The student was also provided with reading instruction on a one-to-one basis with a reading specialist (Docs. f, g, i and interview with school staff).
5. There is no documentation of the length of time the student received the interventions in the general education classroom or that information of the student's progress with the provision of the interventions was collected and reviewed consistent with the PGCPs procedures (review of the student's educational record and interview with school staff).
6. On October 10, 2013, the complainant made a written referral for an evaluation under the IDEA. On the same date, in response to the complainant's request for an evaluation an IEP team meeting notice was developed indicating and an IEP team meeting was scheduled for October 22, 2013. There is no documentation that the complainant requested an evaluation prior to October 10, 2013 (Docs. d, e, and review of the educational record).
7. On October 22, 2013, the IEP team convened. The team considered a report from the student's teacher that during reading class the student had difficulty copying information from the board, misspelled some words, and placed some information from the graphic organizer in the wrong area. The team also considered information from informal

classroom assessments indicating that the student was performing below grade level in reading and math (Docs. f, g, and i).

8. The team considered information that the student's scores on the classroom-based assessments declined between the spring of the 2012-2013 school year and the start of the 2013-2014 school year and that his scores indicated that he was exactly one (1) year below grade level expectancy. The team also considered the student's Maryland School Assessment (MSA) scores, which indicated that the student scored "proficient" in math, and "basic" in reading, during the 2012-2013 school year. The team also noted that the student has "some challenges with processing information and with doing grade level work in reading and math" (Docs. f, g, and i).
9. The team considered the student's report card since the start of the 2013-2014 school year which indicated that he was making "C's" and "D's" in his Math, Reading, Writing, Science, and Social Studies classes. The team also considered information that, despite the provision of interventions, including small group reading instruction, peer tutoring, and one-on-one assistance" to assist him with improving his reading skills and processing information in reading and math, the student was struggling in his classes. The teachers also reported that the student had some missing assignments which impacted his grades (Docs. f, g, and i).
10. During the IEP team meeting, the complainant expressed concern about the student's handwriting and requested that an Occupational Therapy (OT) assessment be conducted. At the meeting, the team reviewed samples of the student's writing and determined that additional data was needed to address the concern (Docs. a, f, g, and i).
11. The OT consultation report documents that the team agreed to obtain the additional data about the student's handwriting, but the team determined that the necessary data could be obtained through an OT consultation and that a formal assessment was not needed. However, there is no documentation in the written notice to the complainant of the basis of the team's decision not to conduct an OT assessment, at this time (Docs. m and review of the educational record).
12. Based on this review, the team determined that additional data was needed and recommended that academic, cognitive, and speech/language, assessments be conducted. On the same date, the complainant provided consent for the assessments. The team also agreed that during the assessment period, the student would continue to receive small group reading instruction and "pull-out" services with the reading specialist (Docs. f - i).
13. On December 17, 2013, the IEP team reconvened to review the results of the assessments ordered at the October 22, 2013 IEP team meeting. At the meeting, the IEP team considered information that the student's reading, writing and math skills are in the "low range" and he is performing "below grade level" in all these areas. The report indicates that the student has a limited vocabulary that may impact his ability to understand grade-level texts. The report also indicates that the student has weaknesses in the areas of auditory memory, word retrieval, vocabulary, and critical thinking (Docs. j - p).

14. The assessment data also indicated that the student displayed “below average” expressive and receptive language skills. He also displayed weakness with his ability to make decisions about completing tasks, auditory recall, and visual attending skills. The assessment reports indicate that the student has a left hand preference and mild difficulty with “expressive” visual-motor coordination and that the student rotated his paper ninety (90) degrees to complete figures while being examined. The reports also indicated that there is a discrepancy between the student’s verbal and nonverbal reasoning abilities indicating that while he can make sense of complex verbal information and use verbal abilities to solve problems, he has difficulty processing complex visual information by forming spatial images to solve novel problems without using words (Docs. j - p).
15. The team considered the OT consultation report which demonstrated that the student would benefit from the use of a slant board to provide stabilization when he is writing. The Occupational Therapist also indicated that an OT assessment was not recommended at this time (Docs. j - p).
16. Based on their review at the December 17, 2013 IEP team meeting, the team determined that the student meets the criteria for identification as a student with an Specific Learning Disability under the IDEA (Docs. n - p).
17. On January 13, 2014, the IEP team reconvened to develop the IEP. The team determined that the student would be provided with special education instruction in both the general education classroom and a separate special education classroom. The team also determined that he would receive speech/language therapy as a related service. The team developed goals to assist the student with improving his decoding, analyzing, vocabulary, math calculation, and problem solving, grammar, and writing skills (Docs. q and r).
18. At the meeting, the team also determined that the student would be provided with supports, including checks for understanding, repetition of directions to ensure that he understands “lengthy and complex sequences of information,” small group instruction for reading, writing, and math, use of a word bank to increase his vocabulary, altered and modified assignments, as needed, encouragement to employ self advocacy, the use of a slant board or slanted surface to assist him with writing more clearly and with a better posture, and consultation between the student teachers and the Occupational Therapist (Doc. r).
19. At the January 13, 2014 IEP team meeting, the complainant indicated that she continued to have concerns about the student’s handwriting and again requested an OT assessment. The team considered information, including class work, writing samples, cognitive and educational assessments, results of the OT consultation, and teacher reports of classroom performance. The data collected during the evaluation indicated that the student scored in the “low average range” with regard to his writing fluency ability, his handwriting can be illegible, and that he sometimes submits assignments with inaccuracies due to spelling errors and misuse of punctuation (Doc. r).

XXX

Mrs. Joan Rothgeb

April 1, 2014

Page 7

20. Based on the assessment data and the complainant's continued concerns, the team recommended that an OT assessment be conducted. On the same date, the complainant provided consent for the assessment to be conducted (Docs. q and r).
21. On March 11, 2014, the IEP team convened to review the results of the OT assessment. The assessment report indicates that the student does not have motor issues, but he has some difficulty with overlapping shapes and tracing dots. The assessment report indicated that his handwriting issues are due to mechanics and not visual-perception problems. The report indicated that the student "presented normal in all areas" and that the use of the slant board has helped the student improve "wrist posture and legibility." The team did determine that the student might benefit from the use of a keyboard and recommended that an Assistive Technology assessment be conducted (Docs. s and t).
22. At the meeting, the complainant indicated that she continued to have concerns about the student's writing and specifically, that he is not "dropping his letters below the line" when he writes certain lower case letters, such as "g" and "p." She further indicated that while this may not make his handwriting illegible, she would like for him to write in the proper manner. The complainant requested an independent OT assessment (Doc. r).
23. In response to the complainant's request for an Independent Educational Evaluation (IEE), the PGCPs indicated that they believed that the OT assessment they conducted was "accurate and valid" and they did not believe an independent OT was required. The PGCPs staff indicated that they would consult with legal counsel regarding the request for an IEE (Docs. s and t).
24. There is no documentation that the complainant requested an IEE in the area of OT prior to the March 11, 2014 IEP team meeting (review of the educational record).
25. There is no documentation that the PGCPs has offered to fund the IEE nor is there documentation that the PGCPs has filed a due process complaint to defend the PGCPs assessment conducted in the area of OT (Doc. t, interview with school staff, and review of the educational record).

DISCUSSION/CONCLUSIONS:

Allegation #1: Child Find Procedures

The Child Find requirements of the IDEA impose an affirmative obligation on the public agency 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

XXX

Mrs. Joan Rothgeb

April 1, 2014

Page 8

management techniques, which will appropriately assist the student. However, the public agency must ensure that the use of such 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 school staff should have suspected a disability under the IDEA and started the evaluation process prior to her request for an evaluation under the IDEA that she made on October 10, 2013 (Doc. a). Based on the Findings of Facts #6 - #12, the MSDE finds that when the complainant made a request for an evaluation, school staff followed proper procedures to begin the evaluation process under the IDEA.

Based on the Findings of Facts #1 - #6, the MSDE finds that the PGCPs provided the student with supports in the regular education program to address his deficits in reading, but did not follow its own procedures related to monitoring the student's progress with the provision of the classroom interventions in order to determine whether his needs could be addressed in this manner or whether a disability should have been suspected and an evaluation conducted prior to the referral made by the complainant. Therefore, the MSDE finds that a violation occurred with respect to the implementation of the child find procedures.

Allegation #2: Evaluation Procedures

The public agency must ensure that assessment procedures are administered to ensure that the student is assessed in all areas related to the suspected disability. It must also ensure that each special education and related service needed by the student is identified, regardless of whether the need is commonly linked to the disability (COMAR 13A.05.01.04 and .05). In order to ensure that an evaluation is sufficiently comprehensive, the parent may obtain an independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees (34 CFR §300.502).

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education (FAPE) to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision. The notice must include a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, and a description of other options that the IEP team considered. The IEP team must also ensure that the notice provides the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR §300.503 and COMAR 13A.05.01.12).

In this case, the complainant alleges that the PGCPs did not follow proper procedures when evaluating the student because he was not assessed in all areas of suspected disability. Specifically, the team did not conduct an OT assessment during the initial evaluation despite the complainant's concerns about the student's handwriting. Based on the Findings of Facts #6 –

XXX

Mrs. Joan Rothgeb

April 1, 2014

Page 9

#12, the MSDE finds that IEP team documented that it considered the existing data and based on that data determined the areas in which additional data was needed.

Based on the Findings of Facts #10 and #11, the MSDE finds that the team considered the complainant's concerns related to the student's handwriting and determined that additional data was needed and it could be obtained through an OT consult. Based on the Findings of Facts #13- #18, the MSDE finds that the IEP team obtained the necessary data, reviewed that data and considered the complainants concerns, determined that the student was a student with a disability under the IDEA, and developed an IEP.

However, based on the Finding of Fact #11, the MSDE finds that the PGCPS did not ensure that the written notice of the team's decision that was provided to the complainant included information regarding the basis of the team's decision not to conduct the OT assessment. Therefore, the MSDE finds that a violation occurred with respect to the provision of prior written notice of the team's decisions to the complainant.

Allegation #3: Response to Request for an IEE

If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either ensure that it is provided or file a due process complaint to demonstrate that its evaluation was appropriate (34 CFR §300. 502). In this case, the complainant alleges that she made numerous requests for an Independent OT assessment, but the school system did not follow proper procedures with regard to her request.

Based on the Findings of Facts #21 - #24, the MSDE finds that the complainant requested an IEE in the area of OT, on March 11, 2014. However, there is no documentation of any other requests for an IEE prior to March 11, 2014. Based on the Finding of Facts #25, the MSDE finds that following the complainant's request for an IEE, the PGCPS has not provided the complainant funding for an IEE nor has the school system requested a due process hearing to defend its evaluation in this area. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student specific

The MSDE requires the PGCPS to provide the complainant with the IEE or request a due process hearing to defend its assessment without undue delay and to provide the MSDE with documentation of these actions by May 1, 2014. The MSDE also requires the PGCPS to convene an IEP team meeting and determine the amount and nature of *compensatory services*² or other remedy necessary to remediate the violations identified with respect to ensuring that the student was properly evaluated and identified.

² 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).

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 order to resolve the dispute, in accordance with IDEA.

School-based

The MSDE requires the PGCPS to provide documentation by July 1, 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 XXXXXXXXXXXXXXXXXXXX. 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 date of its determination.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the Office of Special Education Programs. 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 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

XXX

Mrs. Joan Rothgeb

April 1, 2014

Page 11

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 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/km

c: Kevin W. Maxwell
Monique Whittington Davis
Gail Viens
LaRhonda Owens
Kerry Morrison
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