



April 9, 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: #14-065

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 February 10, 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 has not ensured that the Individualized Education Program (IEP) addresses the student’s reading needs and social, emotional, and behavioral needs, since February 10, 2013,¹ in accordance with 34 CFR §300.324.
2. The PGCPS did not ensure that proper procedures were followed in determining the student’s need for Extended School Year (ESY) services on March 1, 2013,² in accordance with COMAR 13A.05.01.08.

¹ While the complainant alleged violations that occurred more than one (1) year ago, she was informed, in writing, that the MSDE has authority to investigate allegations of violations that occurred no more than one (1) year from the date the complaint was received (34 CFR §300.153(c)).

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3. The PGCPS did not ensure that Home and Hospital Teaching (HHT) services were initiated within ten (10) school calendar days of the November 18, 2013 verification of the student's need for HHT services, in accordance with COMAR 13A.03.05.03.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 11, 2014, 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 February 24, 2014, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On February 26, 2014, 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 review the alleged violations.
5. On March 6, 2014, Ms. Hartman conducted a telephone interview with the complainant regarding the allegations being investigated.
6. On March 7, 10, 25, and 26, 2014, and April 2 and 4, 2014, the PGCPS provided the MSDE with information and documentation, via electronic mail (email).
7. On March 11, 2014 and April 7, 2014, the complainant provided the MSDE with information and documentation, via email.
8. On March 19, 2014, Ms. Hartman and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's educational record, and interviewed the following staff:
 - a. Ms. XXXXXXXXXXXX, Counselor, XXXXXXXXXXXX;
 - b. Ms. XXXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXXX;
 - c. Ms. XXXXXXXXXXXX, General Education Teacher, XXXXXXXXXXXX;
 - d. Ms. XXXXXXXX, Principal, XXXXXXXXXXXX;
 - e. Mr. XXXXXXXXXXXX, Jr., General Education Teacher, XXXXXXXXXXXX; and
 - f. Ms. Valerie F. Nelson, Special Education Instructional Specialist, PGCPS.

² While the timeline for investigating this allegation was originally identified as being since February 10, 2013, it was clarified during the investigation that the allegation is specifically about the IEP team's March 1, 2013 decision concerning ESY services.

Ms. Morrison attended the site visit as a representative of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.

9. 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 February 10, 2014;
 - b. IEP and Prior Written Notice document, dated February 7, 2012;
 - c. Evaluation Report and Determination of Initial Eligibility, dated June 16, 2009;
 - d. Psychological Assessment Report, dated January 30, 2012;
 - e. IEP, dated March 1, 2013, and Prior Written Notice document, dated March 4, 2013;
 - f. Prior Written Notice document, dated May 30, 2013;
 - g. Functional Behavioral Assessment and Behavioral Intervention Plan, dated May 31, 2013;
 - h. Prior Written Notice document, dated October 17, 2013;
 - i. Audio recording of the October 17, 2013 IEP team meeting;
 - j. Email correspondence from the PGCPs to the MSDE, dated March 26, 2014;
 - k. Prior Written Notice document and Consent for Assessments, dated November 14, 2013;
 - l. IEP and Prior Written Notice document, dated January 7, 2014;
 - m. Audio recording of the January 7, 2014 IEP team meeting;
 - n. Home and Hospital Teaching Applications, dated November 20, 2013, December 12, 2013, and February 12, 2014;
 - o. Emails between the PGCPs staff, dated February 4, 2014, and March 7 and 19, 2014;
 - p. IEP and Prior Written Notice document, dated February 11, 2014; and
 - q. Email from the PGCPs to the MSDE, dated April 4, 2014.

BACKGROUND:

The student is twelve (12) years old and is in the 6th grade at XXXXXXXXXXXXXXXXXXXX. He is identified as a student with Multiple Disabilities (Emotional Disability and Specific Learning Disability) under the IDEA and has an IEP that requires the provision of special education instruction and related services.

At the start of the time period addressed by this investigation, the student attended XXXX XXXXXXXXXXXXXXXXXXXX. Since January 29, 2014, the student has been provided with Home and Hospital Teaching (HHT) services because he is unable to attend school due to an emotional condition.

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 - q, and interviews with the PGCPs staff and the complainant).

FINDINGS OF FACTS:

February 7, 2012 IEP

1. The IEP in effect on February 10, 2013, the start of the time period covered by this investigation, was developed on February 7, 2012 (during the 2011-2012 school year), while the student was attending XXXXXXXXXXXXXXXXXXXX (Doc. b, and interviews with the PGCPs staff and the complainant).
2. At the February 7, 2012 IEP team meeting, the team completed a re-evaluation of the student. The IEP team considered the report of a psychological assessment, dated January 30, 2012, as well as information provided by the student's teachers and the complainant. The data indicates that the student was not engaging with peers, was not completing his class work, and was frequently absent from school, and that these interfering behaviors were having a negative impact on the student's ability to progress on his academic goals (Docs. b - d).
3. Based on a review of the data, the IEP team determined that the student, who was previously identified as having a Specific Learning Disability, has an Emotional Disability that also requires the provision of special education services. However, the IEP team did not document its determination of the needs that arise out of the student's emotional disability, and how those needs were to be addressed (Doc. b).

March 1, 2013 IEP Team Meeting

4. On March 1, 2013,³ the IEP team convened to review the student's IEP. At that time, the IEP team considered the concerns of the complainant, as well as the reports from the student's teachers that he "is very introverted and does not participate within the classroom," and that, as a result, had not made sufficient progress toward achieving the annual IEP goals. However, the March 1, 2013 IEP indicates the team determined the student did not require the provision of Extended School Year (ESY) services because he had made "adequate progress continuously throughout the year" (Doc. e.)
5. The documentation reflects that, while the student was reading at a 3.0 instructional grade level the previous school year, his performance in reading was currently at the 2.5 instructional grade level. Based on the data, the IEP team identified needs related to developing and identifying emotions, imposing structure and organization, coping and problem solving, completing assignments, and participating with peers, which are impacting his ability to progress on his academic goals (Docs. b and e).
- 6.

³ While it does not appear that the IEP was reviewed at least annually, as required by 34 CFR §300.324, any violation would be beyond the time period for resolving the matter through the State complaint process (34 CFR §300.153(c)). Therefore, we will not be addressing the matter in this Letter of Findings.

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7. The IEP team decided that the academic goals should be continued and developed annual goals for the student to improve his skills related to identifying and managing his feelings, engaging in and attending to tasks, and interacting with peers. The IEP team determined that the student would be provided with an increased amount of special education instruction to assist him in achieving the annual goals, and counseling as a related service. The IEP team also decided that the student would be provided with reading interventions and that materials would be broken down, or “chunked,” into smaller amounts (Doc. e).

May 30, 2013 IEP Team Meeting

8. On May 30, 2013, the IEP team convened to discuss the student’s lack of progress on his academic and social, emotional, and behavioral goals, and considered information from school staff that the student’s negative behaviors were impacting his ability to benefit from his educational program. These behaviors include not being able to express his needs or feelings, complete assignments, or participate in group activities. The IEP team then developed a Behavioral Intervention Plan (BIP) that required the provision of supports such as the ability to obtain points in order to earn rewards for positive behavior, praise, and incentives for completing work (Docs. f and g).

October 17, 2013 IEP Team Meeting

9. On October 17, 2013, the IEP team convened to address the complainant’s concerns related to the student’s progress “from the previous school through the current [school] year.” The IEP team considered information from the student’s teachers that he had shown improvement in his “social response” to teachers and peers, but that he has experienced “continued limited academic improvement” and was performing at the “higher first (1st) grade level,” despite being in the sixth (6th) grade (Docs. h and i).
10. The documentation also reflects that the team considered information from the student’s teachers that he is refusing some of the special education services offered. However, there is no documentation that the IEP team considered interventions to address his refusal of the supports offered or whether those supports should be replaced with others that the student would accept (Docs. h and i).
11. At the October 17, 2013 IEP team meeting, the complainant expressed her concerns about the student’s lack of progress in reading since he began attending XXXXXXXXXXXXXXXX Elementary School. She requested that the team consider placing the student in a small, separate special education class for reading, providing him with a dedicated aide, or placing the student in a nonpublic separate special education school. There is documentation that, in response to the complainant’s concerns, the IEP team agreed to provide the student with additional reading interventions and to consult

with the PGCPS Special Education Instructional Specialist regarding the need for a dedicated aide and other strategies to address the student's continued lack of progress in reading (Docs. h and i).

12. The PGCPS staff acknowledges that a referral for consultation with the PGCPS Special Education Instructional Specialist was never made, and, therefore, the consultation did not occur (Doc. j).

November 14, 2013 IEP Team Meeting

13. On November 14, 2013, the IEP team convened and considered the complainant's concern that the student was becoming "increasingly depressed," that his behavior at home was worsening, and that he indicated that he did not wish to attend school. The IEP team also considered information from the student's teachers that the student appeared to have "socially matured" and that he had increased his interactions with peers at school (Doc. k).
14. The IEP team recommended that assessments be conducted in the areas related to academic performance (reading, mathematics and written language), cognitive functioning, and social, emotional, and behavioral development (Doc. k).

January 7, 2014 and February 28, 2014 IEP Team Meetings

15. The student did not return to school after November 14, 2013. There is documentation that, while the school system had been informed that the student had an emotional condition that prevented him from attending school, the verification form submitted by the student's private psychologist had been illegible, and school staff did not receive a legible copy of the verification of the student's need for Home and Hospital Teaching (HHT) services until December 18, 2013 (Docs. l - o, and interviews with the PGCPS staff and the complainant).
16. On January 7, 2014, five (5) school days⁴ after receipt of the verification of the student's need for HHT services, the IEP team convened and discussed that the complainant's application for Home and Hospital Teaching (HHT) services had been approved that day. However, there is no documentation that the IEP team determined the services to be provided to the student in the home (Docs. l and m, and review of the PGCPS calendar of weather-related school closures).
17. On January 29, 2014, the student started receiving the HHT services. The PGCPS staff acknowledges that the initiation of HHT services to the student was not within ten (10) school calendar days of the date on which they received the verification of the student's need for those services. There is documentation that the PGCPS has offered

⁴ Due to winter vacation and weather-related closures, there were only five (5) school days between December 18, 2013 and January 7, 2014 (Review of the PGCPS calendar of weather-related school closures).

compensatory services to the complainant for the delay in the initiation of HHT services (Doc. o).

18. On February 11, 2014, the IEP team convened to review the results of assessments completed as part of the re-evaluation which began on November 14, 2013, but decided to complete the process once the student returned to a school-based program.⁵ However, there is no documentation that the IEP team developed a plan for returning the student to a school-based program (Doc. p and review of the student's educational record).
19. At the February 11, 2014 IEP team meeting, the IEP team decided that the student requires Extended School Year (ESY) services and began reviewing and revising the IEP, but decided to continue the process when the student returned to a school-based program (Doc. p).
20. The student continues to be provided with HHT services. There is documentation that re-verification of the student's need for continued instruction in the home was received by the PGCPs on February 12, 2014 (Docs. n and q).
21. Due to weather-related school closures, there have been fewer than sixty (60) school days since the student was approved to receive HHT services on January 7, 2014 (Docs. l and o, and review of the PGCPs calendar of weather-related school closures).

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP that Identifies and Addresses the Student's Needs

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that 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 (34 CFR §§300.101 and .324).

If the student's behavior impedes the student's learning, or that of others, the IEP team must consider the use of positive behavioral intervention and supports, and other strategies, to address that behavior (34 CFR §§300.101 and .324). The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an

⁵ There is documentation that the complainant agreed to an extension of the timeline for completing the reevaluation due to the student's unavailability for assessments (Docs. l and m).

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appropriate educational program under the IDEA, the State Educational Agency must review the procedures used by a school system to reach determinations about the program. Additionally, the State Educational Agency must review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46601, August 14, 2006).

Based on the Findings of Facts #1-#7, the MSDE finds that there is no documentation that the IEP in effect on February 10, 2013 identified and addressed the student's needs that are related to his emotional disability. Based on the Findings of Facts #8 and #9, the MSDE further finds that the IEP team did not consider how to address the student's interfering behavior of refusing supports being offered since October 17, 2013. In addition, based on the Findings of Facts #10 - #13 and #18, the MSDE finds that the PGCPs has not ensured that a consultation with the Special Education Instructional Specialist has been conducted since October 17, 2013 to address the complainant's concerns, consistent with the IEP team's decision. Therefore, the MSDE finds that violations have occurred with regard to this allegation.

Allegation #2: Extended School Year (ESY) Services

Extended School Year (ESY) services are an individualized extension of specific services beyond the regular school year designed to meet specific goals included in the student's IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of a FAPE by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)).

When determining whether ESY services are required for the provision of a FAPE, one of the decisions the IEP team must make is whether the student has achieved a degree of progress toward mastery of the annual IEP goals (COMAR 13A.05.01.08B(2)(b)). As stated above, the IEP team must ensure that its decisions are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46601, August 14, 2006).

Based on the Findings of Facts #4 - #6, the MSDE finds that the IEP team's March 1, 2013 determination that the student did not require ESY services during the summer of 2013 was not consistent with the data. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

Allegation #3: Home and Hospital Teaching (HHT) Services

In Maryland, HHT services may be provided only when there is verification from a licensed physician, a certified school psychologist, a licensed psychologist, or a licensed psychiatrist that the student has a physical or emotional condition that prevents the student from participating in the student's school of enrollment (COMAR 13A.03.05.03 and .04).

If a student is unable to participate in the student's school of enrollment due to a physical or emotional condition which has been properly verified, the public agency must ensure that HHT

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services are initiated with ten (10) school calendar days of notification of the inability of the student to attend the school of enrollment, and receipt of the verification of the need for services in the home (COMAR 13A.03.05.03 and 13A.03.05.04). If a student with a disability is provided instruction at home because of a physical or an emotional condition, the IEP team must review and revise the student's IEP and determine the instructional services to be provided to the student as long as the medical restrictions apply and develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10(C)(5)).

When the period of treatment or convalescence ends, the IEP team must review and revise the IEP and determine the appropriate placement in the Least Restrictive Environment. If HHT services are to be continued beyond sixty (60) calendar days after the initial determination of eligibility, the student's need for those services must be re-verified (COMAR 13A.03.05.04). Educational placement in the home for a student with an emotional condition may not exceed sixty (60) consecutive school days (COMAR 13A.05.01.10(C)(5)).

Based on the Findings of Facts #14 - #16, the MSDE finds that the PGCPS did not ensure that the student was provided with HHT services within ten (10) school calendar days of the December 18, 2013 receipt of the verification of the student's need for HHT services. Based on the Findings of Facts #15 - #17, #19, and #20, the MSDE finds that, while the student has not been provided with HHT services in excess of sixty (60) consecutive school days, the IEP team has not developed a plan to return the student to a school-based program.

In addition, based on the Findings of Facts #15 - #17 and #19, the MSDE finds that the HHT services being provided were not determined by the IEP team, as required. Therefore, the MSDE finds that violations have occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by May 1, 2014 that it has taken immediate steps to convene an IEP team to determine the services to be provided to the student during the provision of HHT, and to develop a plan for returning the student to a school-based program.

The MSDE further requires the PGCPS to provide documentation, by July 1, 2014, that an IEP team meeting has been convened to determine the amount and nature of *compensatory services*⁶ or other remedy necessary to remediate the loss of a FAPE as a result of the violations identified during this investigation since February 10, 2013.

⁶ 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).

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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 the start of the 2014-2015 school year, of the steps taken to ensure compliance by the XXXXXXXXXXXXXXXXXXXX staff with the IDEA and related State requirements listed below.

1. That students' special education and related services needs are identified and addressed through the IEP, in accordance with 34 CFR §§300.101, .304, .320, and .324.
2. That decisions made by the IEP team regarding the services required for a FAPE, including ESY services, are consistent with the data, in accordance with 34 CFR §300.324, Md. Ann. Code, Education Art. §8-405(b), and COMAR 13A.05.01.08B(2)(b).
3. That proper procedures are followed with regard to the provision of HHT services:
 - To ensure that an IEP team is convened to determine the services to be provided and to develop a plan for returning the student to a school-based program, in accordance with COMAR 13A.05.01.10(C)(5).
 - To ensure that the provision of HHT services is initiated within ten (10) school calendar days of receipt of the verification of the student's need for services in the home, in accordance with COMAR 13A.05.01.10(C)(5).

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.

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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 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

c: Kevin W. Maxwell
Shawn Joseph
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Christine Hartman