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State Superintendent of Schools

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May 27, 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: #14-078

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 March 28, 2014, the MSDE received a complaint from Robert Berlow, Esq, hereafter, “the complainant,” on behalf of the above-referenced student and his parents, Mr. XXXXXXXX and Mrs. XXXXXXXX. 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 student has been provided with the special education and related services required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101, .156, and .323. The specific allegations include:

XXX

Robert Berlow, Esq.

Mrs. Joan Rothgeb

May 27, 2014

Page 2

- a. From March 2013 until October 21, 2013, there were no special education teachers in the classes that are to be co-taught by general and special education teachers;
 - b. Since October 21, 2013, the special education teachers have not been the primary service providers in co-taught classes;
 - c. From March 2013 until the end of the 2012-2013 school year, special education instruction in math was not provided by a qualified special education teacher and a paraprofessional;
 - d. From March 2013 until the end of the 2012-2013 school year, special education in math was not provided in a separate special education classroom; and
 - e. From March 2013 until the end of the 2012-2013 school year, the student's math teacher was not informed of the responsibility for implementing the IEP.
2. The PGCPS did not ensure that reports of the student's progress towards achievement of the annual IEP goals were made between March 2013 and February 2014, in accordance with 34 CFR §§300.320 and .324.
 3. The PGCPS has not ensured that the IEP has included measurable annual goals since March 2013, in accordance with 34 CFR §300.320.
 4. The PGCPS did not ensure that the student's parents were provided with the opportunity to participate in the IEP team meeting that convened on April 26, 2013 to complete corrective action required as a result of an investigation in State complaint #13-051, in accordance with 34 CFR §300.322.
 5. The PGCPS did not ensure that the determination made by the IEP team on April 26, 2013 regarding the services needed to compensate the student for the loss of services resulting from violations identified in State Complaint #13-051 was consistent with the evaluation data, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 31, 2014, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Ms. Gail Viens, Deputy

XXX

Robert Berlow, Esq.

Mrs. Joan Rothgeb

May 27, 2014

Page 3

General Counsel, PGCPs; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPs.

3. On April 2, 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 office review the alleged violations.
4. On April 10 and 18, 2014, Ms. Moyo requested information and documentation from the PGCPs staff via electronic mail (email) correspondence.
5. On May 5, 2014, Ms. Moyo and Ms. Nicole Green, Education Staff Specialist, conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXXXX) to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXX, IEP Chairperson;
 - b. Ms. XXXXXXXXXXX, Special Education Teacher/Case Manager; and
 - c. Ms. XXXXXXXXXXX Special Education Teacher.

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 May 7, 14, and 15, 2014, the PGCPs staff provided the MSDE staff with documents to be considered, via email correspondence.
7. On May 19, 2014, Ms. Moyo reviewed documents related to teacher certification maintained by the MSDE Certification Branch.
8. 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 March 28, 2014;
 - b. Individualized Education Program (IEP) team meeting notice, dated February 8, 2013;
 - c. IEP and Prior Written Notice (PWN) document, dated February 24, 2013;
 - d. IEP team meeting notice, dated March 1, 18, and 21, 2013;
 - e. Emails between school staff members transmitted in March 2013;
 - f. Reports of progress on the annual IEP goals generated since March 2013;
 - g. MD Online Parent Contact Log maintained since March 28, 2013;
 - h. IEP team meeting notice, dated April 11 and 19, 2013;
 - i. PWN document, dated April 19 and 26, 2013;

XXX

Robert Berlow, Esq.

Mrs. Joan Rothgeb

May 27, 2014

Page 4

- j. Speech/Language therapy service logs maintained since March 1, 2013;
- k. Maryland School Assessment Scores from the Spring of 2013;
- l. 7th grade class scheduled for the 2012-2013 school year;
- m. Student's attendance record from the 2012-2013 school year;
- n. Report card from the 2012-2013 school year;
- o. Emails from between the PGCPs Central Office staff and school staff from March 2013 through June 2013;
- p. Emails between the PGCPs Central Office staff and the parents transmitted in May 2013 and June 2013;
- q. Receipt of IEP signed by the student's teachers on August 29, 2013;
- r. IEP team meeting notice, dated February 4 and 6, 2014;
- s. IEP, dated February 14, 2014;
- t. Teacher class progress reports, dated February 18 and 19, 2014
- u. IEP, dated February 27, 2014;
- v. PWN document, dated March 6, 2014;
- w. Student 8th grade class scheduled for the 2013-2014 school year;
- x. Science collaborative lesson planning notes from the 2013-2014 school year; and
- y. Student's attendance record from the 2013-2014 school year.

BACKGROUND:

The student is thirteen (13) years old, is identified as a student with a Specific Learning Disability under the IDEA, and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services. The student has been attending the XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX) since the start of the 2012-2013 school year. During the time period addressed by this investigation, the student's parents were provided with notice of the procedural safeguards (Docs. a – d, f – n, q – w, and y).

ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION IN ACCORDANCE WITH THE IEP

Findings of Facts:

Special Education Instruction in Math

1. The IEP in effect since March 2013 requires the provision of special education instruction in math in a separate special education classroom to be provided by a special education teacher. It also states that the instruction can be provided by "the IEP team." However, the written summary of the team's decision states that the special education instruction in math will be provided by a special education teacher and a paraprofessional (Docs. c, i, s, u, and v).

XXX
Robert Berlow, Esq.
Mrs. Joan Rothgeb
May 27, 2014
Page 5

Special Education Instruction in Reading/Language Arts, Science and Social Studies

2. The IEP requires special education instruction in all other areas in the general education classroom to be provided by the special education teacher, general education teacher, “the IEP team,” or a speech/language assistant. While the IEP indicates that the special education teacher is to be the primary provider of the service, it also indicates that the team decided that the special education instruction would be provided using a co-teaching model¹ (Docs. c, i, s, u, and v).
3. On September 9, 2013, the school staff sent correspondence to the parents of the students at the school informing them of staffing shortages that have resulted in vacant special education teacher positions at the school. There is no documentation that a special education teacher has been consistently assigned to provide special education instruction to the student (Doc. a and review of the student educational record).
4. There is no documentation that any of the special education teachers that have provided special education instruction to the student hold certification in the content areas being taught (Review of the teachers’ certification documents).

Legal Requirements:

Each public agency must ensure that each student with a disability receives the special education instruction and related services required by the IEP. In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, p.12479, March 1999² and 34 CFR §§300.101 and 323 and COMAR 13A.05.01.09D(5)).

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

¹ The co-teaching model is “a collaborative partnership between a generalist and a specialist who have shared accountability and ownership for planning and delivering instruction and assessments to all students within a classroom environment. When co-teaching neither the general nor special educator act as the “main” or “primary” teacher, but collaborate with each other while working r with both disabled and non-disabled students (www.learninglinks.org).

² In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

XXX
Robert Berlow, Esq.
Mrs. Joan Rothgeb
May 27, 2014
Page 6

demonstrate subject matter knowledge in the core academic subjects³ that they teach (20 U.S.C. §1412(a)(14), 34 CFR §§200.25, .55, and .56, and 34 CFR §§300.18 and .156).

The IDEA requires that each person employed as a public school special education teacher is highly qualified as a special education teacher (34 CFR §300.156). This means that the teacher must have obtained full State certification as a special education teacher and holds at least a bachelor's degree or passed a State special education teacher licensing exam, and has a license to teach in the State as a special education teacher.

The teacher must also meet any additional requirements specified in the ESEA. If the special education teacher is also teaching core academic subjects, he or she must also hold certifications in the core academic areas being taught. However, this requirement does not create a right of action on behalf of an individual student for the lack of the provision of special education instruction by highly qualified teachers (34 CFR §§200.56, 300.18, and 300.156 and Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities, OSEP, January 2007).

Discussion/Conclusions:

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP is not written clearly with respect to the manner in which special education instruction is to be provided, including the individuals responsible for providing the service. Therefore, this office finds that the PGCPS has not ensured that the student has been provided with the special education instruction in accordance with the IEP team's decision, and that a violation occurred.

Based on the Findings of Facts #1 - #4, the MSDE further finds that the PGCPS has not ensured that there is sufficient staffing to provide the special education required by students with disabilities at XXXXXXXXXXXX. Therefore, a violation has occurred.

ALLEGATIONS # 2 AND #3:

PROVISION OF THE REPORTS OF THE STUDENT'S PROGRESS TOWARD ACHIEVEMENT OF THE GOALS AND INCLUSION OF MEASURABLE ANNUAL GOALS IN THE IEP

Findings of Facts:

5. The IEP in effect since March 2013 includes annual goals for the student to increase specific skills in the areas of reading comprehension, math calculation, math problem

³ Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography (34 CFR §300.10).

XXX

Robert Berlow, Esq.

Mrs. Joan Rothgeb

May 27, 2014

Page 7

solving, and written language expression. Each annual goal also contains short-term objectives that describe the activities in which the student will participate in order to demonstrate progress toward achieving the goals. The goals state that the student's progress will be measured by the percentage of accuracy he demonstrates while participating in those activities on a specified number of occasions. The IEP also indicates that the data that will be used to measure progress on the goals will be obtained from classroom based assessments (Docs. c, s, and u).

6. The IEP states that reports of the student's progress towards achieving the IEP goals will be reported to the student's parents, in writing, on a quarterly basis (Docs. c, s, and u).
7. The student's educational record contains reports of the student's progress toward achieving the annual IEP goals, dated June 3 and 5, 2013, November 11, 2013, and April 24, 2014. However, there is no documentation of the provision of the reports to the student's parents. In addition, there is no documentation that reports of the student's progress were generated for the second quarter of the 2013-2014 school year (Doc. f, review of the educational record, and interview with school staff).
8. The reports of the student's progress towards achieving the annual IEP goals do not consistently reflect that progress is being measured as described in the IEP, and there is no documentation of the collection of the data that the IEP reflects will be used in order to determine progress. The school staff report that there have been a series of substitute teachers assigned to the student's classes due to staff shortages, and that these teachers have provided anecdotal information about the student's classroom performance that has been used to measure his progress towards achievement of the annual IEP goals (Doc. f).

Discussion/Conclusions:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum, which is based on the evaluation data. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

The IEP team must review the IEP at least annually in order to determine whether the student is making sufficient progress towards achievement of the annual IEP goals. In addition, the IEP team must review, and revise as appropriate, the IEP to address the lack of expected progress towards achievement of those goals. Therefore, the IEP must also include information about how often the parents will be provided with reports of the student's progress (34 CFR §§300.320 and .324).

XXX
Robert Berlow, Esq.
Mrs. Joan Rothgeb
May 27, 2014
Page 8

Allegation #2: Provision of Progress Reports

Based on the Finding of Fact #7, the MSDE finds that the PGCPS has not ensured that the student's parent has been provided with reports of the student's progress toward achievement of the annual IEP goals in accordance with the IEP. Therefore, this office finds that a violation has occurred with respect to the allegation.

Allegation #3: Inclusion of Measurable Annual Goals on the IEP

Based on the Findings of Facts #5, #6, and #8, the MSDE finds that IEP does not include a statement of how the student's progress towards achievement of the annual IEP goals will be measured, which is clear to those who with responsibility for implementing the IEP. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATIONS #4 AND #5: PARENT PARTICIPATION IN THE APRIL 26, 2013 IEP TEAM MEETING AND ENSURING THAT COMPENSATORY SERVICES DETERMINATION IS CONSISTENT WITH THE DATA

Findings of Facts:

9. On April 19, 2013, the IEP team convened to complete the corrective action required as a result of a previous State complaint investigation regarding the student in the State complaint #12-051. However, at the meeting the parents requested to audio record the meeting. The meeting was rescheduled to April 26, 2013 because the school staff did not have access to an audio recorder. By this time, the meeting had already been rescheduled three (3) times at the parents' request (Docs. i and o).
10. On April 26, 2013, the IEP team reconvened to conduct the meeting that was rescheduled from April 19, 2013. On the date of the meeting, the parents notified school staff that they were running late, but would be attending the meeting. However, when the parents arrived at the school, they were informed that the meeting had already been completed (Docs. i and p).
11. On May 23, 2013, the parents requested another meeting to discuss their concerns about the decisions made at the April 26, 2013 meeting. However, there is no documentation that the school staff have responded to the request (Doc. p and review of the student's educational record).
12. In order to complete the required corrective action, the IEP team had to determine the services needed to compensate the student for the loss of special education instruction that resulted from a delay in the implementation of the IEP due to a delay in the provision

XXX

Robert Berlow, Esq.

Mrs. Joan Rothgeb

May 27, 2014

Page 9

of the IEP to the student's teachers. On April 26, 2013, the school-based members of the IEP team decided that the student would be provided with twenty (20) hours of tutoring in math and reading/language arts because this was the student's area of greatest weakness. However, there is no information or documentation that when making this decision, the team also considered the difference between the student's present levels of performance and the levels of performance that he would have been expected to have achieved without the loss of services (Docs. a, i, and review of the student's educational record).

Discussion/Conclusions:

Allegation #4: Parent Participation

The public agency is required to take steps to ensure the parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings, including notifying the parent of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place (34 CFR §300.322 and COMAR 13A.05.01.07). If a parent cannot attend the IEP meeting, then the public agency is required to use other methods to ensure parent participation, including individual or conference telephone calls or other alternative means, such as video conferences (34 CFR §300.322 and .328).

Based on the Findings of Facts #9 -#12, the MSDE finds that the PGCPs did not ensure that proper procedures were followed to provide the student's parents with the opportunity to participate in the IEP team meeting IEP. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #5: Compensatory Services

Compensatory services are those services that are reasonably calculated to provide the student with the educational benefit that likely would have accrued had the public agency ensured that the student was provided with a FAPE. Therefore, the student's current educational deficits must be considered when determining the individually tailored services needed to assist the student in performing at the levels expected had a FAPE been provided (*Letter to Kohn*, 17 IDELR 522, OSEP, February 13, 1991, *G. ex rel. RG v. Fort Brag Dependent Schs.*, 343 F.3d 295 (4th Cir. 2003), and *Reid v. District of Columbia*, 43 IDELR 32, March 25, 2005).

Based on the Findings of Facts #9 and #12, the MSDE finds that the PGCPs did not ensure that the IEP team considered the data needed to determine the student's current educational deficits in order to determine the services needed to assist the student in performing at the levels expected had a FAPE been provided. 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 documentation by July 1, 2014 that an IEP team on which the student's parent has the opportunity to participate has convened and taken the following action:

- a. Determined the student's current levels of academic and functional performance;
- b. Determined the levels of academic and functional performance that the student was expected to achieve by this time with the provision of services required by the IEP;
- c. Reviewed and revised the IEP to ensure that it is designed to address the student's identified needs consistent with the data, and that it contains a clear description of how the student's progress toward achievement of the annual IEP goals is to be measured and the manner in which special education instruction is to be provided, including a clear explanation of who has responsibility for the provision of the instruction;
- d. Determined the services needed to compensate the student for the violations identified in the State complaint #13-051 and in this investigation based on data regarding the difference between the current levels of performance and levels of expected performance; and
- e. Developed a plan for the provision of those services within a year of the date of this Letter of Findings.

The PGCPS must ensure that the student's parent is provided with proper written notice of the IEP team's decisions, including the basis for those decisions and a description of the data and the options considered.

The MSDE further requires that the PGCPS provide documentation by September 30, 2014 that the student has been provided with special education and related services by qualified teachers in the educational placement required by the IEP since the start of the 2014-2015 school year.

Similarly-Situated Students

The MSDE requires the PGCPS to provide documentation by September 30, 2014 that it has identified any other students at XXXXXXXXXXXXXXXXXXXX who were not provided with the special education and related services by qualified teachers in the education program required by the IEP during the 2013-2014 school year. For each student that is identified, the school system must provide documentation of the following:

XXX

Robert Berlow, Esq.

Mrs. Joan Rothgeb

May 27, 2014

Page 11

- a. That the student has been provided with special education instruction by qualified teachers in the educational placement required by the IEP since the start of the 2014-2015 school year;
- b. That an IEP team has determined the services needed to compensate the student for the loss of services based on data regarding the difference between each student's current levels of performance and levels of expected performance; and
- c. That the IEP team has developed a plan for the provision of those services within one year of the date of this Letter of Findings.

School-Based

The MSDE requires the PGCPS to provide documentation by August 1, 2014 that the following steps have been taken at XXXXXXXXXXXXXXXX:

- a. Ensure that school staff follow proper procedures when an IEP team develops and reviews and revises each student's IEP, including ensuring that parents have the opportunity to participate in IEP team meetings and that the IEP includes measurable annual goals and a clear statement of the special education and related services to be provided;
- b. Ensure that students are provided with the special education and related services in the educational placement required by the IEP;
- c. Ensure that parents are provided with reports of progress towards achievement of annual IEP goals in accordance with each student's IEP; and
- d. Ensure that school staff follow proper procedures when making determinations regarding the services needed to remediate violations of a FAPE.

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 OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch, Accountability and Monitoring Section, 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.

XXX
Robert Berlow, Esq.
Mrs. Joan Rothgeb
May 27, 2014
Page 12

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 fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The student's parents 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/km

cc: XXXXXXXXXXXXXXXX
Kevin W. Maxwell
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