



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD

July 16, 2014

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: #14-101

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 May 28, 2014, the MSDE received a complaint from Mr. XXXXXXXXX, hereafter, “the complainant,” on behalf of his 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 allegation that the PGCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his need for instruction to be provided in an air conditioned setting, in accordance with 34 CFR §300.324.

XXX

Mrs. Joan Rothgeb

July 16, 2014

Page 2

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 29, 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 June 3, 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 school system review the alleged violation.
4. On June 30, 2014, Ms. Hartman and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXX to review the student's educational record, and interviewed Mr. XXXXXXXXXXXX, Special Education Co-Chairperson. Ms. Morrison attended the site visit as a representative of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.
5. On July 14, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the student's mother about the allegation subject to this investigation.
6. On July 15, 2014, Ms. Mandis conducted a telephone interview with the complainant about the allegation subject to this investigation.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Medical orders from the student's private physicians, reviewed by the PGCPs Division of Health Services staff on August 22, 2007, August 28, 2009, and September 10, 2012;
  - b. IEP, dated March 11, 2008;
  - c. Medical note from the student's private physician at XXXXXXXXXXXXXXXXXXXX XXXXX, dated May 6, 2008;
  - d. IEP, dated February 20, 2009;
  - e. Handwritten note from school staff documenting a telephone conversation with the student's private physician at XXXXXXXXXXXXXXXXXXXX on August 25, 2009;
  - f. Emergency Care Plans, dated August 26, 2009, August 4, 2010, and August 19, 2013;

XXX

Mrs. Joan Rothgeb

July 16, 2014

Page 3

- g. IEP, dated January 26, 2010;
- h. IEP, dated January 20, 2011;
- i. Written summary of an IEP team meeting, dated January 18, 2012;
- j. IEP, dated March 27, 2012 and written summary of the IEP team meeting;
- k. Medical note from the student's private physician, dated May 7, 2012;
- l. IEP, dated September 27, 2012;
- m. IEP, dated October 31, 2012;
- n. IEP, dated September 25, 2013;
- o. IEP, dated May 5, 2014; and
- p. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on May 28, 2014.

### **BACKGROUND:**

The student is seventeen (17) years old and is diagnosed with Attention Deficit Hyperactivity Disorder, Cerebral Palsy, Diabetes, Asthma, and Allergies. He is identified with Multiple Disabilities under the IDEA, including Intellectual Disability and Other Health Impairment, and he receives special education and related services. The student attends XXXXXXXXXXXXX (Doc. o).

In this case, the complainant alleges that because he was assured at an IEP team meeting that the student's needs were being addressed consistent with the medical information he provided to school staff, he believed that air conditioning would be provided in order to prevent the exacerbation of the student's medical condition related to Asthma. The complainant reports that when he arrived at school on May 27, 2014<sup>1</sup> and observed that no air conditioning was being provided, he complained to the school staff, who appeared to be unaware of the student's need for such services. The complainant reports that the student was moved to an air conditioned room the following day, but that he is concerned that the IEP does not specifically require this service (Doc. p and interview with the complainant).

The State complaint investigation procedure can be used to resolve only those allegations of violations of the IDEA that occurred within a year of the filing of the State complaint (34 CFR §300.153). While the complainant asserts that the medical information was provided to the school staff more than a year prior to the filing of this State complaint, an investigation was conducted into whether the medical information was considered by the IEP team when it was provided to the school staff in order to determine whether a violation occurred within a year of the date of the filing of the State complaint.

---

<sup>1</sup> Recorded weather history reflects that the temperature reached a high of 89 degrees in the area on this date (<http://www.wunderground.com/history>).

**FINDINGS OF FACTS:**

1. The student's educational record contains medical orders from the student's private physicians documenting that he has a medical condition related to a diagnosis of Asthma, for which he is prescribed medication. The medical orders reflect that they have been reviewed by the PGCPS Division of Health Services Staff since August 22, 2007 (Doc. a).
2. The student's educational record contains documentation from the student's private physician from XXXXXXXXXXXXXXXXXXXX, dated May 6, 2008, which states that as a result of the Asthma, the student "should be in an air conditioned environment" (Doc. c).
3. On February 20, 2009, the IEP team identified the student with health/medical needs that impact his academic achievement or functional performance. The IEP indicates that the student was identified with medical needs related to Asthma, Allergies, and Attention Deficit Hyperactivity Disorder based on medical documentation and parent input from February 2009. It also indicates that these needs are addressed through the administration of medication and monitoring of strenuous physical activity (Doc. d).
4. There is documentation that on August 25, 2009, the PGCPS Division of Health Services staff reviewed the information provided on August 21, 2009 by the student's private physician from XXXXXXXXXXXXXXXXXXXX regarding the medications prescribed to treat the student's Asthma. There is also documentation that on that date, the student's private physician from XXXXXXXXXXXXXXXXXXXX provided information by telephone to the school staff about the student's medical needs related to Asthma (Docs. a and e).
5. On August 26, 2009, an Emergency Care Plan was initiated for the student. The Plan was developed by the PGCPS Division of Health Services and provides the school staff with information on how to recognize the signs of respiratory distress and the appropriate action to take (Doc. f).
6. At an IEP team meeting held on March 27, 2012, the complainant expressed concern about the student's Asthma "and the warm weather that will be coming" when the student is participating in instruction in the community.<sup>2</sup> Documentation of the meeting indicates that the school nurse responded that the student's teachers carry paperwork reflecting the student's medical needs when trips are taken into the community (Doc. j).

---

<sup>2</sup> The student participates in the Community Referenced Instruction (CRI) Program, which provides students with community-based life skills training (Docs. i and o).

XXX

Mrs. Joan Rothgeb

July 16, 2014

Page 5

7. The student's educational record includes a May 7, 2012 statement from the student's private physician, which contains the following statement:

Please be aware that this student has a history of Asthma. Please make appropriate accommodations for this student in order to prevent exacerbations of Asthma (Doc. k).

8. There is no documentation that the IEP team has considered whether the student requires services to prevent exacerbations of Asthma, as recommended by the student's private physicians (Docs. a - d and f - o).
9. There is no documentation that the student's needs related to his Asthma diagnosis have changed since the student's private physicians recommended that services be provided to prevent exacerbations of the student's Asthma (Docs. a - d and f - o).

### **DISCUSSION/CONCLUSIONS:**

In order to provide a student with a disability with a Free Appropriate Public Education (FAPE), the public agency must ensure that the student is provided with an IEP that includes the special education and related services needed to address all of the student's academic, developmental, and functional needs that arise out of the disability, as identified in the evaluation data (34 CFR §§300.101 and .320).

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education. This may include services such as air conditioning (34 CFR §300.34 and United States Department of Education, Office of Special Education Programs, *Letter to Hayden*, 22 IDELR 501, October 3, 1994).

Based on the Findings of Facts #1 - #9 above, the MSDE finds that there is no documentation that the IEP team has considered whether the student requires services to prevent the exacerbation of his Asthma, as recommended by his private physicians. Therefore, this office finds that the PGCPs has not ensured that the IEP team has addressed all of the student's needs that arise out of his disability, and that a violation occurred since May 28, 2013.<sup>3</sup>

---

<sup>3</sup> As stated above, the State complaint investigation procedure can be used to resolve an allegation of a violation of the IDEA that occurred within a year of the filing of the State complaint (34 CFR §300.153).

XXX

Mrs. Joan Rothgeb

July 16, 2014

Page 6

### **CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the PGCPS to provide documentation by the start of the 2014-2015 school year that the IEP team has considered the medical information from the student's private physicians and determined whether the student requires services to prevent the exacerbation of Asthma. If the IEP team determines that the student requires an air conditioned environment or any other service to prevent the exacerbation of Asthma, the PGCPS must ensure that the IEP clearly reflects the required services.

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, he maintains the right to request mediation or file a due process complaint in order to resolve the dispute, in accordance with IDEA.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the PGCPS by the Family Support and Dispute Resolution Branch, MSDE, 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 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

XXX

Mrs. Joan Rothgeb

July 16, 2014

Page 7

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/am

c: Kevin W. Maxwell  
Shawn Joseph  
LaRhonda Owens  
Kerry Morrison  
XXXXXXXXXXXX  
XXXXXXX  
Dori Wilson  
Anita Mandis  
Christine Hartman