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State Superintendent of Schools

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August 15, 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: #14-108

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 June 5, 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 did not ensure that the student was provided with special education instruction by a qualified special education teacher from the start of the 2013-2014 school year until November 2013, in accordance with 34 CFR §§300.18 and 156.
2. The PGCPS did not ensure that the student was provided with the supports required by the Individualized Education Program (IEP) during the 2013-2014 school year, in accordance with 34 CFR §§.300.101 and .323. Specifically, the complainant alleges that

XXX

Mrs. Joan Rothgeb

August 15, 2014

Page 2

the student was not provided with visual aids, adapted materials, and modified assignments.

3. The PGCPS did not ensure that reports of the student's progress towards achievement of the annual IEP goals were made between the start of the 2013-2014 school year and March 8, 2014, in accordance with 34 CFR §§300.320 and .324.

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 16, 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 June 18, 2014, Ms. Moyo conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On July 1, 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.
5. On July 10, 2014, Ms. Moyo and Ms. Memuna Bangura, Monitoring and Accountability Specialist, MSDE, reviewed the student's educational record at XXXXXXXXXXXXXXXX XXXXX and spoke with Ms. XXXXXXXX, Principal. Ms. Morrison was present at the document review as a representative of the PGCPS and to provide information on the PGCPS policies and procedures, as needed. On the same date, the PGCPS provided the MSDE with documentation from the student's education record.
6. On July 28, 2014, the PGCPS staff sent documentation related to the allegations being investigated, via electronic mail (email), to the MSDE staff.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainant to the MSDE, received on June 16, 2014;
  - b. IEP and prior written notice, dated November 29, 2012;
  - c. Correspondence from the school staff to the parents, dated September 6, 2013;
  - d. IEP team meeting notice, dated October 25, 2013;

XXX

Mrs. Joan Rothgeb

August 15, 2014

Page 3

- e. Community Referenced Instruction teacher position description, dated October 29, 2013
- f. IEP, dated November 21, 2013
- g. Prior written notice, dated November 22, 2013;
- h. Electronic mail (email) correspondence from the PGCPS staff to school staff, dated March 13, 2014;
- i. Email correspondence between the PGCPS staff and school staff, dated March 18 and 20, 2014;
- j. IEP team meeting notice, dated April 1, 2014;
- k. Amended IEP, dated April 2, 2014;
- l. Reports of progress toward achieving the IEP goals for the 2013-2014 school year; and
- m. Maryland Online IEP parent contact log, printed on July 8, 2014.

**BACKGROUND:**

The student is ten (10) years old and he attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with an Other Health Impairment related to a “significant cognitive disability” and receives special education instruction 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 IEP team decisions and notice of the procedural safeguards (Docs. a, b, d, f, g, and j - m).

**ALLEGATION #1: HIGHLY QUALIFIED TEACHER**

**Findings of Facts:**

1. The IEP in effect during the 2013-2014 school year required that the student be provided with special education instruction in a separate special education classroom in the Community-Referenced Instruction (CRI) program. The CRI program is a program which supports students with significant cognitive disabilities and provides the students with significant modifications to access the general education curriculum and with the opportunity to work on functional life skills (Docs. b, d – g, j, and k).
2. The teacher assigned to the student’s class from the start of the 2013-2014 school year to September 6, 2013 held an Advanced Professional Certificate in special education and was certified to teach infants to adults (review of teacher certification documents).
3. On September 6, 2013, the school staff sent correspondence to the parents indicating that the teacher who was assigned to teach the CRI class at the start of 2013-2014 school year had resigned and that the position was vacant. In the correspondence, school staff also indicated that until a replacement teacher was hired, a retired Prince George’s County Public School teacher would be the “short-term substitute” teacher and would provide

XXX

Mrs. Joan Rothgeb

August 15, 2014

Page 4

instruction to the class with assistance from the para-educator and the dedicated classroom aide already working with the class (Doc. c).

4. There is documentation that on September 7, 2014, the substitute was assigned to the class. The school staff report that the PGCPs CRI specialist and the school's instructional lead teacher assisted the substitute through weekly collaborative planning meetings and by providing lesson plans from the former teacher. However, there is no documentation of the provision of this assistance to the substitute teacher or of the qualifications of the substitute teacher (Docs. a, c, interview with school staff, and review of the educational record).
5. On October 25, 2013, the school staff sent an IEP team meeting notice to the complainant which included the name of the new permanent teacher assigned to provide instruction in the CRI classroom. The assigned teacher held an Advanced Professional Certificate in special education and was certified to provide instruction to students in grades one (1) through eight (8) (Doc. d and review of teacher certification).

#### **Discussion/Conclusions:**

The public agency must ensure that personnel are appropriately and adequately prepared and trained in order to certify that special education instruction and related services are provided by "highly qualified" personnel. In order to meet the "highly qualified" requirement, special education teachers must obtain State certification as a special education teacher or pass the State special education teacher licensing examination, and hold a license to teach in the State as a special education teacher (34 CFR §§300.18 and .156).

Maryland teachers can meet these requirements by holding at least a Bachelor's Degree and a valid Maryland Advanced Professional Certificate or a National Board Certification in the core academic subject being taught. This requirement, however, 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 §§300.18 and .156 and *Using Maryland's High, Objective, Uniform State Standard of Evaluation*, January 2008).

Based on the Findings of Facts #1, #2, and #5, the MSDE finds that the permanent teachers assigned to the class during the 2013-2014 school years met the "highly qualified" requirements. However, based on the Findings of Facts #3 and #4, the MSDE finds that there is no documentation that the student was provided with special education instruction by a highly qualified teacher during the period of time when a substitute teacher was assigned to the class. Therefore, the MSDE finds that a violation occurred with regard to this allegation. However, because no individual right exists in this case, no student specific corrective action is required.

**ALLEGATION #2: PROVISION OF VISUAL AIDS, ADAPTED MATERIALS, AND MODIFIED ASSIGNMENTS**

**Findings of Facts:**

6. The IEP required that in addition to the supports incorporated into the CRI program, the student be provided with modified assignments, picture symbols/visual aids, adapted grade level materials, large print, extended time, and breaks to help him better focus in class (Docs. b, f, g, and k).
7. The parties report that the teacher did not consistently use all of the modifications or program supports available when providing instruction to the students and that she required assistance with the provision of the modifications required to provide instruction to the students in the CRI classroom. There is also documentation that it was necessary for the CRI specialist to assist the teacher with her class by providing her with instructional support (Doc. i and interviews with the complainant and school staff).

**Discussion/Conclusion:**

The public agency is required to ensure that each student is provided with the special education instruction, related services, and supports required by the IEP (34 CFR §§300.101 and .323). Based on the Finding of Fact #6 and #7, the MSDE finds that the school staff did not consistently provide the student with the supports, as required by the IEP. Therefore, the MSDE finds that a violation occurred.

**ALLEGATION #3: REPORTS OF PROGRESS**

8. The IEP documents that the reports of progress towards achieving the annual IEP goals will be provided to the parent in writing on a quarterly basis during the school year (Docs. b, f, k, and l).
9. There is documentation that reports of the student's progress towards achieving the annual IEP goals were generated for the first and second quarters of the 2013-2014 school year. However, there is no documentation that the complainant was provided with these reports in a timely manner (Docs. l, review of the educational record, and interview with school staff).
10. There is documentation and both parties report that the complainant has now been provided with copies of all of the progress reports generated during the 2013-2014 school year (Doc. a and interviews with the complainant and school staff).

**Discussion/Conclusion:**

Based on the Findings of Facts #8 and #9, the MSDE finds that the complainant was not provided with copies of reports of the student's progress on a quarterly basis during the 2013-2014 school year, as required. As a result, the MSDE finds that a violation occurred. Notwithstanding, based on the Finding of Fact #10, the MSDE finds that the complainant was subsequently provided with copies of the progress reports and consequently, no student-specific corrective action is required to remediate this violation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires that the PGCPS provide documentation by November 1, 2014 that the IEP team has convened to determine if there was a negative impact to the student's ability to benefit from his program as a result of the violation related to the lack of provision of supports in the classroom. If the team determined there has been a negative impact, then the team must determine the appropriate remedy to compensate for the missed services.

**Similarly-Situated Students**

The PGCPS must contact the parent of each student who participated in this CRI class during the 2013-2014 school year and offer to convene an IEP team meeting to determine whether the violation regarding the lack of the consistent provision of modifications had a negative impact on the student's ability to benefit from the education program.

If there has been a negative impact, the PGCPS must provide the MSDE with documentation by December 1, 2014 that the IEP team has determined the services to be provided to the student to remediate the loss of services during the 2013-2014 school year within one (1) year of the date of this Letter of Findings.

The PGCPS must also provide each parent 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.

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 the Family Support and Dispute Resolution Branch, MSDE. This office may be contacted at (410) 767-7770.

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Mrs. Joan Rothgeb

August 15, 2014

Page 7

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 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  
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