



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

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

December 12, 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: #15-023

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 October 15, 2014, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 her identified needs since October 15, 2013,¹ in accordance with 34 CFR §§300.101 and .324.

¹ The complainant was informed, in writing, that this office has authority to investigate only those allegations alleged to have occurred not more than one (1) year prior to the date the complaint was received (34 CFR §300.153).

XXX

Mrs. Joan Rothgeb
December 12, 2014
Page 2

INVESTIGATIVE PROCEDURES:

1. Ms. K. Sabrina Austin, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On October 17, 2014, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPs; Dr. LaRhonda Owens, Supervisor of Compliance, PGCPs; Ms. Gail Viens, Deputy General Counsel, PGCPs; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPs.
3. On October 21, 2014, Ms. Austin spoke with the complainant by telephone to clarify both the allegation to be investigated and the requested remedy.
4. On October 22, 2014 and November 10, 2014, the complainant provided the MSDE with additional documentation related to the allegation being investigated, via email.
5. On October 23, 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.
6. On October 27, 2014 and November 5, 10, and 12, 2014, the MSDE requested documentation from the PGCPs.
7. On October 31, 2014 and November 6, 2014, Ms. Austin conducted a telephone interview with the complainant regarding the allegation being investigated.
8. On November 5, 2014, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, reviewed the student's educational record at XXXXXXXXXXXXXXXXXXXX with Ms. Valerie Coachman, Special Education Coordinator, PGCPs, and Betty Adkins, Autism Specialist, PGCPs. On the same day, the MSDE requested additional documentation from the student's educational record from the PGCPs.
9. On November 12 and 21, 2014, the PGCPs provided the MSDE with documentation from the student's educational record related to the allegation being investigated.

XXX

Mrs. Joan Rothgeb
December 12, 2014
Page 3

10. On November 18, 2014, the PGCPs provided the MSDE with information regarding the allegation being investigated.
11. On November 21, 2014, Ms. Austin and Ms. Mandis conducted a site visit at XXXXXXXXXXXXXXXXXXXX and interviewed Ms. R. Wilson, Speech Language Pathologist, PGCPs, and Ms. Valerie Coachman, CSEP Coordinator, PGCPs. Ms. Morrison attended the site visit as a representative of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.
12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. XXXXXXXXXXXXXXXXXXXX Speech and Language Evaluation, dated December 29, 2009;
 - b. Educational Assessment, dated May 6, 2010;
 - c. Behavior Intervention Plan, dated July 30, 2010;
 - d. Functional Behavior Assessment Summary Report, dated July 30, 2010;
 - e. XXXXXXXXXXXXXXXXXXXX Speech-Language Evaluation, dated May 31, 2011;
 - f. XXXXXXXXXXXXXXXXXXXX Report of Neuropsychological Assessment, dated June 3, 2011;
 - g. Functional Behavior Assessment Summary Report, dated May 2, 2012;
 - h. Behavior Intervention Plan, dated May 2, 2012;
 - i. Prior Written Notice, dated May 4, 2012;
 - j. Amended IEP, dated May 16, 2012;
 - k. Consultation Report, dated December 12, 2012;
 - l. Prior Written Notice, dated April 26, 2013;
 - m. IEP, dated April 29, 2013;
 - n. Prior Written Notice, dated May 23, 2013;
 - o. Behavior Intervention Plan, dated May 23, 2013;
 - p. Report of October 3, 2013 Consultant Observation;
 - q. Letter from the complainant to XXXXXXXXXX, dated November 2, 2013;
 - r. Notice and Consent for Assessment, dated November 6, 2013, signed November 11, 2013;
 - s. Sign-in Sheet, IEP Meeting dated November 7, 2013;
 - t. Prior Written Notice, dated January 2, 2014;
 - u. Assessment Report of Occupational Therapist, dated January 5, 2014;
 - v. Classroom Observation Report, dated January 7, 2014;
 - w. Speech-Language Assessment, dated January 14, 2014;
 - x. Assessment Report of School Psychologist, dated January 14, 2014;

XXX

Mrs. Joan Rothgeb
December 12, 2014
Page 4

- y. Sign-in Sheet, IEP Meeting dated January 16, 2014;
- z. Prior Written Notice, dated January 25, 2014;
- aa. Behavior Intervention Plan, dated February 11, 2014;
- bb. IEP, dated April 24, 2014;
- cc. Prior Written Notice, dated April 29, 2014;
- dd. Amended IEP dated June 4, 2014;
- ee. Letter from the complainant to the XXXXXXXXXXXXX staff, dated November 2, 2013;
- ff. IEP Progress Reports, dated between June 3, 2013 and November 3, 2014;
- gg. Letter from the complainant to the XXXXXXXXXXXXX staff, dated October 6, 2014;
- hh. Behavior Intervention Plan, dated October 23, 2014;
- ii. Prior Written Notice, dated October 29, 2014;
- jj. Email correspondence dated October 30, 2014 from the PGCPS to the complainant;
- kk. Written summary of revisions made to the student's IEP at the October 23, 2014 IEP meeting;
- ll. Notice and Consent for Assessment, dated November 20, 2014; and
- mm. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on October 15, 2014.

BACKGROUND:

The student is nine (9) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services. The student is in the 4th grade and attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) (Doc. bb and interview with school system staff).

During the time period covered by the investigation, the complainant participated in the educational decision-making process and was provided with notice of the procedural safeguards and parental rights (Docs. m, s, y, bb and dd).

FINDINGS OF FACTS:

1. The IEP in effect on October 15, 2013 was developed on April 29, 2013, and was revised on April 24, 2014, and June 4, 2014.

Speech and Language Needs

2. The April 29, 2013 IEP identifies needs for the student in the areas of receptive and expressive language, and includes annual goals for her to improve these skills. The IEP also requires six (6) thirty minute sessions (three (3) hours total) per month of speech therapy as a related service, to be provided in a separate special education class (Doc. m).

XXX

Mrs. Joan Rothgeb

December 12, 2014

Page 5

3. On November 2, 2013, the complainant expressed concern, in writing, that the student was not making sufficient progress and requested that additional speech therapy services be provided (Doc. q and interview with school system staff).
4. On November 7, 2013, the IEP team held a meeting in response to the complainant's concerns. The documentation reflects that the IEP team considered information that the student was not making sufficient progress towards achieving the annual speech and language receptive goals, that she continues to experience difficulty focusing, and that her "lack of motivation is hampering her progress." In response, the IEP team recommended an expressive and receptive language assessment and the complainant provided written consent (Docs. r – t, ff and review of educational record).
5. The PGCPS conducted a speech and language assessment in December 2013 and January 2014. While the assessment report stated that the student "presents with severe deficits" in the area of receptive and expressive language, the evaluator reported that attempts to formally assess the student on two separate occasions for the identification and diagnosis of language and communication disorders were unsuccessful due to the student's inattentive and "unsettled" behaviors (getting out of her seat, pushing and tearing papers) (Doc. w).
6. On January 16, 2014, the IEP team reconvened to review the assessment results. The IEP team did not revise the IEP, and there is no documentation that the IEP team considered the student's lack of progress or the complainant's request for additional speech therapy at this meeting (Docs. y and z, and interview with school system staff).
7. When the IEP team met on April 24, 2014 to conduct an annual review of the IEP, they updated the present levels of performance based on information from the speech and language assessment performed in December 2013 and January 2014. The IEP team also considered reports that the student was not making sufficient progress towards achieving the receptive and expressive language goals, noting that the student's behavior "hampers her progress." The IEP team revised objectives within the expressive and receptive language goals based on the student's reported progress, but there is no documentation that the IEP team considered the complainant's request for additional speech therapy to address the lack of expected progress (Docs. bb, cc and ff).

Behavioral Needs

8. The April 29, 2013 IEP reflects that the student's needs related to attention to task hamper her progress; that "the teacher has to be at her side, giving her prompts to get the task complete and keep her attention;" that "she will refuse to do her work;" that there "were still [incidents] of hitting;" that the student "needs to work on focusing and participating more in the daily tasks;" and that the student "also needs to work on behaving appropriately, following directions, and completing assigned tasks on time."

XXX

Mrs. Joan Rothgeb

December 12, 2014

Page 6

The IEP includes a goal for the student to increase attention and task completion, and requires the supplementary support of a dedicated assistant “to provide behavioral support to assist the student to remain on task and to maintain appropriate behaviors in all settings.” According to the IEP, a Behavior Intervention Plan (BIP) was developed on July 30, 2010 to address the student’s “aggressive and disruptive behaviors” (Doc. m).

9. At the November 7, 2013 meeting, the IEP team considered the complainant’s concerns about the student’s behavior and progress towards achieving her annual IEP goals. The IEP team recommended that assessments be conducted in academics (reading, mathematics and written language), adaptive performance, fine motor, cognitive, and speech and language, but did not review the BIP to ensure that it remained appropriate or consider positive behavior interventions to address these concerns (Docs. r - t, and review of educational record).
10. On January 16, 2014, the IEP team convened a meeting to review the results of the assessments. The documentation of the meeting indicates that the IEP team reviewed a psychological assessment. According to the report, the student displayed such interfering behaviors (including scribbling, throwing, grabbing, distractions and detours) that four separate attempts were required in order to conduct the assessment. The psychologist also reported accounts of the student’s inattention and distracted behavior from the classroom teacher, the occupational therapist and the speech language pathologist, which included statements that the student’s “behavior interferes with sustained effort,” and “she is no longer present and available for learning” when she becomes frustrated. The report reflects the psychologist’s conclusion that the student’s behaviors “continue to interfere with her ability to fully participate in the educational process” (Docs. x - z).
11. At the January 16, 2014 IEP meeting, and again at the IEP team meetings held on April 24, 2014 and October 23, 2014, the IEP team decided to update the BIP. However, there is no documentation that the IEP team has done so (Docs. z, cc, ii and kk, review of educational record, and interview with school system staff).
12. On November 20, 2014, the IEP team recommended that a Functional Behavior Assessment (FBA) be conducted and the complainant provided written consent (Doc. ll, and interview with school system staff).
13. An IEP team meeting is now being scheduled with participation from the PGCPS Central Office staff to consider whether the student requires a change in educational placement in order to address her interfering behaviors (Interview with school system staff).

Fine Motor Needs

14. At the November 7, 2013 IEP team meeting, the IEP team considered the complainant's concerns about the student's handwriting skills and recommended that an occupational therapy assessment be conducted. The complainant provided written consent (Docs. r - t).
15. The PGCPs conducted an occupational therapy assessment in January 2014. The assessment report states that the student "presents with impulsive behaviors that adversely impact her attention and concept acquisition" (Doc. u).
16. At the April 24, 2014 IEP meeting, the IEP team updated the present levels of performance based on information from the occupational therapy assessment. The IEP team determined that the student's fine motor skill needs impact her academic achievement and functional performance. Based on this information, the IEP team developed a goal for the student to improve her writing, and determined that an occupational therapist would provide consultation to the student's teachers two (2) times per month to address the student's writing needs in the classroom (Doc. bb).

Visual Supports

17. The April 29, 2013 IEP indicates that the student "still needs visual supports in order to respond correctly" to simple comprehension questions, and that providing visual supports helps to facilitate the student's understanding of text and concepts. The annual IEP goals state that the student is to be provided with the use of pictures as a supplementary aid, and also requires the use of visual cues, visual prompts, and pictures in order to assist her with achieving the goals (Doc. m).
18. In October 2013 and in January 2014, a PGCPs autism specialist conducted classroom observations and recommended that the IEP team consider whether the student would benefit from an individual "visual schedule." However, there is no documentation that the IEP team considered the recommendation until April 24, 2014 when it added visual/picture supports and a picture schedule as supplementary aids in the student's IEP (Docs. p, v, and bb).

Applied Behavior Analysis

19. The complainant sent a letter to the PGCPs, dated November 2, 2013, requesting the use of Applied Behavior Analysis² (ABA) therapy methods to support the student. However,

² "Applied Behavior Analysis is the process of systematically applying interventions based upon the principles of learning theory to improve socially significant behaviors to a meaningful degree, and to demonstrate that the interventions employed are responsible for the improvement in behavior" (<http://www.centerforautism.com/aba-therapy.aspx>).

XXX

Mrs. Joan Rothgeb
December 12, 2014
Page 8

there is no documentation that the IEP team considered the complainant's request (Doc. q and review of educational record).

20. The complainant sent a letter to XXXXXXXXXXXXXXXXXXXX, dated October 6, 2014, reiterating her request for the use of ABA therapy methods to support the student (Doc. gg).
21. On October 23, 2014, the IEP team considered the complainant's request for the use of ABA instructional methodology, and decided to use "discrete trials"³ in connection with teaching sight words to the student (Doc. ii and interview with school system staff).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that the IEP team develops an IEP that includes a statement of the student's present level of academic achievement and functional performance, including how the disability affects the student's progress in the general curriculum, which is based on 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. In addition, in the case of a student whose behavior impedes her learning or that of others, the IEP team must also consider strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §§300.101, .320 and .324).

If the IEP team determines the need for additional data in order to ensure that all of the student's needs are identified, the public agency must ensure that assessments are conducted, the results are considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety (90) days of the recommendation to obtain the data (COMAR 13A.05.01.06).

The public agency must review a student's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved, and to revise the IEP, as appropriate, to address any lack of expected progress toward the goals on in the general education curriculum, the results of any reevaluation, information about the child provided to or by the parents, or the student's anticipated needs (34 CFR §300.324).

³ "Discrete trial training, also known as massed trials, is the basic instructional technique of ABA or Applied Behavior Analysis" (<http://special.ed.about.com/od/autismandaspergers/a/Discrete-Trial-Training-The-Instructional-Backbone-Of-Aba.htm>)

XXX

Mrs. Joan Rothgeb
December 12, 2014
Page 9

Speech and Language Needs:

In this case, the complainant alleges that the student's IEP has not provided a sufficient amount and type of speech and language services to enable the student to achieve the annual IEP goals.

Based on Findings of Facts #4 - #7, the MSDE finds that the PGCPS did not ensure that the assessment results were considered by the IEP team within the required timelines. In addition, based on the Findings of Facts #1 - #7, the MSDE finds that the IEP team has not considered the complainant's concerns about the amount and nature of speech and language services being provided to the student in order to address the lack of expected progress on the student's IEP goals since November 7, 2013. Therefore, the MSDE finds that violations occurred with regard to this aspect of the allegation.

Student's Behavior:

Based on Findings of Facts #8 and #13, the MSDE finds that the IEP team has not addressed the student's behavioral needs since November 7, 2013. Therefore, the MSDE finds a violation with regard to this aspect of the allegation.

Fine Motor Needs:

In this case, the complainant alleges that the PGCPS has not ensured that the student's fine motor needs have been met because the IEP only requires consultation and does not require direct occupational therapy as a related service.

Based on Findings of Facts #14 - #16, the MSDE finds there was a delay by the IEP team in addressing the student's fine motor needs from February 7, 2013 (when the IEP team was required to consider the assessment results) until April 24, 2014. Therefore, the MSDE finds a violation with regard to this aspect of the allegation. However, based on these same Findings of Facts, the MSDE finds that there is no documentation to support the allegation that direct occupational therapy services are required in order to address the student's fine motor needs.

Visual Supports:

In this case, the complainant alleges that the PGCPS has not ensured that the student's visual learning needs have been met because the IEP does not require visual supports, and a visual schedule, in order to assist the student in her education (Doc. mm).

Based on Finding of Fact #17, the MSDE finds that the IEPs covered by this investigation period include visual supports for the student as reflected in supplementary aids and embedded in the IEP goals. However, based on Finding of Fact #18, the MSDE finds there was a delay in the IEP team's consideration of the PGCPS autism specialist's recommendation for an individual visual

schedule. Therefore, the MSDE finds a violation with regard to this aspect of the allegation from October 2013 to April 24, 2014.

Request for ABA:

Based on Findings of Facts #19 - #21, the MSDE finds that there was a delay in the IEP team's consideration of the complainant's request for ABA instructional methodology from November 2, 2013 to October 23, 2014. Therefore, the MSDE finds a violation with regard to this aspect of the allegation during this time period.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by January 30, 2015, that the following actions have been taken:

- a) An IEP team, including a behavior specialist, has reviewed the results of the FBA recommended on November 20, 2014, and has developed a BIP consistent with the results from the FBA, and revised the IEP, as appropriate, to ensure that it addresses the student's social, emotional, and behavioral needs, and speech and language needs; and
- b) The IEP team has determined the nature and amount of compensatory services to be provided to the student to redress the violations identified through this complaint investigation, and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings; and
- c) The IEP team has convened with participation from the PGCPS Central Office staff, including a behavior specialist, to determine the student's educational placement consistent with the data.

School-Based

The MSDE requires the PGCPS to provide documentation by April 1, 2015, 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.

XXX

Mrs. Joan Rothgeb
December 12, 2014
Page 11

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 initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Monitoring and Accountability 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.

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.

XXX

Mrs. Joan Rothgeb
December 12, 2014
Page 12

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/am

c: Kevin W. Maxwell
Joan Rothgeb
LaRhonda Owens
Kerry Morrison
XXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin