



December 23, 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: #15-026

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 October 29, 2014, the MSDE received a complaint from Ms. XXXXXXXX, 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 student has been provided with the special education services required by the Individualized Education Program (IEP) since May 2014, in accordance with 34 CFR §§300.101 and .323 as indicated below.
 - a. The PGCPS has not ensured that the student's teachers and service providers have been informed of their specific responsibilities for implementing the IEP;

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- b. The PGCPS has not ensured that the student has been consistently provided with the services of a dedicated aide that is required by the IEP; and
 - c. The PGCPS has not ensured that the student has been provided with the amount of special education instruction in the separate special education classroom that is required by the IEP.
2. The PGCPS did not obtain parental consent prior to accessing the student's public benefits, in accordance with 34 CFR §300.154(d).

INVESTIGATIVE PROCEDURES:

1. On October 29, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated. On the same date, 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.
2. On October 30, 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.
3. On November 10, 2014, Ms. Sandi Marx, State Complaint Investigator Consultant, MSDE, requested documents from the PGCPS.
4. On November 21, 2014 and December 2, 2014, Ms. Marx reviewed documents from the student's educational record at XXXXXXXXXXXXXXXXXXXX. Ms. Morrison attended the record review as a representative of the PGCPS. In addition, the following school staff were interviewed:
 - a. Ms. XXXXXXXXXXX, General Education Teacher;
 - b. Mr. XXXXXXXXXXX, Dedicated Aide;
 - c. Ms. XXXXXXXXXXX, Special Education Resource Teacher;
 - d. Ms. XXXXXXXX, Occupational Therapist;
 - e. Ms. XXXXXXXXXXX, Special Education Resource Teacher; and
 - f. Mr. XXXXXXXXXXX, Principal.
5. On December 4, 2014, the MSDE requested additional documentation from the PGCPS.
6. On December 5, 2014, the PGCPS provided the MSDE with additional documents.

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7. On December 18, 2014, the MSDE received documents from both the complainant and the PGCPS.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The IEP team meeting sign-in sheets for meetings held on March 18, 2014 and April 22, 2014;
 - b. Consent to access the complainant's benefits, dated July 19, 2011;
 - c. The IEP, dated April 22, 2014;
 - d. The "Snapshot IEP;"
 - e. Correspondence from the complainant to the school staff, dated May 27, 2014;
 - f. Correspondence between the complainant and the school staff, dated \ June 10, 2014;
 - g. Correspondence between the complainant and the school staff, dated October 14 - 16, 2014;
 - h. Correspondence between the complainant and the school staff, dated October 23 and 30, 2014;
 - i. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on October 29, 2014;
 - j. Correspondence among the school staff, dated November 6, 2014;
 - k. The special education teacher's schedule; and
 - l. The special education teacher's daily planner.

BACKGROUND:

The student is six (6) years old, is identified as a student with a Developmental Delay under the IDEA, and has an IEP that requires the provision of special education and related services. He attends the XXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX) (Doc. c).

ALLEGATION #1 IEP IMPLEMENTATION

FINDINGS OF FACTS:

Ensuring that Teachers and Service Providers are Informed of their Responsibilities for Implementing the IEP

1. During the site visit conducted as part of this State complaint investigation, it was observed that the student's teachers and service providers have been provided with a "Snapshot IEP," which contains information about the annual IEP goals, and the special education and related services to be provided to assist the student in achieving the goals. While the "Snapshot IEP" reflects that the student is to be provided with additional adult

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support, it does not explain the nature of the support to be provided (Docs. c and d, and observations conducted during a MSDE site visit).

2. While there is documentation that the student's teachers and related service providers participated in the IEP team meetings held to review and revise the IEP, the documentation does not reflect that the staff member assigned to provide additional adult support was involved in those meetings. However, there is documentation that on October 30, 2014, the complainant provided this staff member with a copy of the IEP (Docs. a and h).

Provision of the Services of a Dedicated Aide

3. While the IEP requires that the student be provided with "a dedicated aide" to give him additional adult support to remain on task in the classroom and to maintain appropriate boundaries in the school setting, the "Snapshot IEP" does not indicate the purpose of the support. There is documentation that on October 30, 2014, the complainant provided a copy of the IEP to the staff member assigned to provide this service (Docs. c, d, and h).
4. The school staff attendance records reflect that the individual who is assigned to provide the student with additional adult support has had several absences from school since May 2014. While other school staff are assigned to serve in this capacity when the assigned individual is absent, there has not always been another school staff member available to do so. In addition, there is no documentation that the individuals who have provided the support during those absences were informed of their role in implementing the IEP (Docs. e, f, j, review of school staff attendance records, and interview with school staff).

Provision of Special Education Instruction in a Separate, Special Education Classroom

5. The IEP requires that the student be provided with special education instruction in a separate special education classroom by a special education teacher three (3) times per week and that each session is to be thirty (30) minutes for a total of one (1) hour and thirty (30) minutes each week. This special education instruction is to assist the student with achieving annual IEP goals to improve his math and reading skills (Doc. c).
6. The special education teacher's schedule reflects that she is scheduled to work with the student in a separate special education classroom three (3) times per week. However, her daily planner documents that she provided special education instruction to the student outside of the general education classroom only two (2) occasions during the month of September, 2014 and eight (8) occasions during the month of October 2014. The daily planner reflects that, while the special education teacher has worked with the student in the general education classroom during the months of November and December 2014,

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she has not provided services to him in the separate special education classroom since October 2014 (Docs. k and l).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that special education services are provided in accordance with each student's IEP in the educational placement required by the IEP (34 CFR §300.101). In order to do so, the public agency must make sure that the IEP includes a clear statement of the special education and related services that are required and that each teacher and provider is informed of the IEP requirements and their responsibility for implementing the IEP (34 CFR §§300.320 and .323).

Ensuring that Teachers and Service Providers are Informed of their Responsibilities for Implementing the IEP

In this case, the complainant alleges that the student's teachers and service providers were not informed of their roles for implementing the IEP, and that as a result, the student has not been provided with the amount and nature of special education services required by the IEP (Doc. i).

Based on the Findings of Facts #1 and #2, the MSDE finds that the student's teachers and related service providers have been provided with information about the services to be provided and the goals to be addressed by the services. However, based on the Findings of Facts #1 - #3, the MSDE further finds that the individual assigned to serve as the student's "dedicated aide" was not provided with information about the nature of the support that is to be provided until October 30, 2014. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Provision of the Services of a Dedicated Aide

The complainant further alleges that the student has not consistently been provided with the additional adult support required by the IEP, due to lack of coverage during absences from school of the individual who has been assigned to provide that service (Doc. i).

Based on the Finding of Fact #4, the MSDE finds that other school staff members are assigned to serve in this role when the individual who is assigned to provide this support is absent from school. However, based on that Finding of Fact, the MSDE finds that there has not consistently been other school staff available to do so, and there is no documentation that the other staff members were informed of the nature of the support that was to be provided. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

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Provision of Special Education Instruction in a Separate, Special Education Classroom

In addition, the complainant alleges that the student was not consistently removed from the general education classroom to receive special education instruction in the separate, special education classroom (Doc. i).

Based on the Findings of Facts #5 and #6, the MSDE finds that the documentation reflects that the student has not been provided with the amount of special education instruction in the separate special education classroom that is required by the IEP. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #2 ACCESSING PUBLIC BENEFITS

FINDINGS OF FACTS:

7. On July 19, 2011, the complainant provided written consent for the school system to recover costs from Medicaid for service coordination services. The consent indicates the information to be disclosed to Medicaid and the purpose of the disclosure and states that the complainant has been informed of her rights, including her right to revoke consent in writing (Doc. b).
8. There is documentation that the service coordination services are being provided by the student's resource teacher. The school staff report that it is their practice to assign a student's resource teacher to serve as the student's service coordinator (Doc. g and interview with the school staff).
9. During the 2014-2015 school year, the complainant requested that the student be assigned a different resource teacher and service coordinator. The documentation reflects that the request was made by the complainant due to her concerns about the sufficiency of the communication she had with the staff member who serves in these roles (Doc. g).
10. The school staff indicated to the complainant that they agreed to reassign a different staff member to serve as the service coordinator, since under the Medicaid regulations, the complainant must approve of the individual who serves in this position in order for the school system to obtain reimbursement for the service from Medicaid. However, the school staff indicated that the individual who was currently assigned as the service coordinator and resource teacher would continue to serve as the student's resource teacher (Doc. g).

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11. On October 16, 2014, the complainant responded to the school staff by e-mail, stating the following:

Again, I do not want her as my son's resource teacher and or case manager and I am requesting an immediate change. I know what my rights are and I will be pursuing them as far as the situation is concerned. I will be calling Medicaid to stop any billing services from your school that indicates her as case manager or anyone else that I do not know about on paper (Doc. g).

12. To date, there is no documentation that the PGCPS has assigned someone other than the student's resource teacher to serve as the service coordinator (Review of records and interview with the school staff).

DISCUSSION/CONCLUSIONS:

Effective March 18, 2013, the public agency must obtain only a one-time written consent from the student's parent, after providing written notification of the IDEA protections, before accessing the student's or the parent's public benefits or insurance to cover the costs of services for the first (1st) time. The public agency must provide the parent with written notification of the IDEA protections, including the right to revoke consent, annually thereafter. Prior to March 18, 2013, the public agency was required to obtain consent each time it accessed the student's or the parent's benefits or insurance (34 CFR §300.154).

The consent must specify the personally identifiable information that may be disclosed, the purpose of the disclosure, and the agency to which the disclosure may be made. The consent must also specify that the parent understands and agrees that the public agency may access the student's or the parent's public benefits or insurance to pay for services (34 CFR §300.154).

A parent is not required to provide additional written consent following the March 18, 2013 amendment to these regulations as long as there is no change in the type of services provided, the amount of the services provided, or the amount that the public agency charges for the services (Analysis of Comments and Changes, Federal Register, Vol. 78, No. 31, February 14, 2013).

In this case, the complainant asserts that the individual assigned to serve as the service coordinator has changed since she provided written consent to access her benefits. The complainant alleges that this constitutes a change in the services that requires that she provide another written consent to access her benefits to cover the costs of these services (Doc. i).

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Based on the Finding of Fact #7, the MSDE finds that the school system obtained written consent from the complainant to access her benefits to cover the costs of case management services. Based on the Findings of Facts #8 - #10, the MSDE finds that there is no documentation of a change in services that requires additional consent to be obtained from the complainant. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

However, based on the Findings of Facts #8 - #12, the MSDE finds that there is no documentation of the assignment of a new service coordinator in response to the complainant's notice that she was revoking consent to access her benefits if the service coordinator was not reassigned. Therefore, this office finds that the complainant's October 16, 2014 correspondence serves as her written revocation of consent for the school system to access her benefits to cover the costs of these services.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation, by February 1, 2015 of the immediate steps that have been taken to ensure that the student is being provided with the amount of special education instruction in the separate special education classroom required by the IEP and that the student is consistently being provided with the services of a dedicated aide who has been informed of his or her role in the implementation of the IEP.

The MSDE also requires the PGCPS to provide documentation by February 1, 2015 that the IEP team has determined the amount and nature of services needed to remediate the identified violations and has developed a plan for the implementation of those services within a year of the date of this Letter of Findings.

School-Based

The MSDE requires the PGCPS to provide documentation by April 1, 2015 of the steps taken to determine whether the violations identified in this investigation are unique to this case or constitutes a pattern of noncompliance at XXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted at both schools in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

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If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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 Ms. Bonnie Preis of 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 complaint investigation, consistent with the IDEA. The MSDE recommends

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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

cc: Kevin W. Maxwell

Shawn Joseph

LaRhonda Owens

Kerry Morrison

XXXXXXXX

Dori Wilson

Anita Mandis

Bonnie Preis