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State Superintendent of Schools

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March 12, 2015

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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: #15-041

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 January 12, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 allegations listed below:

1. The PGCPS has not ensured that the student has been provided with special education services required by the Individualized Education Program (IEP), since the start of the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323. The complainant specifically alleged:

XXX

Mrs. Joan Rothgeb

March 12, 2015

Page 2

- 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;
  - b. The PGCPS has not ensured that the special education instruction is provided primarily by special education teachers in co-taught classes; and
  - c. The PGCPS has not ensured that the student has been consistently provided with the accommodations and supplementary aids and services required by the IEP.
2. The PGCPS did not follow proper procedures when disciplinarily removing the student from school on December 10, 2014. Specifically, the PGCPS did not ensure that on the date the student was disciplinarily removed, school personnel notified the parents of the decision and provided the parent with the procedural safeguards notice, in accordance with 34 CFR §§300.530 and COMAR 13A.08.03.04, and .08.
  3. The PGCPS did not ensure that proper procedures were followed in response to the parent's request for an expedited IEP team meeting in December 2014, in accordance with 34 CFR §300.324 and .503.

#### **INVESTIGATIVE PROCEDURES:**

1. On January 14, 2015, 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.
2. On January 16, 2015, Ms. Sharon Floyd, Education Program Specialist, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On January 12 and 21, 2015 the complainant provided the MSDE with documentation to consider.
4. On January 22, 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.
5. On January 23, 2015, Ms. Floyd requested documents from the PGCPS.

XXX

Mrs. Joan Rothgeb

March 12, 2015

Page 3

6. On February 2, 2015, Ms. Floyd reviewed the student's educational record at the PGCPS Central Office. Ms. Morrison attended the record review as a representative of the PGCPS. On the same date, Ms. Floyd and Ms. Memuna Bangura, Monitoring Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXX to obtain additional documents to complete the investigation. Ms. Morrison, Central Office Compliance Instructional Specialist, PGCPS, and Ms. Valeria Nelson, Special Education Instructional Specialist, attended the site visit as representatives of the PGCPS and to provide information on the PGCPS policies and procedures, as needed, along with the following school system staff:
  - a. Ms. XXXXXXXXXXX, Special Education Teacher;
  - b. Ms. XXXXXXXXXXX, Assistant Principal;
  - c. Ms. XXXXXXXX, Pupil Personnel Worker;
  - d. Mr. XXXXXXXXXXX, Principal; and
  - e. Ms. XXXXXXXX, Special Education Chairperson.
7. On February 2, 2015, the PGCPS provided the MSDE with documents to be considered.
8. On February 9, 2015, Ms. Floyd requested additional information from the PGCPS.
9. On February 12, 18, and 19, 2015, the PGCPS provided the MSDE with additional documents to be considered.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated December 3, 2013;
  - b. IEP, dated November 25, 2014;
  - c. Draft IEP, reviewed at the November 25, 2014 IEP team meeting;
  - d. Electronic mail (email) messages between the complainant and the school system staff during the 2014-2015 school year;
  - e. Prior Written Notices, dated December 4, 2013, April 29, 2014, December 5, 2014, and January 6, 2015;
  - f. Notice of IEP team meeting to the complainant, dated December 19, 2014;
  - g. Notification Request of Extended Suspension, dated December 11, 2014;
  - h. General education teachers' schedules for 2014-2015 school year;
  - i. Correspondence from the Pupil Personnel Worker to the complainant, dated January 8, 2015;
  - j. The student's schedule for the 2014-2015 school year;
  - k. The special education teachers' schedules for 2014-2015 school year;
  - l. The student's attendance data for the 2014-2015 school year;
  - m. The PGCPS Board of Education In-School Suspension, Policy Number 5115;

XXX

Mrs. Joan Rothgeb

March 12, 2015

Page 4

- n. Teacher-parent communication logs;
- o. Accommodation summary chart provided to the student's general education teachers;
- p. Receipt of Parental Rights, Maryland Procedural Safeguards Notice, dated November 25, 2014;
- q. The PGCPS 2014-2015 school year calendar;
- r. Electronic mail (email) messages between the school system staff during the 2014-2015 school year;
- s. IEP goals monitoring tool provided to the student's teachers;
- t. Maryland online IEP case access history;
- u. Signature page of the meeting with the student's co-teachers;
- v. Student's Report Card for the 2014-2015 school year;
- w. Student's work samples for the 2014-2015 school year;
- x. Written summary of the IEP team meeting, dated January 7, 2015;
- y. The PGCPS Board of Education Constituent Services Protocol and Tracking System, Policy Number 1600; and
- z. IEP team meeting notification, dated December 19, 2014.

### **BACKGROUND:**

The student is eleven (11) years old, is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education services. She attends XXXXXXXXXXXXXXXXXXXXXXXX.

During the time period covered by this investigation, the complainant was provided with notice of the procedural safeguards (Doc. p).

### **ALLEGATION #1                      IEP IMPLEMENTATION**

#### **1A.    Ensuring Access to the IEP**

### **FINDINGS OF FACTS:**

1. The IEP requires that the student be provided with special education instruction in the general education classroom for language arts, math, science and social studies by the special education and general education teachers (Doc. b).
2. The staff member who serves as the case manager on the student's IEP team is the student's special education teacher. As the case manager, this staff member is responsible for ensuring that the student's teachers and service providers have access to the IEP and understand their roles in implementing the IEP (Interview with staff).

XXX

Mrs. Joan Rothgeb

March 12, 2015

Page 5

3. August 26, 2014 was the first day of instruction for the 2014-2015 school year (Doc. q).
4. While the case manager reports that she obtained the student's IEP from the educational record at the start of the school year, there is no documentation of this (Interview with staff).
5. There is documentation that on September 15, 2014, the case manager accessed the IEP electronically, and that on September 17, 2014, she met with some, but not all, of the student's general education teachers, to ensure that they understood their roles in implementing the IEP (Doc. t).

### **DISCUSSION/CONCLUSIONS:**

Each public agency must ensure that students are provided with the special education and related services required by the IEP. In order to do so, the IEP must be accessible to each teacher and service provider who is responsible for its implementation and informed of their specific responsibilities related to implementing the student's IEP. In addition, the IEP must be written clearly with respect to the services that are required (34 CFR §300.101 and 323).

Based on the Findings of Facts #1 - #5, the MSDE finds that there is no documentation that the special education teacher had access to the IEP prior to September 15, 2014. There is documentation that some of the general education teachers had access on September 17, 2014. However, there is no documentation that the remaining general education teachers have been provided with access to the IEP since the start of the 2014-2015 school year. Therefore, this office finds that a violation has occurred with respect to the allegation.

### **ALLEGATION #1                      IEP IMPLEMENTATION**

#### **1B. Provision of Special Education Services Primarily by the Special Education Teacher**

### **FINDINGS OF FACTS:**

6. At the start of the 2014-2015 school year, the IEP required the provision of special education instruction in the general education classroom. This instruction was to be co-taught by general education and special education teachers. The IEP also required the provision of special education instruction in a separate special education class primarily by the special education teacher (Doc. a).
7. On November 25, 2014, the IEP was revised to require that all special education instruction be provided in the general education classroom co-taught by special education and general education teachers, with primary responsibility for the provision of special education instruction by the special education teacher (Doc. b).

XXX

Mrs. Joan Rothgeb

March 12, 2015

Page 6

8. The special education teacher is present in the student's classes, along with the general education teachers, and there is documentation that she is involved in monitoring the student's progress (Docs. h, k, r, and s).

### **DISCUSSION/CONCLUSION:**

The United States Department of Education, Office of Special Education Programs (OSEP) has indicated that the term "co-teaching" has many different meanings depending on the context in which it is used. The OSEP directed that whether and how co-teaching is implemented is a matter that is to be left in the discretion of State and local officials (Analysis of Comments and Changes, *Federal Register*, Vol. 71, No. 156, p. 46561, August 14, 2006).

The MSDE has defined co-teaching as a collaborative partnership between a generalist and a specialist who have shared accountability and ownership for planning and delivering instruction and assessment to all students within a classroom environment. There are several approaches to co-teaching that provide ways for two teachers to work together in a classroom. These include one teaching, one observing; one teaching, one assisting, parallel teaching, team teaching, station teaching, and alternative teaching (<http://marylandlearninglinks.org>).

In this case, the complainant alleges that she has observed the special education teacher and general education teachers working with the student and does not believe that the special education teacher is the primary provider as stated on the IEP.

Based on the Findings of Facts #6 - #8, the MSDE finds that the special education teacher provides special education instruction through a co-teaching model, which requires her to share the provision of special education instruction with the general education teacher. However, this does not preclude her from being designated on the IEP as having primary responsibility for ensuring that the special education instruction is provided. Therefore, this office does not find a violation has occurred with respect to this allegation.

### **ALLEGATION #1                      IEP IMPLEMENTATION**

#### **1C. Consistent Provision of Supplementary Aids and Services.**

### **FINDINGS OF FACTS:**

9. The IEP requires the provision of each of the following supplementary aids and services on a "daily" basis:
  - a. Use of organizational aids;
  - b. Chunking of texts;

XXX

Mrs. Joan Rothgeb

March 12, 2015

Page 7

- c. Repetition of directions;
  - d. Use of highlighters during instruction and assignments;
  - e. Use of manipulatives;
  - f. Check for understanding; and
  - g. Deletion of extraneous information on assignments and assessments, when possible (Doc. b).
10. The report of the student's progress towards achieving the annual IEP goals, dated October 27, 2014, reflects that the student was making sufficient progress with the use of the supplementary aids and services. In addition, the prior written notice, dated February 16, 2015, documented that the student made the honor roll for the first quarter of the 2014 – 2015 school year (Docs. a and d).
11. While the student's work samples demonstrate that the supplementary aids and services are being provided, they reflect that the student is not provided with each of them with every assignment on a daily basis (Docs. w).

#### **DISCUSSION/CONCLUSION:**

Supplementary aids and services means aids and services and other supports that enable a student with a disability to be educated with students without disabilities to the maximum extent appropriate (COMAR 13A 05.01.03).

Based on the Findings of Facts #9 - #11, the MSDE finds that, while there is documentation of the provision of the supplementary aids and services, there is no documentation that each support is provided on a daily basis in every class, as required by the IEP. Therefore, this office finds a violation with respect to this allegation. Notwithstanding the violation, based on the Finding of Fact #9, the MSDE finds that the student has been able to access special education instruction and make progress on the IEP goals and participate in the general education curriculum with the provision of supplementary aids and services in the manner in which they are being used.

#### **ALLEGATION #2**

#### **DISCIPLINARY PROCEDURES**

#### **FINDINGS OF FACTS:**

12. On December 11, 2014, the student was disciplinarily removed from school, and the complainant was informed that the student's suspension would most likely be for at least five (5) school days (Docs. g, x and y).

XXX

Mrs. Joan Rothgeb

March 12, 2015

Page 8

13. On December 18, 2014, the school staff proposed that the discipline removal be in excess of 10 (ten) school days. However, following the outcome of the extended suspension conference, the student was returned to school after the 10<sup>th</sup> (tenth) day of removal this school year (Docs. g and i).
14. There have been no other disciplinary removals for the student during this school year (Doc. e).

### **DISCUSSION/CONCLUSION:**

The IDEA and COMAR provide protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year. These protections include notifying the parent on the date that the student receives a disciplinary removal that constitutes a change in placement<sup>1</sup> and providing the parents with notice of the procedural safeguards. It also includes the requirement that the IEP team meet to determine if the behavior was a manifestation of the student's disability, and if so, to return the student to school (34 CFR §300.530 and COMAR 13A.08.04).

Based on the Findings of Facts #12 - #14, the MSDE finds that, because the student was not actually disciplinarily removed in excess of ten (10) school days, the disciplinary protections do not apply. Therefore, this office does not find that a violation occurred with respect to the allegation.

### **ALLEGATION #3**

### **RESPONSE TO REQUEST FOR IEP TEAM MEETING**

### **FINDINGS OF FACTS:**

15. On December 17 and 18, 2015, the complainant requested an "immediate expedited" IEP team meeting to occur prior to the winter break. The purpose of the meeting was to make a determination of whether the disciplinary removal resulted from behavior that was a manifestation of the student's disability and to have the student returned to school (Docs. d and y).
16. While an IEP team meeting was held on January 7, 2015, it was not held prior to the winter break that began on December 22, 2014, and written notice was not provided to the complainant denying her request to have an IEP meeting convened prior to that date (Doc. e).

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<sup>1</sup> This means a removal for more than 10 consecutive days or a series of removals that constitutes a pattern that accumulates to more than 10 days (COMAR 13A.08.03.05).



**DISCUSSION/CONCLUSION:**

The public agency must ensure that the IEP team reviews the IEP at least annually to determine whether the annual goals are being achieved. In addition, the team must review and revise the IEP to address information provided by the parents and the student's anticipated needs (34 CFR §§300.324). When the public agency proposes or refuses to change the evaluation, identification, provision of FAPE or educational placement of a student with disabilities, it must provide prior written notice of the decision (34 CFR §§300.503).

Based on the Findings of Facts #15 - #16, the MSDE finds that the PGCPS did not ensure the prior written notice was provided when it refused the complainant's request to consider her concerns about the educational program prior to the start of winter break. Therefore, the MSDE finds that a violation occurred.

Notwithstanding the violation, based on Finding of Fact #16, the student returned to school prior to the 11<sup>th</sup> (eleventh) day of removal. Therefore, this office finds that the violation did not negatively impact the student, and as a result, no student specific corrective actions are required to remediate the violation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the PGCPS to provide documentation by May 1, 2015 that the IEP team has reviewed and revised the IEP to ensure that it is written clearly with respect to the supplementary aids and services that are required, and that the student's teachers have been informed of their specific responsibilities related to implementing the student's IEP.

The MSDE also requires the PGCPS to provide documentation by May 1, 2015 that the IEP team has determined whether the violation related to IEP implementation at the start of the school year had a negative impact on the student's ability to benefit from the special education services, and if so, the remedy to redress the violations and the plan for the provision of those services within a year of the date of this Letter of Findings.

The PGCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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.

XXX  
Mrs. Joan Rothgeb  
March 12, 2015  
Page10

### **School-Based**

The MSDE requires the PGCPS to provide documentation by June 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 XXXXXXXXXXXX Middle School.

Specifically, a review of student records, data, or other relevant information must be conducted 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.

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 Dr. Kathleen Aux, Compliance Specialist, 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

March 12, 2015

Page 11

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/sf

cc: Kevin W. Maxwell  
Shawn Joseph  
Gail Viens  
LaRhonda Owens  
Kerry Morrison  
XXXXXXXX  
Dori Wilson  
Anita Mandis  
Sharon Floyd