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February 20, 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: #15-042

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 14, 2015, the MSDE received a complaint from Nicole Joseph, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX. 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 Individualized Education Program (IEP) was reviewed at least annually, in accordance with 34 CFR§300.324.

2. The PGCPS did not ensure that proper procedures were followed in response to the parent's request for an IEP team meeting in October 2014, in accordance with 34 CFR §§300.324 and .503.
3. The PGCPS did not ensure that the parent was provided with a written invitation to the IEP team meeting held on December 3 and 17, 2014, in accordance with COMAR 13A.05.01.07.
4. The PGCPS did not ensure that the parent was provided with each assessment, report, data chart, draft IEP, or other document that it planned to discuss at the IEP team meeting held on December 3 and 17, 2014, at least five (5) business days before the meeting, in accordance with COMAR 13A.05.01.07.

**INVESTIGATIVE PROCEDURES:**

1. On January 15, 2015, 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 January 16, 2015, 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 January 30, 2015, the MSDE requested documents from the PGCPS.
4. On February 6 and 13, 2015, the PGCPS provided the MSDE with information and documentation.
5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated January 9, 2014;
  - b. Letter of Findings in State complaint #14-113, issued on August 27, 2014;
  - c. Electronic mail (email) messages between the student's mother and the school staff, dated September 22, 2014 and October 10 -14, 2014;
  - d. Email message from the complainant to the school system staff, dated November 10, 2014;
  - e. Email message from the school system staff to the student's mother, dated November 18, 2014;

- f. Written summary of the December 3, 2014 IEP team meeting;
- g. Email message, dated December 4, 2014, from the PGCPS forwarding the written summary of the December 3, 2014 IEP team meeting to the student's mother;
- h. Written invitation to the student's mother to the December 17, 2014 IEP team meeting, reflecting contacts with the student's mother on December 3, 5, 7, and 16, 2014;
- i. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on January 14, 2015;
- j. IEP, dated January 22, 2015; and
- k. Parent contact log through February 6, 2015.

### **BACKGROUND:**

The student is sixteen (16) years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education and related services. He attends XXXXXXXX High School (Docs. a and j).

There is documentation that, during the time period covered by this investigation, the student's mother was provided with notice of the procedural safeguards (Docs. a and j).

### **FINDINGS OF FACTS:**

1. On January 9, 2014, the IEP team conducted a review of the student's IEP (Doc. a).
2. On August 27, 2014, the MSDE issued a Letter of Findings (#14-113) as a result of an investigation of a previous State complaint regarding the student. As reported in the Letter of Findings, the PGCPS was required to convene an IEP team meeting no later than September 30, 2014 to review and revise, as appropriate, the IEP to ensure that the student's needs are properly identified, and to ensure that the IEP document is written clearly. The PGCPS was further required to ensure that the IEP team determined the services necessary to compensate the student for the loss of services during the 2013-2014 school year resulting from violations identified through the State complaint investigation (Doc. b).
3. On October 10, 2014, the student's mother sent email correspondence to the school staff following up on a request that she made on September 22, 2014 for a change in the student's assigned English teacher. In the October 10, 2014 email correspondence, the student's mother also stated that "there should [have] been a scheduled IEP meeting for [the student] in September and I have still not been notified about a meeting to change and discuss his IEP accommodations" (Doc. c).

4. On October 14, 2014, the student's mother sent another email correspondence to the school staff, asking "What happened to the IEP meeting that was supposed to be scheduled before the end of September?" (Doc. c).
5. After receiving no response to the mother's requests for the IEP team meeting to be scheduled, the complainant made a request to the school system staff on her behalf on November 10, 2014 (Doc. d).
6. On November 18, 2014, the school system staff sent an email correspondence to the student's mother indicating that an IEP team meeting was scheduled with the complainant for December 3, 2014 at 10:30 a.m. The email further states that the school staff would ensure that the mother and the complainant "both receive the written notice via email no later than Friday Nov. 21, 2014" (Doc. e).
7. There is no documentation that a written invitation to the December 3, 2014 IEP team meeting was sent to the student's mother. However, both the complainant and the student's mother participated in the meeting (Docs. f and g).
8. There is no documentation that the student's mother was provided with a copy of the MSDE Letter of Findings or the IEP in advance of the December 3, 2014 IEP team meeting (Doc. e).
9. At the December 3, 2014 IEP team meeting, the team determined the services needed to compensate the student for the loss of services during the 2013-2014 school year. The team also recommended that a speech/language assessment be conducted and the student's mother provided consent. The written summary of the IEP team meeting documents the IEP team decision to reconvene on December 17, 2014 in order to consider assessment results and complete the review and revision of the IEP to ensure that it is written clearly. The IEP team also documented its decision that the parent would be provided with a draft IEP with proposed revisions at least five (5) days before the December 17, 2014 meeting (Doc. f).
10. The written summary of the December 3, 2014 IEP team meeting states that a purpose of the meeting was to review the MSDE Letter of Findings and complete corrective actions, which included review and revision of the IEP (Doc. f).
11. On December 4, 2014, the school system staff sent the student's mother a copy of the written summary of the December 3, 2014 IEP team meeting by email correspondence. However, there is no documentation that a draft IEP was provided prior to the December 17, 2014 meeting (Doc. g).
12. The student's educational record contains a written invitation to the December 17, 2014 IEP team meeting that contains dates of December 3 and 7, 2014, and indicates that

additional contacts were made with the student's mother on December 5 and 16, 2014. The parent contact log verifies that the December 16, 2014 contact with the student's mother was an email about the December 17, 2014 IEP team meeting, but that the contact made on December 5, 2014 was a telephone call about a different matter. The log contains no contact entries for December 3 and 7, 2014 (Docs. h and k).

13. The IEP team, including the student's mother, convened on December 17, 2014. The documentation of the meeting reflects that the IEP team recommended that additional assessments be conducted. The IEP was revised following the meeting, and dated January 22, 2015. However, reading and written language goals and objectives were continued verbatim from the prior IEP in which they were to be achieved by January 9, 2015, and there is no indication that they were reviewed and that the team decided that they remain appropriate. In addition, there is no documentation that transition planning was conducted since the January 9, 2015 IEP (Doc. j).
14. An IEP team meeting has not yet been scheduled to consider assessment data and to review and revise the IEP (Doc. i).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1            Annual Review of the IEP**

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved (34 CFR §300.324). The United States Department of Education, Office of Special Education Programs (OSEP) has indicated that if additional information is needed to finalize an appropriate IEP, the IDEA does not prevent the IEP team from reconvening after the needed information is obtained, **as long as the IEP is developed in a timely manner**, consistent with the requirements (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46676).

Based on the Findings of Facts #1, #9, #10, #13, and #14, the MSDE finds that the IEP team has reviewed the IEP for the purpose of ensuring that it is written clearly, and is in the process of conducting a reevaluation to ensure that it identifies all of the student's needs, as required by the MSDE Letter of Findings in State complaint #14-113. However, based on those Findings of Facts, this office finds that an annual IEP review has not been completed since January 9, 2014. Therefore, this office finds that a violation has occurred with respect to the allegation.

#### **Allegation #2            Response to Request for an IEP Team Meeting**

In addition to reviewing the IEP at least annually, the public agency must ensure that the IEP team reviews and revises, as appropriate, the IEP to address any information from the parents and the student's anticipated needs (34 CFR §300.324).

Nicole Joseph, Esq.  
Mrs. Joan Rothgeb  
February 20, 2015  
Page 6

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of students or the provision of a Free Appropriate Public Education (FAPE) to students (34 CFR §300.503). Therefore, if a public agency refuses to convene the IEP team to consider parent concerns, it must provide proper written notice to the parent of the basis for the refusal.

Based on the Findings of Facts #2 - #7, the MSDE finds that there is no documentation that the school staff responded to the requests by the student's mother to schedule an IEP team meeting until the complainant intervened on her behalf. Therefore, this office finds that a violation occurred with respect to the allegation.

### **Allegation #3                      Written Notice the IEP Team Meetings**

The public agency must take steps to ensure that parents are present or are afforded the opportunity to attend and participate at IEP team meetings. In order to do so, the public agency must provide parents with written notice of the meeting at least ten (10) days in advance of the meeting. The written notice must include information about the purpose, date, time, and location of the meeting. It must also include information about who will be in attendance as well as information about the right to invite others to participate in the meeting (COMAR 13A.05.01.07D).

Based on the Findings of Facts #6 and #7 the MSDE finds that there is no documentation that written notice of the December 3, 2014 IEP team meeting that included the required content was provided. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #7, the MSDE finds that the student's mother participated in the meeting. Therefore, no student-based corrective action is required to remediate the violation.

Based on the Findings of Facts #9 and #11 - #13, the MSDE further finds that while there is documentation that the student's mother was provided with written information about the IEP team meeting held on December 17, 2014, the written notice did not include all of the required content. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #13, the MSDE finds that the student's mother participated in the meeting. Therefore, no student- based corrective action is required to remediate the violation.

**Allegation #4 Provision of Documents Prior to the IEP Team Meetings**

The public agency must also provide parents with a copy of each assessment, report, data chart, draft IEP, or other document that the IEP team plans to discuss at the meeting at least five (5) business days before the meeting (COMAR 13A.05.01.07D). As explained in the MSDE Technical Assistance Bulletin #20 – *Child with a Disability – Individualized Education Program Meeting – Document Access* (September 2012), even if a document was previously provided to or by a parent, it must be provided again if the IEP team intends to review it again.

Based on the Findings of Facts #2, #6, #8, and #10, the MSDE finds that although a purpose of the December 3, 2014 IEP team meeting was to review documents, those documents were not provided to the student’s mother prior to the IEP team meeting.

Based on the Findings of Facts #9 and #11, the MSDE finds that, although the IEP team decided that a draft IEP would be provided to the student’s mother prior to the December 17, 2014 IEP team meeting, there is no documentation that a draft IEP was provided. Therefore, this office finds that violations occurred with respect to the allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the PGCPS to provide documentation, by April 1, 2015 of the following:

1. That the IEP team has considered the assessment data and completed the review and revision of the IEP.
2. That the student’s mother was provided with copies of all documents, including a draft IEP, no less than five (5) business days before the IEP team meeting.
3. That the student’s mother was provided with a written invitation to the meeting that contains all of the required information at least ten (10) days before the meeting.
4. That the student’s mother was provided with a copy of the revised IEP no less than five (5) business days following the IEP team meeting.
5. That the IEP team has determined the services needed to compensate the student for the delay in reviewing and revising the IEP from January 9, 2015 until the date that the IEP review and revision is completed.

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.

Nicole Joseph, Esq.  
Mrs. Joan Rothgeb  
February 20, 2015  
Page 8

### **School-Based**

The MSDE requires the PGPCS to provide documentation by June 1, 2015, of the steps it has taken to ensure that the XXXXXXXX High School staff properly implements the requirements for providing parents with written notice of IEP team meetings that includes the required content, and providing parents with documents to be considered by the IEP team at least five (5) business days before an IEP team meeting. The documentation must include a description of how the PGPCS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

The MSDE also requires the PGPCS to provide documentation by June 1, 2015 of the steps it has taken to determine whether the violation related to ensuring that the IEP was reviewed and revised, as appropriate, at least annually is unique to this case or if it represents a pattern of noncompliance at XXXXXXXX High 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 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.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the PGPCS by Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-0255.

Please be advised that both the complainant and the PGPCS 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.



Nicole Joseph, Esq.  
Mrs. Joan Rothgeb  
February 20, 2015  
Page 9

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The student's mother 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:     XXXXXXXX  
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