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State Superintendent of Schools

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CORRECTED COPY
(Issued August 5, 2015)

July 24, 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: #15-079

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 May 26, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, the student's parent, and Ms. XXXXXXXX, the parent's advocate, on behalf of the above-referenced student. In that correspondence, the complainants 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.

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The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the Individualized Education Program (IEP) team reviewed and revised, as appropriate, the student's IEP to address lack of expected progress toward achieving the IEP goals since June 2014, in accordance with 34 CFR §300.324.
2. The PGCPS did not ensure that the IEP team conducted a comprehensive reevaluation on January 9, 2015, in order to identify and address the student's social, emotional, and behavioral, speech/language, fine motor, and adaptive functioning needs in accordance with 34 CFR §§300.303 - .311 and .324 and COMAR 13A.05.01.06.
3. The PGCPS did not provide prior written notice of the IEP team's January 9, 2015 decision to reject the request for assessments, in accordance with 34 CFR §300.503.
4. The PGCPS has not followed proper procedures in response to the March 31, 2015 request for an Independent Educational Evaluation (IEE), in accordance with 34 CFR §300.502.
5. The PGCPS did not ensure that consent was obtained prior to the completion of a Functional Behavioral Assessment (FBA), in accordance with 34 CFR §300.300.
6. The PGCPS has not ensured that the student has been consistently provided with the services of a dedicated assistant to work with her on a one-on-one basis, as required by the IEP, since the start of the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323.
7. The PGCPS did not follow proper procedures to respond to a request to review the student's educational record, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. On May 26, 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 June 4, 2015, Ms. Sharon Floyd, Education Program Specialist, MSDE, discussed the allegations being investigated with Ms. XXXXX, the complainant's advocate.

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3. On June 12, 2015, Ms. Floyd discussed the allegations being investigated with the parent.
4. Also on June 12, 2015, the MSDE sent correspondence to the complainants 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 allegation and requested that the PGCPS review the alleged violations.
5. On June 12, 2015, Ms. Floyd conducted a telephone interview with the parent's advocate about the allegations being investigated. Later that day, the parent's advocate provided the MSDE with documentation sent electronically (email) to consider.
6. On June 23, 2015, Ms. Floyd and Dr. Kathleen Aux, Education Specialist, Dispute Resolution and Family Support, Division of Special Education/Early Intervention Services, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's educational record, and interviewed the following school system staff:
 - a. Ms. XXXXXXXX, Special Education Lead Teacher;
 - b. Ms. XXXXXXXXXXXX, Speech/Language Pathologist;
 - c. Ms. XXXXXXXX, Special Education Teacher; and
 - d. Ms. XXXXXXXX, Occupational Therapist.

Ms. Morrison and Ms. Stacy Linton, Autism Specialist, PGCPS, attended the site visit as representatives of the PGCPS and to provide information on the school system's policies and procedures, as needed.

7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Notice of the procedural safeguards, provided to the student's parents on September 10, 2014;
 - b. Consent and permission for the MSDE to release information to Ms. XXXXX, dated March 11, 2015;
 - c. IEP, dated September 10, 2014;
 - d. IEP goals and progress reports, dated September 27, 2012, September 13, 2013, and October 31, 2014 through June 5, 2015;
 - e. Assessment reports dated June 3 and 4, 2015, and June 22, 2015, and psychological assessment reports, dated February 5, 2002 and December 1, 2011;
 - f. Invitation to the January 9, 2015 IEP team meeting;
 - g. IEP, dated November 10, 2014, invitation to the September 10, 2014 IEP team meeting, and the written summary of the meeting;
 - h. FBA/BIP summary report, dated December 16, 2014, notice of consent, dated May 20, 2015;

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- i. Administrative procedure, #4108, electronic (email) correspondence between school staff; dedicated assistants daily sign-in sheets;
- j. Request and consent to evaluate, to PGCPs, from the parent's advocate, dated April 2, 2015;
- k. Receipt and acknowledgement for IEE, to parent, from school staff, dated May 18, 2015;
- l. Approval for an IEE, to parent, from PGCPs, dated May 26, 2015;
- m. Correspondence, between student's parent and teacher, dated August 26, 2014 to May 7, 2015;
- n. Invitation to the May 20, 2015 IEP team meeting and written summary of the meeting;
- o. Electronic correspondence, between the parent's advocate and PGCPs, dated June 4, 2015;
- p. Log of review, from the student's record, signed by parent's advocate, dated May 20, 2015;
- q. Correspondence containing an allegation of a violation of the IDEA, received by the MSDE on May 26, 2015;
- r. Electronic mail correspondence from the school system staff to the MSDE, dated June 29, 2015; and
- s. Invitation to the August 18, 2015 IEP team meeting.

BACKGROUND:

The student is sixteen (16) years old and attends XXXXXXXXXXXXXXXX (XXXXXXXXXXXX). She is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services (Doc c).

There is documentation that, during the time period covered by this investigation, the parent was provided with notice of the procedural safeguards (Doc a).

ALLEGATION #1 IEP REVIEW TO ADDRESS LACK OF EXPECTED PROGRESS

FINDINGS OF FACTS:

- 1. The annual goals for the student to improve her performance in the areas of reading vocabulary and comprehension, communication, early math literacy and physical education, documented on the IEP, dated September 13, 2013, have not been revised and the student has not achieved the goals (Doc d).
- 2. On September 10, 2014, the IEP team met to review the student's current class performance, progress on IEP goals and objectives, teacher reports, therapist reports, parent reports, and clinical therapist observations. The IEP team decided that the IEP

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continued to remain appropriate but did not document that it considered that the student had not achieved the goals, nor did it document the basis for the decision to continue the current goals (Docs. c and g).

DISCUSSION/CONCLUSIONS:

The IEP team must revise the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324).

Based on the Findings of Facts #1 and #2, the MSDE finds that the student has not made sufficient progress to achieve the annual IEP goals within one (1) year of their development, and that the IEP team has not reviewed and revised, as appropriate, the IEP to address this lack of progress. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #2

CONDUCTING A COMPREHENSIVE REEVALUATION

FINDINGS OF FACTS:

3. On December 4, 2014, the parent informed the school staff of her concerns about the student's behaviors, including head-banging, scratching, and hitting and the need for a Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) to be included in the student's IEP. The student had been psychiatrically hospitalized in early November 2014 and is prescribed medications for anxiety (Docs. m, o, and r).
4. On January 9, 2015, an IEP meeting was held in response to the parent's concerns. There is no written documentation of the team's decisions. However, the parties are in agreement that the parent requested that psychological, educational, speech/language, occupational, and physical therapy assessments be conducted, and the team rejected the request (Interviews with school staff and complainants).
5. On April 2, 2015, the parent informed school staff that she was obtaining private educational, speech/language, occupational, physical therapy, psychological and social history assessments (Doc j).
6. On May 20, 2015, the IEP team met and decided to conduct assessments in all areas in which the parent indicated she was obtaining private assessments (Doc n).

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DISCUSSION/CONCLUSIONS:

The IDEA requires that the IEP address the needs that arise from the student's disability regardless of the category of identified disability determined by the IEP team. When conducting a reevaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the reevaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team in determining whether the student is a student with a disability and in determining the content of the student's IEP (34 CFR §300.304).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

Based on the Findings of Facts #3 - #6, the MSDE finds that there is no documentation of the basis for the IEP team's January 9, 2015 decision that additional data was not needed, and thus, no documentation that the decision was consistent with the existing data. Therefore, this office finds that a violation occurred from January 9, 2015 until May 20, 2015, when the IEP team decided to obtain additional data.

ALLEGATION #3

PROVISION OF PRIOR WRITTEN NOTICE

DISCUSSION/CONCLUSIONS:

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision, a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR §300.503).

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Based on the Finding of Fact #4, the MSDE finds that the PGCPS did not ensure that prior written notice of the decisions made by the IEP team on January 9, 2015 was provided to the parent and that a violation occurred with respect to the allegation.

**ALLEGATION #4 RESPONSE TO REQUEST FOR AN INDEPENDENT
EDUCATIONAL EVALUATION (IEE)**

FINDINGS OF FACTS:

7. Following the January 9, 2015 IEP team meeting, a member of the school staff conducted a FBA without obtaining consent from the parent. The IEP team has not reviewed the results (Doc. k).
8. On March 31, 2015, the parent requested an IEE for a FBA (Doc. k).
9. On May 26, 2015, the school system notified the parent that her request for an IEE was granted (Docs. k and l).

DISCUSSION/CONCLUSIONS:

Parents of a student with a disability have the right to obtain one (1) Independent Educational Evaluation (IEE) at public expense each time the public agency conducts an evaluation with which the parent disagrees. Upon request for an IEE, the public agency must, without unnecessary delay, either provide parents with information about where an IEE may be obtained and the agency criteria applicable for an IEE, or file a due process complaint to request a hearing to demonstrate that its evaluation is appropriate (34 CFR §300.502).

Based on the Findings of Facts #7-#9, the MSDE finds that the PGCPS followed proper procedures when responding to the parent's request for an IEE, and therefore, a violation did not occur.

ALLEGATION #5 CONSENT TO CONDUCT THE FBA

DISCUSSION/CONCLUSIONS:

The public agency must obtain informed consent from the student's parent prior to conducting assessments as part of a reevaluation or the initial provision of special education and related services to the student (34 CFR § 300.300).

Based on the Finding of Fact #7, the MSDE finds that a FBA was conducted without obtaining written consent from the parent. Therefore, the MSDE finds a violation occurred.

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However, based on the Findings of Facts #3 and #4, the MSDE finds that, notwithstanding the violation, the parent requested that the FBA be conducted. Therefore, no student based corrective action is required.

ALLEGATION #6

PROVISION OF A DEDICATED ASSISTANT

FINDINGS OF FACTS:

10. On September 10, 2014, an IEP team meeting recommendation was made for the student to receive the services of a dedicated assistant. The prior written notice documented that the dedicated assistant is to be available to the student on a daily basis, and must be able to assist the student with instructional activities and a toileting program (Docs. g, i, and r).
11. Although the school staff submitted a request to the PGCPS Central Office staff for a dedicated assistant for the student, a dedicated assistant was not made available to the school until February 2, 2015 (Doc i).
12. From April 14, 2015 to May 29, 2015, the student was not provided with the services of a dedicated assistant due to a staff vacancy (Doc i).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students with disabilities receive the services and supports required by the IEP (34 CFR §§300.101 and .323).

Based on Findings of Facts #10 - #12, the MSDE finds that the student was not consistently provided with the services of a dedicated assistant, as required by the IEP, from September 10, 2014 to February 2, 2015 and from April 14, 2015 to May 29, 2015. Therefore, the MSDE finds that a violation occurred.

ALLEGATION #7

RESPONSE TO REQUEST TO REVIEW RECORDS

FINDINGS OF FACTS:

13. On April 2, 2015, the parent's advocate contacted the school staff through electronic correspondence (email) and requested that she be provided with a copy of the student's educational record (Docs. b and o).
14. On May 19, 2015, school staff informed the parent's advocate that she could review the student's record at the school on May 20, 2015(Doc o).

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15. On May 20, 2015, the parent's advocate, reviewed the student's record prior to the IEP team meeting held on that same date (Doc p).

DISCUSSION/CONCLUSIONS:

The IDEA requires that each public agency permit parents to inspect and review any educational records regarding their children that are "collected, maintained, or used by the agency," consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.10 and 34 CFR §300.613).

The public agency must comply with a request for access to the educational record without unnecessary delay, and before any meeting regarding an IEP, or any due process hearing or resolution session. However, in no case should the response be provided more than forty-five (45) days after the request has been made (34 CFR §300.613).

Based on the Findings of Facts #13 - #15 above, the MSDE finds that the PGCPs did not respond to the request within the required timelines. Therefore, this office finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPs to provide documentation by the start of the 2015-2016 school year, that the IEP team has reviewed and revised the IEP to address the student's lack of progress towards achievement of the annual IEP goals.

The MSDE also requires the PGCPs to provide documentation that the IEP team has determined the amount and nature of compensatory services or other remedy to redress the violations, identified and, developed a plan to provide them within one (1) year of the date of the Letter of Findings.

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

Systemic

The MSDE requires the PGCPs to provide documentation by November 1, 2015 of the steps taken to ensure that the violation regarding the lack of availability of a dedicated assistant to school staff does not recur.

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School-Based

The MSDE also requires the PGCPs to provide documentation by the start of the 2014-2015 school year of the steps it has taken to determine whether the remaining violations are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXX. 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 complainants and the PGCPs by Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-0255.

Please be advised that both the complainants 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 parent and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification,

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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

c: Kevin W. Maxwell

Shawn Joseph

LaRhonda Owens

Kerry Morrison

XXXXXXXXXXXX

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Anita Mandis

Kathy Aux