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State Superintendent of Schools

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September 4, 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: #16-004

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 July 8, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant¹,” on behalf of the above-referenced student. In the 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 following allegations:

1. The PGCPS did not ensure that the initial IDEA evaluation that began as a result of a August 19, 2014 referral was completed within the required timelines, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06.

¹ The complainant is the student’s aunt and meets the IDEA definition of a parent which includes a person acting in the place of a parent (such as a relative with whom the student lives, or a person who is legally responsible for the student’s welfare).

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2. The PGCPS did not ensure that the Individualized Education Program (IEP) was implemented, as required, during the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323. Specifically:
 - a. The PGCPS did not ensure that the student was provided with special education instruction;
 - b. The PGCPS did not ensure that the student was provided with the required accommodations;
 - c. The PGCPS did not ensure that the progress reports were provided on a quarterly basis during the school year; and
 - d. The PGCPS did not ensure that the student was provided Extended School Year (ESY) services during the summer of 2015.
3. The PGCPS did not ensure that the student was provided with special education instruction during the 2014-2015 school year from teachers who hold a valid Maryland certification in the areas of instruction provided, in accordance with 34 CFR §300.18.

INVESTIGATIVE PROCEDURES:

1. On July 10, 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 July 21, and 28, 2015, Ms. Sharon Floyd, Education Program Specialist, Complaint Investigation Section, MSDE, conducted telephone interviews with the complainant and clarified the allegations for investigation.
3. On July 29, 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.
4. On August 11 and 21, 2015, the complainant provided documents to the MSDE for consideration.

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5. On August 20 and 21, 2015, the PGCPs provided documents to the MSDE for consideration.
6. On August 20, 2015, Ms. Floyd and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXX (XXXXXX) to review the student's educational record, and interviewed the following:
 - a. Ms. XXXXXXXX, Special Education Coordinator;
 - b. Ms. XXXXXXXX, Special Education Science Teacher;
 - c. Ms. XXXXXXXX, Special Education Math Teacher; and
 - d. Ms. XXXXXXXX, Special Education History Teacher.

Ms. Morrison attended the site visit as a representative of the PGCPs and to provide information on the PGCPs 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. The student's report cards for the 2014-2015 school year;
 - b. The PGCPs Administrative Procedure #3541, *Student Transportation*, dated July 1, 2013;
 - c. IEP, dated December 18, 2014, and progress reports on IEP goals for reading comprehension, math calculation, and written language expression, dated April 13, 2015 and June 23, 2015;
 - d. IEP, dated December 18, 2014, amended on May 21, 2015;
 - e. Written summary of the September 30, 2014 IEP team meeting, notice and consent for assessment;
 - f. Invitation to the November 25, 2014 IEP team meeting, written summary of the meeting;
 - g. Written summary of the December 16, 2014 IEP team meeting;
 - h. Written summary of the December 18, 2014 IEP team meeting;
 - i. Written summary of the April 28, 2015 IEP team meeting;
 - j. ESY services guidelines for completing supplemental instructional materials, the student's ESY goals and objectives for 2015, parent contact information form for ESY, the PGCPs special education ESY programs description, and the student's 2015 ESY progress report;
 - k. Electronic mail (email) correspondence from the school system staff to the complainant;
 - l. Email correspondence from the complainant to the school system staff;

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- m. Email correspondence from the complainant and school system staff to the MSDE;
- n. Logs of speech/language and psychological services for the 2014-2015 school year;
- o. Email correspondence from the MSDE Division of Educator Effectiveness to the MSDE DSE/EIS;
- p. Reports of psychological, educational, and speech/language assessments, dated November 13, 18, and 24, 2014, respectively;
- q. Receipt of parental rights, procedural safeguards notice, and explanation, dated November 25, 2014, and signed by the complainant;
- r. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on July 8, 2015; and
- s. Grade nine (9) science work samples for the 2014-2015 school year.

BACKGROUND:

The student is fifteen (15) years old and attends XXXXXXXXXXXX. She is identified as a student with a Specific Learning Disability (SLD) under the IDEA, and has an IEP that requires the provision of special education and related services (Docs. c and d).

There is documentation that, during the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Doc. q).

ALLEGATION #1 INITIAL EVALUATION WITHIN REQUIRED TIMELINES

FINDINGS OF FACTS:

1. On August 19, 2014, the complainant sent a referral through electronic mail (email) correspondence to the school staff requesting that the student be evaluated for special education and related services (Doc. l).
2. On September 30, 2014, the IEP team convened and obtained consent from the complainant to conduct assessments for the student (Doc. e).
3. On November 25, 2014, the IEP team determined the student meets the criteria for identification as a student with a disability under the IDEA (Doc. f).
4. On December 18, 2014 the IEP team developed an IEP for the student (Doc. h).

DISCUSSION/CONCLUSION:

The public agency must ensure that the IEP team completes the evaluation within sixty (60) days of parental consent for assessments and within ninety (90) days of the public agency's receipt of a written referral for evaluation (COMAR 13A.05.01.04 - .06). Each public agency must ensure that a meeting to develop an IEP for a child is conducted within thirty (30) days of a determination that the child needs special education and related services (34 CFR §300.323).

Based on the Findings of Facts #1-#3, the MSDE finds that the school system did not complete the evaluation within the required timelines. Therefore, the MSDE finds a violation with respect to that aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #3 and #4, the MSDE finds that the IEP team met to develop the IEP, twenty-three (23) days after determining the student's eligibility. As a result, the entire process of conducting the evaluation and a meeting to develop the IEP took place within the amount of time permitted by the IDEA. Therefore, this office finds no negative impact on the student and no student-specific corrective actions are required.

ALLEGATION #2 IMPLEMENTATION OF SPECIAL EDUCATION INSTRUCTION, ACCOMMODATIONS, ESY SERVICES, AND PROGRESS REPORTS AS REQUIRED BY THE IEP

FINDINGS OF FACTS:

Special education instruction and related services

5. The IEP, that was developed on December 18, 2014, required the student to be provided with special education instruction in a separate class for English, math, social studies, and science by a special education teacher. However, this meeting, originally scheduled for December 16, 2014, had to be rescheduled to December 18, 2014 because there was no general education teacher in attendance at the meeting. In addition, there is no documentation that the complainant received prior written notice for this IEP team meeting (Docs. c, g and h).
6. On January 27, 2015, at the beginning of the new grading period, the student's schedule was changed to reflect that she was placed in a separate special education class for English, math, social studies, and science. A delay occurred between the development of the IEP and the implementation of the IEP (Docs. a, c, d and h).
7. There is no documentation that the IEP goals were addressed through special education instruction (Interview with school staff).

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8. The IEP requires counseling service to be provided for two (2) thirty minute sessions per month by the school psychologist or school counselor. The log of counseling services documents that the student did not receive counseling services in January or March 2015 and that she was provided with only one counseling session in February, April, May and June 2015 (Docs. c, d and n).
9. The student's IEP requires the speech/language therapist to provide consultation to the student's teachers. However, there is no documentation that the speech/language therapist met with the student's teachers (Docs. c, d and n).

Accommodations

10. The IEP requires that the student receive the following accommodations:
 - a. A human reader or audio recording of selected sections of assessments;
 - b. Notes and outlines;
 - c. Mathematics tools and calculation devices;
 - d. Visual organizers;
 - e. Graphic organizers;
 - f. Extended time for the completion of classwork and assessments;
 - g. Multiple or frequent breaks; and
 - h. Reduced distractions (Docs. c and d).
11. There is documentation that the student was provided with mathematics manipulatives, such as Algebra tiles and calculation devices, to use during classwork, homework, and tests (Doc. k).
12. The student's work samples in science demonstrate the use of visual and graphic organizers, pictures, chunking of similar science material, fewer choices for multiple choice examples, true and false statements instead of vocabulary completion exercises, and fewer numbers of overall questions (Doc. s).
13. There is no documentation of provision of accommodations in any other courses or of the provision of any other accommodations in math and science (Interview with school staff and Docs. k and s).

Extended School Year Services

14. On April 28, 2015 the IEP team determined the student required ESY services and would be provided with transportation to and from the ESY services location during the summer of 2015. There is no documentation that the complainant received prior written notice for this IEP team meeting (Docs. i and j).

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15. The PGCPS Administrative Procedure #3541 states that a, “student with a disability may require specialized transportation as a related service to a public school.” Students will be dropped off or picked-up only within the assigned school boundary based on the student’s address. A transfer must be requested if the day care provider is outside of the school boundary area. Students will only be provided with transportation if there is an existing bus. Transportation may be provided to educational programs such as tutoring programs (Doc. b).
16. On May 29, 2015 the complainant made an administrative request that the student be transported daily from the location where ESY services were to be provided to her tutor’s home. The special education instructional specialist responded to the complainant’s request by stating that, “according to the transportation office, parents are responsible for transporting beyond a school’s boundaries” (Docs. j and k).
17. The PGCPS provided transportation for the student between school and home while the student participated in the ESY program from July 6, 2015 through August 6, 2015. The complainant was not informed of the transfer request process (Docs. j and k).
18. On July 30, 2015, an ESY services progress report documented that the student participated in the ESY program for reading and math daily and made sufficient progress toward mastery of the goals. However, there is documentation that, from July 6, 2015 through July 15, 2015, the ESY teacher did not have access to the student’s IEP (Docs. j, k and l).

Provision of Quarterly Progress Reports

19. The IEP requires that reports of the student’s progress towards achievement of the annual IEP goals be provided to parents on a quarterly basis (Docs. c and d).
20. There is no documentation that the school staff developed reports of the student’s progress on all of the IEP goals (Docs. c and m).

DISCUSSION/CONCLUSION:

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 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).

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Special education instruction and related services

In this case, the complainant alleges that the student did not receive special education and related services in accordance with the IEP (Docs. m and r).

Based on Findings of Facts #5 and #6, the MSDE finds that there was a delay in providing special education instruction in the placement required by the IEP. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

In addition, based on the Findings of Facts #7-#9, the MSDE finds that there is no evidence that the IEP goals were addressed by the special education services provided or that related services were provided as required by the IEP. Therefore, the MSDE also finds a violation occurred with respect to this aspect of the allegation.

Accommodations

Based on the Findings of Facts #10-#13, the MSDE finds that there is no documentation that accommodations were provided as required by the IEP. Therefore, this office finds a violation occurred.

Extended School Year Services

The complainant also asserts that the PGCPSS did not provide appropriate transportation services during ESY to enable the student to receive private tutoring that she obtained and that she should have been informed of transportation arrangements in a timelier manner (Docs. j, k, m and r).

Based on the Findings of Facts #14-#16, however, there is no specific timeline requirement to determine the specifics of ESY transportation. However, based on the Findings of Facts #15-#17, the MSDE finds that the PGCPSS did not ensure that the school system's policy and procedures regarding requests for transportation outside of the school boundary area were followed. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

In this case, the complainant also alleges that the student was not provided with ESY services in a timely manner because the teacher didn't have access to the IEP (Docs. j, l, m, and r). Based on the Finding of Fact #18, the MSDE also finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #18, the MSDE finds that the student was able to make sufficient progress towards achievement of the goals, even with the delay in provision of ESY. Therefore, this violation requires no student specific corrective action.

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Provision of Quarterly Progress Reports

The complainant also alleges that she was not provided with reports of the student's progress during the 2014-2015 school year (Docs. m and r).

Based on the Findings of Facts #19-#20, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #3 PROVISION OF SPECIAL EDUCATION INSTRUCTION FROM TEACHERS CERTIFIED IN THE AREAS OF INSTRUCTION

FINDING OF FACT:

21. While the student's teachers hold special education certificates, only the student's math and biology teachers also hold certificates in the content areas of instruction that is provided to the student (Doc. o).

DISCUSSION/CONCLUSION:

The IDEA requires that special education and related services be provided by qualified personnel. Public agencies must ensure that personnel are appropriately and adequately prepared and trained. The federal regulations contain specific requirements for personnel who provide special education services in core academic subjects (including language arts, mathematics, science, and history) consistent with Section 1119 (a)(2) of the Elementary and Secondary Education Act of 1965 (No Child Left Behind Act).

A special education teacher is not required to demonstrate subject matter competence in any core academic subject if the teacher is providing consultation services to other teachers, such as adapting curricula, using behavioral supports and interventions, or selecting appropriate accommodations for students with study or organizations skills; or reinforcing instruction that the student is receiving from a highly qualified teacher in the core academic subject. (*Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities*, United States Department of Education, Office of Special Education Programs, 107 LRP 11710, January 1, 2007).

Based on Finding of Fact #21, the MSDE finds that the student's special education teachers have primary responsibility for providing special education instruction in core content subject areas but do not hold certification in those areas. Therefore, the MSDE finds that a violation occurred with respect to the allegation.

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Notwithstanding the violation, because there is no individual student right to instruction from qualified teachers, no specific corrective action is required. However, as stated in Allegation #2 above, this office finds that the student was not provided with the special education and related services required by the IEP, and thus, student specific corrective action is required as described below to redress the loss.

ADDITIONAL ISSUES IDENTIFIED DURING THE COURSE OF THE COMPLAINT INVESTIGATION

Provision of Prior Written Notice

Written notice must be given to parents a reasonable time before the public agency either proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a Free Appropriate Public Education (FAPE) to a student. This includes a description of the action proposed or refused, an explanation of why the agency refuses or proposes the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision and a description of other options that the IEP team considered and the reasons why they were rejected (34 CFR §300.503).

Based on the Findings of Facts #5 and #14, the MSDE finds that the PGCPS did not ensure that the complainant received a written summary of the IEP team meetings held on December 18, 2014 and April 28, 2015. Therefore the MSDE finds that a violation occurred.

Required Participants at an IEP Team

The IEP team must include the student's parent, at least one (1) regular education teacher of the student if the student is, or may be, participating in the regular education environment, at least one (1) special education teacher of the student, a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency, an individual who can interpret the instructional implication of evaluation results, at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, and the student when appropriate (34 CFR §300.321).

Based on Finding of Fact #5, the MSDE finds that the PGCPS did not ensure that the IEP team had the required participants resulting in rescheduling the IEP team. Therefore MSDE finds that a violation occurred.

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CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by January 15, 2016 that the student is being provided with special education and related services, as required by the IEP. The MSDE also requires the PGCPS to provide documentation that the IEP team has taken the following actions:

1. Included the required participants at the IEP team;
2. Reviewed and revised the IEP, as appropriate, to address the student's progress toward achievement of the IEP goals;
3. Determined the services required to compensate the student for the loss of a FAPE;
4. Developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings; and
5. Provided the complainant with a written summary of the meeting that contains all of the required information.

The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the IEP team's decisions.

System-Based

The MSDE requires the PGCPS to provide documentation by January 15, 2016, of the steps it has taken to ensure that the PGCPS staff properly implements the requirements for areas of noncompliance.

Specifically, the PGCPS needs to provide the MSDE with all of its efforts to recruit qualified teachers within the intensive special education programs because these teachers are responsible for providing special education services in core academic subjects. The PGCPS also needs to provide the MSDE of the steps taken to ensure the enforcement of its student transportation policies and procedures. The documentation must include a description of how the PGCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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School-Based

The MSDE requires the PGCPS to provide documentation by January 15, 2016, of the steps it has taken to determine if the remaining violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXX. 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 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 parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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.

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Questions regarding the findings and conclusions 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/sf

c: Kevin W. Maxwell
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