



August 25, 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: #16-009

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.

ALLEGATION:

On July 21, 2015, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Prince George’s County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the PGCPS did not ensure that proper procedures were followed when conducting an initial evaluation under the IDEA since July 21, 2014, in accordance with 34 CFR §§300.301 - .306, and COMAR 13A.05.01.04 - .06.

INVESTIGATIVE PROCEDURES:

1. On July 21, 2015, the MSDE provided a copy of the State complaint, by 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.

XXX

Mrs. Joan Rothgeb

August 25, 2015

Page 2

2. On July 29, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated, and to request documentation.
3. On July 30, 2015, the MSDE sent correspondence to the complainant that identified the allegation subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegation, requested that the PGCPS review the alleged violation, and requested documentation for consideration.
4. On August 4, 2015, the MSDE discussed the allegation with the complainant and requested additional documentation related to the allegation.
5. On August 4, 10, 11 and 15, 2015, the PGCPS provided documentation to the MSDE for consideration.
6. On August 5, 2015, the MSDE discussed the allegation with the complainant, and the complainant provided additional documentation to the MSDE for consideration.
7. On August 7, 10 and 11, 2015, the MSDE requested additional documentation from the PGCPS.
8. On August 11, 2015, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXX to review the student's educational record, and interviewed the following school system staff:
 - a. Ms. Ramona Burton, Compliance Assistant, PGCPS;
 - b. Ms. XXXXXXXXXXXX, Special Education Administrator, XXXXXXXXXXXX; and
 - c. Ms. Natasha White Jones, 504 Coordinator, PGCPS.

Ms. Morrison participated in the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The report of an independent cognitive evaluation of the student, dated December 12, 2013;
 - b. Electronic mail (Email) message from the school staff to the complainant, dated March 30, 2015;
 - c. Written summary of a 504 Team meeting held on April 17, 2015;
 - d. The student's 504 Plan, dated April 17, 2015, and revised on May 29, 2015;

XXX

Mrs. Joan Rothgeb

August 25, 2015

Page 3

- e. Email message from the school staff to the complainant, dated May 5, 2015, and the complainant's email message responding to the school staff, dated May 5, 2015;
- f. Notice of an IEP meeting, dated May 7, 2015, and log of the school staff's contact and notification to the complainant on May 7, 2015;
- g. Prior Written Notice, dated May 22, 2015, and sign in sheet for the May 22, 2015 IEP team meeting;
- h. The student's report card for the 2014-2015 school year;
- i. Written summary of a 504 Team meeting held on May 29, 2015;
- j. Email message from the complainant to the school staff, dated May 29, 2015;
- k. Email message from the complainant to the school staff, dated June 15, 2015, with referral to Home and Hospital Teaching and physician's verification, dated June 5, 2015;
- l. The complainant's request to withdraw the student from the PGCPs, dated June 18, 2015;
- m. Email message from the school system staff to the complainant, dated July 21, 2015; and
- n. Correspondence from the complainant, alleging violations of the IDEA, received by the MSDE on July 21, 2015.

BACKGROUND:

The student is sixteen (16) years old, and attended XXXXXXXXXXXXXXXX from the start of the investigation period through the 2014-2015 school year. He is not identified as a student with a disability under the IDEA. He is identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973, due to Attention Deficit Hyperactivity Disorder (ADHD), and has a "504 Plan" which requires that he be provided with accommodations (Docs. d and h).

The complainant withdrew the student from the PGCPs on June 18, 2015. The parties report that the student has been enrolled in a private school for the 2015-2016 school year (Doc. l and interviews with the parties).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. f).

FINDINGS OF FACTS:

- 1. The student's 504 Plan reflects that his identified disability of Attention Deficit Hyperactive Disorder (ADHD) affects his attention as well as his processing and work speed (Doc. d).

XXX

Mrs. Joan Rothgeb

August 25, 2015

Page 4

2. On May 5, 2015, the complainant sent an email to the school staff that reflects her request for an Individualized Education Program (IEP) and a “screening” of the student. The complainant’s email indicates that she wanted an evaluation of the student that includes testing that would be accepted by the “NCAA”¹ (Doc. e).
3. On May 7, 2015, the school staff and the complainant scheduled an IEP meeting for May 22, 2015. The notice prepared by the school staff identifies that the purpose of the May 22, 2015 IEP team meeting was to review existing information to determine the need for additional data. The notice also reflects that, on the same date, the school staff provided the complainant with the procedural safeguards and parental rights (Doc. f).
4. The IEP team convened on May 22, 2015 to address the complainant’s concerns and her request for an IEP for the student. While the IEP team considered that the student has difficulty with “math concepts,” as well as “note taking, self advocacy, organizational skills, comprehension and poor handwriting skills,” the written summary of the IEP team meeting reflects the opinion of the school staff that the student’s academic “struggles” are “mostly related to his inconsistent attendance” (Doc. g).
5. The complainant reported that the student has asthma which affects his attendance. The school staff report that they did not suspect a medical condition requiring specialized instruction because the student had never been absent from a track meet. However, the IEP team did not document its decision that no additional data was needed² (Doc. g).
6. The written summary of the May 22, 2015 IEP team meeting states that the IEP team considered formal and informal assessments. A review of the student’s education record also reflects that the only formal assessment of the student is a report of an independent cognitive evaluation, dated December 12, 2013, that the complainant privately obtained. The report reflects that both the complainant and the school staff reported “very elevated” ratings of the student in the areas of inattention and hyperactivity/impulsivity, “strongly” indicating that the student has ADHD (Docs. a and g, and review of the student’s educational record).

¹ The NCAA is an acronym for the National Collegiate Athletic Association. The student is nationally rated in track and field, and was named the Gatorade 2014-2015 Maryland Boys Track and Field Athlete of the Year (press release, www.gatorade.com).

² There is documentation that, on March 30, 2015, the school staff provided the complainant with forms required to request Home and Hospital Teaching. On June 15, 2015, the complainant provided the school staff with a completed referral for Home and Hospital Teaching. The referral included a physician’s verification that indicates that the student has “poorly controlled asthma, allergic rhinitis and debilitating migraine headaches.” However, the verification also reflects the physician’s recommendation that the student is able to attend school intermittently as health permits (Docs. b and k).

XXX

Mrs. Joan Rothgeb

August 25, 2015

Page 5

7. The report of the private evaluation included a recommendation that an educational assessment of the student be conducted in order to determine whether additional accommodations are needed under the student's 504 Plan or whether the supports of an IEP are needed (Doc. a).
8. The IEP team determined it did not suspect that the student has a disability under the IDEA, and that the student's needs can be met by including additional accommodations in the student's existing 504 Plan at an upcoming 504 team meeting scheduled for May 29, 2015. The written summary of the meeting reflects that the complainant agreed that the student had been successful in the past with particular accommodations in his 504 Plan³ (Doc. g).
9. On May 29, 2015, the complainant informed the school staff, via email, that she had not received the Prior Written Notice document from the May 22, 2015 IEP team meeting. There is documentation that the school system staff provided the complainant with the Prior Written Notice document on July 21, 2015 (Docs. j and k).
10. On May 29, 2015, the 504 Team, including the complainant, held a meeting to review and revise the student's 504 Plan. The written summary of the meeting reflects that the 504 team considered the complainant's concerns, including the student's need to "self-advocate," and that the 504 team added accommodations to the student's 504 Plan in response to the complainant's concerns (Doc. i).

DISCUSSION/CONCLUSIONS:

Upon receipt of a written referral for evaluation, the public agency must determine whether it suspects the student of having a disability, and if so, promptly request parental consent to assess the student in all areas related to the suspected disability (COMAR 13A.05.01.04 and .05). As part of an initial evaluation, the public agency must ensure that the IEP team reviews existing data, including assessment data and information from the child's teachers and parents. Based on that data, the public agency must identify what additional data, if any, is needed to determine the student's eligibility and educational needs (34 CFR §300.305 and COMAR 13A.05.01.06).

The public agency must ensure that the parent is provided with proper written notice if it determines that no assessment data is needed to complete the evaluation. The public agency must also ensure that the parent is provided with proper written notice if it does not suspect the student of being a student with a disability and does not believe that an evaluation is required (COMAR 13A.05.01.04).

Written notice must also be provided to parents before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the

³ The school staff report that the IEP team discussed accommodations used previously with the student, but that had been removed in the student's current 504 Plan (Interview with the school staff).

XXX

Mrs. Joan Rothgeb

August 25, 2015

Page 6

provision of a Free Appropriate Public Education (FAPE) to the student. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

In order to meet the criteria for identification as a student with a disability under the IDEA, a student must have at least one (1) an identified disability, including an Other Health Impairment, and who, therefore, requires special education and related services. If a student is determined to have one (1) an identified disability, but is found to require only related services, and not special education instruction, the student will not meet the criteria for identification as a student with a disability under the IDEA (34 CFR §300.8).

An Other Health Impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment. This may be due to chronic or acute health problems such as Attention Deficit Hyperactivity Disorder and asthma (34 CFR §300.8).

In this case, the complainant alleges that the PGCPS did not ensure that additional data was obtained and that, as a result, a comprehensive evaluation of the student was not conducted. The complainant also alleges that she did not receive the Prior Written Notice document of the decisions made at the May 22, 2015 IEP team meeting (Doc. n and interview with the complainant).

Based on the Findings of Facts #3 - #7, the MSDE finds that, on May 22, 2015, the IEP team considered the existing data about the student, information from teachers and the complainant, and the results of assessments. Based on the Finding of Fact #8, the MSDE finds that the IEP team's decision that it did not suspect that the student requires special education was consistent with the data.

However, based on the Finding of Fact #5, the MSDE further finds that the PGCPS did not ensure that the complainant was provided with proper Prior Written Notice, including the basis of the decision not to recommend additional assessments in response to information from the complainant about the student's asthma. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the PGCPS to provide documentation, by October 30, 2015, of the steps it has taken to ensure that the XXXX High School staff properly implements the requirements for ensuring that the Prior Written Notice document includes all of the required information when an IEP Team does not suspect a disability and determines that no additional data is needed.

XXX

Mrs. Joan Rothgeb

August 25, 2015

Page 7

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.

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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties 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

c: Kevin W. Maxwell
Gwendolyn Mason
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