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Interim State Superintendent of Schools

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December 17, 2015

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Mrs. Joan Rothgeb
Director of Special Education
Prince George's County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #16-038

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 October 23, 2015, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, "the complainant," on behalf of her son. 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 above-referenced student.

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that the student was provided with special education instruction in reading and language, since the start of the 2015-2016 school year, as required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323.
2. The PGCPS has not ensured that the student is being provided with special education instruction in reading and math, by a highly qualified special education teacher, since the start of the 2015-2016 school year, in accordance with 34 CFR §300.18.

INVESTIGATIVE PROCEDURES:

1. On October 29, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS.
2. On November 6, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Mrs. Rothgeb of the allegations to be investigated and requested that her office review the alleged violations.
3. On November 20, 2015, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant about the allegations. On the same date, the complainant provided the MSDE with documentation to be considered.
4. On November 20, 2015, Mr. Chichester and Ms. Sharon Floyd, Complaint Investigator, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXX and interviewed the following PGCPS staff:
 - a. Ms. XXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXX, CSEP Coordinator;
 - c. Ms. XXXXXXX, IEP Case Manager and Special Education Teacher;
 - d. Ms. XXXXXXX, Special Education Instruction Specialist;
 - e. Ms. XXXXXXXX, Special Education Teacher; and
 - f. Ms. XXXXX, General Education Teacher.

Ms. Kerry Morrison, Special Education Instruction Specialist, PGCPS, attended the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated May 12, 2015, and amended on June 8, 2015;
 - b. IEP, dated October 6, 2015, and amended on October 8, 2015 and November 9, 2015;
 - c. IEP Prior Written Notice, dated October 6, 2015;
 - d. The Special Educator's schedule for the 2015-2016 school year;
 - e. Intervention Accountability Sheets, dated between August 28, 2015 and November 12, 2015;
 - f. Student's work samples in reading and language arts, dated between September and November, 2015;
 - g. Maryland Educator Certificates for XXXXXXXXXXXXXXXXXXXXXXX School staff;
 - h. XXXXXXXXXXXXXXXXXXXXXXX master schedule for the 2015-2016 school year;

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- i. Electronic correspondence (email) messages among the complainant and the school staff, dated October 15, 2015; and
- j. Correspondence containing allegations of violations of the IDEA, received by the MSDE on October 23, 2015.

BACKGROUND:

The student is eight (8) years old and is identified as a student with an Other Health Impairment (OHI) related to a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD) under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

The student attended the XXXXXXXXXXXXXXXXXXXXXXXX at the start of the 2015-2016 school year. On November 10, 2015, he was placed at XXXXXXXXXXXXXXXXXXXXXXXX, a non-public, special education school by the PGCPS.

During the time period covered by the investigation, the complaint was provided with the opportunity to participate in the IEP team meetings (Docs. a - c).

ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION IN READING AND WRITTEN LANGUAGE IN THE PLACEMENT REQUIRED BY THE IEP

FINDINGS OF FACTS:

1. The IEP, in effect at the start of the 2015-2016 school year, contained conflicting information about the amount of special education instruction that was required. In the "Services" section, it stated that the student would be provided with seven (7) hours and thirty (30) minutes of special education instruction each week in reading and language arts. In the "Discussion of Services" section, the IEP stated that the student would be provided with two (2) hours of special education instruction each week in reading and language arts (Docs. a and j).
2. The special education teacher's schedule reflects that she was pulling the student and other special education students from instruction in reading in the general education classroom, in order to provide them with special education instruction in reading, for one (1) hour on Tuesdays and Thursdays. The schedule also reflects that she was working with the student using a reading intervention program, for thirty (30) minutes each day (Docs. d, e, and f).
3. On October 6, 2015, the IEP was revised to require the provision of special education instruction in reading, in a separate special education classroom, for forty-five (45) minutes each day. The IEP does not indicate the time during the school day the services are to be provided (Docs. b and c).

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4. The prior written notice document that was developed when the IEP was written, states that the IEP team decided that the student would be provided with additional special education instruction in reading, using a guided reading method, for twenty (20) minutes each day, in a separate special education classroom, and would receive additional reading supports, using a research-based intervention program, for thirty (30) minutes each day, in a separate special education classroom. However, the IEP does not include information about this additional special education instruction in reading. The prior written notice document does not indicate when during the school day the services are to be provided (Doc. c).
5. The intervention accountability sheets, maintained by the special education teacher, in order to document her work with the student in the area of reading, contains information that is inconsistent with her schedule with respect to when she is working with the student. The intervention accountability sheets do not indicate that the student is being provided with special education instruction in reading on a daily basis, as required by the IEP (Docs. d and e).
6. On October 15, 2015, the complainant contacted the special education teacher, expressing concern that the student was being provided with reading interventions during recess, lunch, and non-academic classes, and indicated that it was her understanding that the student was to be provided with reading intervention services during his scheduled reading and language class. Although the IEP does not indicate when the reading interventions are to be provided, the team did not reconvene to address the complainant's concerns and to clarify the IEP (Docs. a, b, i, j, and interviews with the complainant and the school staff).
7. On November 9, 2015, the PGCPs agreed that the student would be placed in a non-public, special education school (Doc. b).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education and related services in the educational placement required by the IEP. In order to do so, the IEP must be written in a manner that is clear to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. Each teacher and provider must be informed of his or her specific responsibilities related to implementing the student's IEP, and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP (34 CFR §300.101 and .323).

In this case, the complainant expressed concern that the student is not being provided with special education instruction in reading each day during his reading class period. Based on the Findings of Facts #1, #3, and #4, the MSDE finds that there is no documentation that the IEP team decided that the special education instruction in reading is to be provided during the student's reading class.

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However, based on the Findings of Facts #2, #5, #6 and #7, the MSDE finds that the student was not being provided with the amount and frequency of special education instruction in reading that is documented in the IEP or the prior written notice, from the start of the school year until November 9, 2015. Therefore, the MSDE finds that a violation has occurred with this aspect of the allegation.

**ALLEGATION #2: PROVISION OF SPECIAL EDUCATION SERVICES
IN MATH AND ENGLISH BY A HIGHLY QUALIFIED TEACHER**

FINDINGS OF FACTS:

8. Instruction is provided in the student's reading class by a teacher who holds certification in the content taught and in special education (Docs. g, h, and j).
9. Instruction is provided in the student's math class by both a teacher who holds certification in special education and a teacher who holds certification in the content taught (Docs. g, h, and j).

DISCUSSION/CONCLUSIONS:

The IDEA requires that all special education teachers be "highly qualified." The definition of "highly qualified special education teacher" in the IDEA is aligned with the highly qualified requirements under the Elementary and Secondary Education Act (ESEA). The IDEA regulations establish requirements for special education teachers in general, as well as those teaching core academic and multiple subjects (34 CFR §§200.56, 300.18, and 300.156). Core academic subjects mean English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography (34 CFR §300.10).

Being "highly qualified" means that a special education teacher has obtained full State certification as a special education teacher and holds at least a bachelor's degree (34 CFR §300.18). If the special education teacher is also teaching core academic subjects, he or she must also hold certifications in the core academic areas being taught. However, the special education teacher is not required to demonstrate subject matter competence in a core academic subject if only providing consultation services to a general education teacher who holds a certification in the subject area or if only reinforcing instruction provided by such a teacher (34 CFR §§200.56, 300.18, and 300.156 and *Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities*, OSEP, January 2007).

Based on the Findings of Facts #8 and #9, the MSDE finds that there is documentation that the student was being provided special education instruction in reading and math, by teachers who hold certification in special education and in the content taught. Therefore, the MSDE does not find that a violation has occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the PGCPS to provide documentation, by February 1, 2016, that the IEP team has taken the following actions:

- a. Revised the IEP to reflect the amount and frequency of special education services in reading that is required, and to address the complainant's concerns about when during the school day the services will be provided;
- b. Provided documentation that the special education services in reading are being provided in accordance with the IEP; and
- c. Determined the amount and nature of compensatory services or other remedy to redress the violation that the student was not being provided with the amount and frequency of special education instruction in reading that is documented in the IEP or the prior written notice.

The PGCPS must ensure that the IEP team considers the difference between the student's present and expected levels of performance when determining the services needed to remediate the violations.

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.

School Specific

The MSDE requires the PGCPS to provide documentation by March 1, 2016 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 the XXXXXXXXXXXXXXXXXXXXXXXX. 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.

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TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, 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 within the timelines reported in this Letter of Findings.

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 (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:ac

c:	Kevin Maxwell	Dori Wilson
	LaRhonda Owens	Anita Mandis
	Kerry Morrison	Albert Chichester
	XXXXXXXXXXXX	Nancy Birenbaum