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February 19, 2016

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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: #16-054

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 December 3, 2015¹, the MSDE received a complaint from Ms. XXXXXXXX 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 above-referenced student.

The MSDE investigated the following allegations:

1. The PGCPs has not ensured that the student has been consistently provided with transportation services, as required by the Individualized Education Program (IEP), during the provision of Extended School Year (ESY) services in the summer of 2015, and on October 13, 2015, in accordance with 34 CFR §§300.101 and .323.

¹ There is a sixty (60) day timeline for completion of the complaint investigation process. However, in order to review the additional information received from the complainant, she was informed, in writing, that it was necessary to extend the timeline for completion of this Letter of Findings, pursuant to 34 CFR §300.152.

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2. The PGCPs has not ensured that the student's educational record is maintained and available to the student's parent, in accordance with COMAR 13A.08.02.09, and *The Maryland Student Records System Manual*.

INVESTIGATIVE PROCEDURES:

1. On December 3, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPs.
2. On December 8, 2015, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and identified the allegations for investigation.
3. On December 11, 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 school system review the alleged violations.
4. On December 11, 2015, Mr. Loiacono contacted Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPs, to arrange a document review and site visit.
5. On December 16, 2015, Mr. Loiacono conducted a review of the student's educational record at XXXXXXXX High School.
6. On December 22, 2015, the PGCPs provided the MSDE with documentation to be considered.
7. On January 8, 2016, the complainant contacted Mr. Loiacono and raised additional concerns regarding the allegations.
8. On January 21, 2016, the MSDE notified the parties, in writing, that it was extending the time required for investigating the complaint to ensure that the complainant's additional concerns were addressed through the investigation.
9. On February 2, 2016, Mr. Loiacono conducted an additional review of the student's educational record at XXXXXXXX High School.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Individualized Education Program, amended April 14, 2015;
 - b. PGCPs Electronic Mail (Email) from Extended School Year staff to Transportation staff, dated July 13, 2015;
 - c. PGCPs GPS Bus logs, dated July 6, 2015 to July 30, 2015;
 - d. Email from the complainant to the PGCPs staff, dated July 12, 2015;

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- e. Letter from student's physician, undated;
- f. Correspondence from PGCPS staff and the complainant, dated October 21, 2015;
- g. Sign-in Log documenting review of student's special education record;
- h. Prior Written Notice, dated October 28, 2015;
- i. Electronic Mail from PGCPS staff and MSDE, dated January 15, 2016; and
- j. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on December 3, 2015.

BACKGROUND:

The student is seventeen years old and attends XXXXXXXX High School. He is identified as a student with an Intellectual Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services.

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

ALLEGATION #1: PROVISION OF TRANSPORTATION FOR THE STUDENT

FINDINGS OF FACTS:

Extended School Year Transportation

1. The IEP indicates that transportation services and the provision of a bus aide would be provided during Extended School Year (ESY) services during the summer of 2015. The IEP does not indicate that the student requires transportation to be air-conditioned when the weather is warm (Doc. a).
2. ESY services were to be provided from July 6, 2015 to July 30, 2015. The student was not provided with transportation on July 6, 2015, and therefore did not participate in ESY on that date (Docs. a and c).
3. The parties agree that on or around July 6, 2015, the complainant contacted the PGCPS transportation staff and requested that the student be provided with transportation by a bus with air-conditioning because without it, she reported that the heat could trigger an asthma attack. In response, the complainant was informed that she had to provide medical documentation of the necessity in order for air-conditioned bus transportation to be provided (Docs. b and d).
 3. On July 12, 2015, the complainant provided the PGCPS with documentation from the student's physician indicating that the student required an air-conditioned bus (Docs. d and e).

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5. While transportation on a bus without air-conditioning was offered between July 7, 2015 and July 17, 2015, the student did not participate in the ESY program because the complainant did not believe the transportation services were appropriate (Doc. c).
6. On July 20, 2015, the PGCPs began providing transportation to the student in an air-conditioned bus, and he began receiving ESY services (Doc. c).
7. On October 28, 2015, the IEP team convened to consider the transportation needs of the student. The IEP was revised to require an air-conditioned bus pending provision additional medical documentation from the complainant demonstrating the need for an air-conditioned bus. However, the team did not document its basis for requiring additional information regarding the need for an air-conditioned bus (Doc. h).

Transportation on October 13, 2015

8. The PGCPs staff acknowledge that the transportation services that were required by the IEP were not provided on October 13, 2015 (Doc. i and Interview with PGCPs Staff).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101, .320, and .323). Related services includes transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education (34 CFR §300.34).

Based on the Findings of Facts #1-7, the MSDE finds that the transportation services which are required by the IEP were made available to the student from July 7, 2015 until July 17, 2015, in accordance with the IEP, but that the complainant did not accept those services. Therefore, no violation is found with respect to this time period.

Based on the Finding of Fact #8, the MSDE finds that the student was not provided with transportation services on July 6, 2015 and October 13, 2015. As a result, the MSDE finds that a violation occurred.

ADDITIONAL ISSUE: THE FOLLOWING WAS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101, .320, and .324).

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Medical services, which are those that must be performed by a physician, are not required to be provided under the IDEA. However, medical services that are provided specifically for diagnostic or evaluation purposes are considered related services under the IDEA (34 CFR - §300.34 and *Letter to Greer*, 19 IDELR 348, July 14, 1992). Therefore, if the IEP team decides that medical data is needed in order to determine a student's educational needs, the public agency must ensure that the medical data is obtained, and may not require the parent to obtain the data.

Based on Findings of Facts #1-7, the MSDE finds that the PGCPS did not ensure that they obtained the health information necessary to determine the student's transportation needs.

Further, based on Finding of Fact #8, there is no documentation that explains the basis for the October 28, 2015 IEP team determination that additional data was required. Therefore, the MSDE finds that a violation occurred.

ALLEGATION #2: MAINTENANCE OF THE EDUCATIONAL RECORD

9. The student's educational record contains the IEP documents, including prior written notices, assessments, and progress reports which were completed during the 2014-2015 and 2015-2016 school year. The record does not contain IEP documents prior to August 2014 (Review of Record).
10. There is documentation of an access log that indicates who has reviewed the student's education record (Doc. g).

DISCUSSION/CONCLUSIONS:

Student records provide information about a student's academic performance. Therefore, the proper maintenance of these records is necessary to ensure that accurate information is available to plan for a student's education. All student educational records are to be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (34 CFR §§300.610 - .627).

In order to ensure proper student records management, the local public agencies in the State are required to maintain educational records consistent with the Maryland Student Records System Manual (COMAR 13A.08.02.01 and .02). In addition, they are required to maintain information in the record of each request for and disclosure of personally identifiable information from the educational records (COMAR 13A.08.02.20).

The Maryland Student Records System Manual requires that information about the courses in which the student was enrolled, including course titles for students in secondary school, and credits earned by each student be maintained in the educational record. Data must be maintained regarding the student's personal information, school attendance, annual performance, High School Assessment results, State and district-wide testing results, and health screening information. For students with disabilities, documents including the IEP, progress reports,

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assessment reports, any documentation of IEP team meetings, and Medical Assistance records, must also be maintained in the record (Maryland Student Records System Manual, 2016).

However, there is no requirement that correspondence of any kind, whether transmitted electronically or by United States Postal Service, be maintained in the educational record. In addition, there is no requirement that data used in developing reports such as those of the student's progress towards achievement of the annual IEP goals, be maintained in the educational record (Maryland Student Records System Manual, 2016).

Based on the Findings of Facts #9-10, the MSDE finds that the PGCPs has not ensured that documents that are required to be in the educational record have been maintained. Therefore, this office finds that a violation occurred.

ADDITIONAL ISSUE: THE FOLLOWING WAS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

FINDINGS OF FACTS:

11. On October 9, 2015, the complainant, through her advocate, made a written request to amend the prior written notice included in the student's educational record following an IEP team meeting (Doc f).
12. On October 21, 2015, in their response to the complainant, the PGCPs agreed to include some of the proposed changes proposed by the complainant's advocate, but refused to include others. The response did not inform the complainant of the procedures for requesting a hearing to challenge the documents that the school system refused to amend (Doc. f).

DISCUSSION/CONCLUSIONS:

A parent who believes that information in the student's educational record is inaccurate or misleading may request that the public agency amend the information. Upon receipt of such a request, the public agency must decide, within a reasonable period time of the receipt of the request, whether to amend the information. If the public agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing before school system personnel to challenge the information (34 CFR §§300.618 and .619).

In this case, the complainant made a written request to amend the student's record. Based on Findings of Facts #11 and #12, the MSDE finds that the PGCPs staff responded to the complainant's request, but agreed to amend only part of the record.

Further based on Finding of Fact #12, the MSDE finds that while the complainant was entitled to notice of an opportunity for a hearing to challenge the denial of her request for amendments to

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the record, it was not provided. As a result, the MSDE finds a violation with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPs to provide documentation by April 15, 2016 that it has completed the following:

- a. The complainant has been provided with information on how to request a hearing to challenge the school system's refusal to amend the student's educational record; and
- b. The IEP team must convene to determine and address all of the student's transportation needs and to determine whether compensatory services are required to remedy the identified violations.

School-Based

The MSDE also requires the PGCPs to provide documentation by June 1, 2016 that steps have been taken to determine whether the violations identified through this investigation are unique to this case or whether they constitute a pattern of violations at the 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 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 Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-7770.

Please be advised that the BCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with

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the findings of fact 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, conclusions and corrective actions 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:gl

c: Kevin Maxwell
LaRhonda Owens
Kerry Morrison
XXXXXXXXX
Marcella E. Franczkowski
Linda Bluth
Anita Mandis
Gerald Loiacono
Nancy Birenbaum