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Interim State Superintendent of Schools

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February 11, 2016

Ms. Jessica Williams
Education Due Process Solutions, LLC
P.O. Box 139
Laurel, Maryland 20725

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: #16-059

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 14, 2015, the MSDE received a complaint from Ms. Jessica Williams, the complainant, on behalf of the above-referenced student and his mother, Mrs. XXXXXXXXX. 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 followed proper procedures when developing the student's Individualized Education Program (IEP) and determining progress, in accordance with 34 CFR §§300.320, .323 and .324. Specifically, it is alleged that the student's IEP since December 14, 2014 does not contain present levels of academic achievement and functional performance in the areas of expressive and receptive language.

2. The PGCPS has not ensured that all of the student's behavioral and social needs that arise out of his disability have been identified and addressed since December 14, 2014, in accordance with 34 CFR §300.324.
3. The PGCPS has not developed an IEP that addresses the student's identified written language and reading needs since the start of the 2015-2016 school year, in accordance with 34 CFR §300.324.
4. The PGCPS has not followed proper procedures when determining the student's educational placement for the 2015-2016 school year. Specifically, it is alleged that the IEP team did not consider the harmful effects of the placement on the student, in accordance with 34 CFR §§300.114 - .116.

INVESTIGATIVE PROCEDURES:

1. On December 14, 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 December 16, 2015, Ms. Sharon Floyd, Education Program Specialist, MSDE, discussed the allegations being investigated with the complainant.
3. On December 21, 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 December 28, 2015, the complainant provided the MSDE with documentation sent electronically (email).
5. On February 4, 2016, Ms. Floyd and Mr. Gerald Loiacono, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX School (XXXXXXXXXX MS) to review the student's educational record, and interviewed the following school system staff:
 - a. Dr. XXXXXXXXXXXX, Special Education Math Teacher;
 - b. Ms. XXXXXXXXXXXX, Speech/Language Pathologist;
 - c. Ms. XXXXXXXXXXXX, Special Education Chairperson;
 - d. Ms. XXXXXXXXXXXXXXXX, Special Education Science Teacher;
 - e. Ms. XXXXXXXXXXXXXXXX, Special Education Language Arts Teacher; and
 - f. Dr. XXXXXXXXXXXX, Principal.

Ms. Jodi Kaseff, Special Education Compliance, 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. On February 4, 2016, documentation was submitted by email to the MSDE from the complainant.
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 parent on March 12, 2015;
 - b. Consent and permission for the MSDE to release information to the complainant, dated December 15, 2015;
 - c. IEP, dated March 12, 2015 and progress reports;
 - d. IEP, dated March 14, 2014 and progress reports;
 - e. Student's report card, dated February 1, 2016;
 - f. Log of speech and language services, dated August 26, 2015 through February 3, 2016;
 - g. Reports of a psychological assessment, dated October 28, 2014, educational assessment, dated November 10, 2014, a speech/language assessment, dated February 11, 2014, and an occupational therapy screening, dated February 3, 2016;
 - h. Invitation and team summary to the January 7, 2016 IEP team meeting;
 - i. Invitation and team summary to the June 23, 2015 IEP team meeting;
 - j. Invitation and team summary to the April 29, 2015 IEP team meeting;
 - k. Invitation and team summary to the March 12, 2015 IEP team meeting;
 - l. Invitation and team summary to the November 25, 2014 IEP team meeting;
 - m. Correspondence containing allegations of violations of the IDEA, received by the MSDE on November 5, 2015; and
 - n. PGCPs procedures for writing standards-based goals.

BACKGROUND:

The student is six (13) years old and attends XXXXXXXXXXXXXXXXXXXX School (XXXXXXXXX XXXXX). He is identified as a student with a Specific Learning Disability 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 parent participated in the education-decision making process and was provided with notice of the procedural safeguards (Doc. a).

**ALLEGATION #1: IEP THAT INCLUDES PRESENT LEVELS OF
ACADEMIC ACHIEVEMENT AND FUNCTIONAL
PERFORMANCE IN EXPRESSIVE AND RECEPTIVE
LANGUAGE AND DETERMINING PROGRESS**

FINDINGS OF FACTS:

Expressive/ Receptive Language Needs

1. The IEP in effect December 2014 identifies the present levels of performance in speech/language based on a January 2014 report of the assessment results of the student's receptive and expressive language skills, the speech/language pathologist logs and teacher reports of the student's performance. The assessment report indicates that the student has difficulty comprehending concepts that are not concrete, and he has difficulty with abstract language. The data indicates that the student's strengths include his ability to use pragmatic and social language (Doc. c).
2. The IEP indicates that the student's expressive and receptive language needs are to be addressed through the goal for reading comprehension and that the speech/language pathologist and reading teacher would collaborate with his reading instruction to assist him to be able to analyze and identify important ideas within a variety of literary and informational texts (Doc. c).
3. The IEP requires the student to receive speech/language consultative services which allows the speech and language pathologist to monitor the student's receptive and expressive language skills within the student's language arts class to focus on the natural exchange of language and provide the student with opportunities to interact with good speech models (Doc. c).
4. On March 12, 2015, the IEP team convened to conduct an annual review of the IEP. The IEP team revised the present levels of performance to include the most recent speech/language pathologist's reports of the student's performance in class, the reading teacher's input, student input, speech/language data logs of daily performance and parental input. The student's present levels of performance in expressive and receptive language indicate that, with verbal prompts and modeling, the student is able to recall details after reading a selection. The present levels of performance also indicates that he participates orally, has consistent eye contact while communicating, which has improved his receptive language skills, and he is able to stay on topic more frequently. As a result of the improvements made with his expressive and receptive language skills, the IEP goal for the student was revised for the student to be able to cite textual evidence (expressive language), analyze what he reads, understand the meaning of what he reads and make inferences based on what he reads (receptive language) (Doc. d).

Reports of Progress

5. The IEP requires that the parent be notified of the student's progress toward the IEP goals with a quarterly written progress report (Docs. c and d).
6. While the PGCPs developed a progress report for the first quarter of the 2014-2015 school year, they did not develop a progress report for the second quarter of the 2014-2015 school year. However, progress reports were provided for the last two (2) quarters of the school year. The reports of progress that were developed state that "the student is making sufficient progress to meet the goal" (Docs. c and d).

DISCUSSION/CONCLUSIONS:

Expressive/Receptive Language Needs

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed and implemented that includes a statement of the student's present levels of academic achievement and functional performance, including how the disability affects the student's progress in the general curriculum, which is based on the evaluation data. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.301, .320 and .323 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46662).

In order to ensure that the IEP is designed to provide the student with special education instruction and related services needed to enable the student to make progress in the general curriculum, the annual goals must be designed to meet the student's needs that result from the disability. Therefore, the IEP team's determination of how the disability affects the student's involvement and progress in the general education curriculum is a primary consideration in the development of the annual goals (34 CFR §§300.301, .320 and .323 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46662).

Based on Findings of Facts #1-#4, the MSDE finds that there is documentation that the student's IEP contains present levels of academic achievement and functional performance, based upon the data, in the areas of expressive and receptive language. Therefore, the MSDE does not find that a violation occurred with respect to this aspect to the allegation.

Reports of Progress

The IEP must also include a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parents (34 CFR §300.320).

Based on Findings of Facts #5 and #6, the MSDE finds that the student's progress towards achievement of the annual IEP goals was not determined with the frequency required by the IEP and that a violation occurred regarding this aspect of the allegation. However, notwithstanding the violation, based on the Finding of Fact #6, the MSDE finds that the progress reports have been subsequently provided to the parent. Therefore, no student-based corrective action is required to remediate the violation.

**ALLEGATIONS #2 and #3: IEP THAT ADDRESSES BEHAVIORAL, SOCIAL,
READING AND WRITTEN LANGUAGE NEEDS**

FINDINGS OF FACTS:

Behavioral and Social Needs

7. The IEP in effect on December 14, 2014 identifies that the student's distractibility, organizational needs, and lack of independence when completing tasks are being addressed by the accommodations, supplementary aids and services. The IEP states that the student does not need a Behavior Intervention Plan or a Functional Behavior Assessment because "his behavior does not interfere with his learning or that of others." The IEP reflects that there is a communication system in place between school staff and the parents to address the student's attention to tasks, such as completion of class assignments and homework before they become problematic (Interview with school staff and Docs. c and d).
8. The IEP team conducted a reevaluation and determined that assessments were needed to ensure that the student's needs were continuing to be addressed, including a psychological assessment. A report of the psychological assessment indicates that the student displays relative strengths in emotional regulation, with skills consistently in the average range. The report also indicates that the student reacts with the appropriate level of emotion, and responds well to new situations. The report documents that while the student handles transitions well, he has difficulty initiating tasks (at home and at school), he lacks self-motivation, and attention to detail are issues of concern. According to the report, the student has a severe deficit in attention and concentration. The report also indicates that the student is described as a calm and compliant student who does not display aggression or volatile behavior. The teacher reports indicate that there are no concerns with the student regarding an unwillingness to follow directives, or displays of aggression or volatile behavior (Doc. g).
9. The report of the psychological assessment also indicates the parent's "elevated concerns about the student's behaviors." The report documents concerns about the student's behaviors that are not as apparent at school include impulsivity, time management, and the impact of changing plans without notice. The IEP team documented the student's

“executive functioning deficits are in the areas of attention, organization, planning, and working memory.” When developing the student’s IEP, the team addressed the needs within supplementary aids and services and accommodations throughout the student’s IEP (Docs. c, g and Interview with school staff).

10. On the IEP dated March 12, 2015, the teacher reports indicate that the student is well adjusted socially. He gets along with his peers and “is extremely kind to his them.” The student works well in groups and cooperative learning situations (Docs. f, j and k).

Reading Needs

11. The IEP in effect since the start of the 2014-2015 school year states that the student is reading at the second grade level based on work samples, teacher observation and an informal reading inventory (Scholastic Reading Inventory). The student’s reading comprehension is measured on a third grade level based on informal assessments and teacher observations which identifies the student’s need to improve his sight word vocabulary. The teacher reports indicate that the student needs consistent verbal prompting to be able to respond to questions. The reports state that he can recall main ideas but has difficulty with inferences and applying information using higher level thinking skills. The IEP states that the student requires repetition of directions, checking for understanding, re-phrasing, extra response time, and the use of pictures and chunking. The IEP includes goals to increase the student’s vocabulary, phonics and reading comprehension skills along with his expressive and receptive language skills, and requires that he be provided with special education reading services in a special education class with a small student ratio and a special education teacher (Doc. c).
12. On the IEP dated March 12, 2015, the student’s reading was reported as being on a third grade level based on work samples, teacher observations and classroom assessments. An informal reading assessment and teacher reports indicate that the student’s reading comprehension level is higher when he is able to provide oral responses rather than written responses. The reports state that he needs verbal and visual prompts to respond accurately. The teachers report that the student’s challenges include answering critical thinking and higher level questions and that his goals address his individual needs. The IEP indicates that the student continues to receive special education reading in a small, structured special education class to address these needs (Doc. d).

Written Language Needs

13. The IEP in effect on December 14, 2014 indicates that the student was writing on a second grade level based on classroom observations and informal assessments. The teacher reports that when given a prompt, the student is able to write simple sentences that include a noun and verb and state details which provide the information needed for

completion. According to the teacher's reports of the results of the provision of informal writing prompts, the student is aware of the rules of punctuation, but he needs verbal prompts, lists and reminders to use and apply punctuation to his sentences and paragraphs. The IEP team developed a goal for the student to compose at least three sentences with instructional supports documented within the supplementary aids and services (Doc. c).

14. On the IEP dated March 12, 2015, the IEP indicates that the student will use sentence starters, sample compositions, graphic organizers, writing prompts, lists of literacy, vocabulary lists and grammar guides to write a two-paragraph composition, that includes transition words to be able to convey setting and time-frame of a story. The IEP team also determined that the student requires a daily copy of the teacher's notes and a rubric prior to writing tasks to support his written language skills (Doc. d).

DISCUSSION/CONCLUSIONS:

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).

Based on the Findings of Facts, #7-#14, the MSDE finds that the IEP team considered all of the required data and developed an IEP that addresses the student's needs consistent with the data. Therefore, this office does not find that violations occurred with respect to the allegation.

ALLEGATION #4: CONSIDERATION OF THE POTENTIAL HARMFUL EFFECTS OF THE EDUCATIONAL PLACEMENT DECISION

FINDINGS OF FACTS:

15. On March 12, 2015 the IEP team determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a separate special education classroom for math, reading, science and social studies, and in general education classes for special area courses such as art, music, and physical education. The IEP team determined that this could be provided in the school the student would attend if not disabled (Doc. d).
16. The IEP reflects that the IEP team determined that the benefits of the provision of special education within the small class with a special education teacher outweigh any potential harmful effects (Doc. d).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP team makes a placement decision in conformity with the requirement to provide special education instruction in the LRE. This means that, to the maximum extent appropriate, students with disabilities must be educated with nondisabled students. Removal of students with disabilities from the general education classroom may occur only if the nature or severity of the disability is such that education in that setting with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §§300.114 and .116).

In determining the LRE, the public agency must ensure that the IEP team gives consideration to any potential harmful effect on the student or on the quality of services that the student needs (34 CFR §300.116).

Based on the Findings of Facts #15-#16, the MSDE finds that the documentation does not support the allegation that the team did not consider potential harmful effects. Therefore, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires that the PGCPs provide documentation by April 1, 2016 of the steps it has taken to determine whether the violation related to the lack of quarterly progress reports is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXX Middle 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 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 complainant and the PGCPs by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-0255.

Ms. Jessica Williams
Mrs. Joan Rothgeb
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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.

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, evaluation, placement, or provision of a Free and 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

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