



February 4, 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: #16-060

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 December 14, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 to provide the student with a Free Appropriate Public Education (FAPE) upon his transfer to the PGCPS in January 2015, in accordance with 34 CFR §§300.101, .103, and .323.

INVESTIGATIVE PROCEDURES:

1. On December 16, 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.

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2. On December 28, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, unsuccessfully attempted to contact the complainant by telephone to discuss the allegation to be investigated. On the same date, the MSDE sent correspondence to the complainant that identified the allegation subject to this investigation, and the MSDE notified the PGCPS of the allegation and requested that the PGCPS review the alleged violation.
3. On January 4, 2016, the MSDE requested documentation from the PGCPS.
4. On January 6, 7, 15, 20 and 21, 2016, the PGCPS provided documentation to the MSDE.
5. On January 15, 2016, Ms. Austin conducted a review of the student's educational record at XXXXXXXXXXXXXXXXXXXX School.
6. On January 18 and 27, 2016, the MSDE conducted telephone interviews with the complainant.
7. On January 19, 20 and 27, 2016, the complainant provided documentation for consideration.
8. On January 29, 2016, Ms. Austin and Ms. Ms. Nicole Green, Dispute Resolution Analyst, MSDE, conducted a telephone interview with the following school system staff:
 - a. Ms. XXXXXXXXXXX, Autism Instructional Specialist;
 - b. Ms. XXXXXXX, former Special Education Teacher, XXXXXXXXXXXXXXXXXXX; and
 - c. Ms. XXXXXXXXXXX, Special Education Instructional Specialist.

Ms. Morrison participated in the telephone interview 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 PGCPS student record card of the student's attendance at XXXXXXXX XXXXXXX School and XXXXXXXXXXXXXXXXXXXX in 2015;
 - b. The PGCPS evaluation report and determination of initial eligibility, dated February 22, 2012;
 - c. Prior Written Notices, dated February 24, 2012, May 23, 2012, September 25, 2012 and December 19, 2012;
 - d. Individualized Education Program (IEP), dated December 19, 2012;
 - e. The student's IEP developed by XXXXXXX City, dated March 25, 2014;
 - f. The XXXXXXX City Department of Education description of class staffing ratios;

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- g. The student registration form for enrollment at XXXXXXXXXXXXXXXX School, signed by the complainant and the school staff on January 5, 2015, and the school staff's note indicating receipt of the student's most recent IEP, and the Affidavit of Disclosure, signed by the school staff on January 5, 2015;
- h. The school staff's report of a classroom observation performed on January 9, 2015;
- i. The facsimile transmission to XXXXXXXXXXXX ES, on January 13, 2015, of the student's March 25, 2015 IEP developed by XXXXXXXX City;
- j. The child find referral, dated January 16, 2015;
- k. Electronic mail (Email) messages between the complainant and the school system staff, January 2015 to March 2015;
- l. Notice of an IEP team meeting scheduled for January 27, 2015, dated January 20, 2015;
- m. Notice of the February 5, 2015 IEP team meeting, and Prior Written Notice of the February 5, 2015 IEP team meeting;
- n. The PGCPS assessment report, dated February 5, 2015;
- o. Prior Written Notice of the February 10, 2015 IEP team meeting, and IEP, dated February 10, 2015;
- p. The student registration form for enrollment at XXXXXXXXXXXXXXXXXXXX School, signed by the complainant on February 11, 2015;
- q. The student record card documenting the student's withdrawal from XXXXXXXXXXXXXXXX School on April 22, 2015;
- r. The PGCPS Department of Special Education Process Guide, dated May 2012; and
- s. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on December 14, 2015.

BACKGROUND:

The student is six (6) years old. He enrolled in XXXXXXXXXXXXXXXX School in January 2015, after he and the complainant relocated to Prince George's County, Maryland from XXXXXXXX. At that time, he was identified as a student with Autism under the IDEA, and had an IEP requiring specialized instruction and related services (the XX IEP) (Docs. e, k and s).

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 (Docs. m and o).

FINDINGS OF FACTS:

1. The PGCPS has developed a Special Education Process Guide that provides guidelines that address students with IEPs who transfer from another state (the PGCPS Guidelines). The PGCPS guidelines set forth the following procedures:

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- The student must register at his/her boundary school.¹
 - The special education chairperson shall immediately review the student's records, including the IEP, to determine the appropriate services, and then consult with the student's parent to determine how services will be provided at the new school.
 - An IEP team meeting must be scheduled within thirty (30) days of the student's enrollment "to formally review the student's IEP and either adopt the previous IEP or develop a new IEP" (Doc. r).
2. The PGCPS Guidelines state that "if it is clear that the student's previous IEP requires significant services that cannot be provided at the boundary school, the school system staff should be contacted immediately to discuss placement options consistent with the IEP." However, the school system staff report that they are unable to place the student outside of his/her boundary school until the IEP team convenes (Doc. r and interview with the school system staff).
3. The PGCPS Guidelines do not indicate that schools are required to implement a student's IEP developed from another State, as written, until the IEP team determines comparable services. However, the PGCPS guidelines do state that the school "should provide services comparable to those the student received at the previous school," and that the school "should make every effort to provide a similar program" (Doc. r).
4. There is documentation that XXXXXXXX developed an IEP for the student, dated March 25, 2014 (the XX IEP). The XX IEP included fourteen (14) annual goals, and required that the student be provided with specialized instruction in a separate special education classroom. In addition, the XX IEP specifically provided that the student's classroom include no more than six (6) students,² with one (1) special educator and one (1) paraprofessional. The XXXXXXXX City Department of Education's description of the special class staffing ratio of "6:1:1" reflects that this class is for students who require very intense structured individual programming, continual adult supervision, and individual strategies to encourage students to engage in all tasks (Docs. e, f, k and s).

¹ The school system staff report that a student's boundary school is the school that he/she would attend if he/she did not have a disability (Interview with the school system staff).

² It also reflects that the XX IEP team considered, but rejected, placement of the student in a larger class size of twelve (12) students (Doc. e).

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5. The XX IEP required that the student be provided with individual occupational therapy services three (3) times per week, individual physical therapy services three (3) times per week, individual speech and language therapy services three (3) times per week, and individual counseling services once per week (Doc. e).
6. There is documentation that, on January 5, 2015, the complainant and the school staff completed the registration process to allow the student to enroll at XXXXXXXXXX XXXXXXXXXX School (XXXXXXXXXXXXX). At this time, the school staff had been provided with the student's XX IEP documenting that he was a student with a disability requiring specialized instruction and related services (Doc. g).
7. Although XXXXXXXXXX did not provide a separate special education classroom, the school staff were directed by the PGCPs Central Office staff to enroll the student in the school (Doc. k and interviews with the parties).
8. On January 9, 2015, the school staff observed the student and documented that, while in a class with twenty-seven (27) students and one (1) teacher, the student was crawling, calling out, rocking, leaving his seat, and attempting to leave the classroom. The documentation further reflects that the student did not participate in the classroom tasks, had difficulty expressing his thoughts and with transitions, needed prompting, redirecting and assistance, and needed his hand held and guided for writing (Doc. h).
9. On January 12 and 16, 2015, the complainant requested an IEP team meeting (Doc. k).
10. On January 20, 2015, the school staff scheduled an IEP team meeting for January 27, 2015. The invitation notice reflects that the purpose of the meeting was to determine the student's eligibility for special education services. Due to a weather-related school closure, the IEP team did not convene on January 27, 2015. The school staff rescheduled the IEP team meeting for February 5, 2015 (Docs. k - m).
11. On January 21, 2015, the complainant sent an email to the school staff requesting that the student's XX IEP be implemented (Doc. k).
12. There is no documentation that the school staff implemented the student's XX IEP, and there is no documentation that the IEP team determined comparable services (Review of the student's educational record and interview with the school system staff).

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13. On February 5, 2015, the IEP team convened. The IEP team reviewed the results of assessments previously conducted by the PGCPs,³ assessments conducted by XXXXXXXX, the XX IEP, and current observations and informal assessments. Based on this information, the IEP team determined that no additional data was needed in order to identify the student as a student with a disability. The IEP team agreed to develop an initial Maryland IEP for the student (Docs. m and n).
14. On February 10, 2015, the IEP team reconvened to develop a Maryland IEP for the student. The IEP team determined that the student requires specialized instruction in a separate special education classroom of no more than six (6) students in a public separate day school. The IEP team identified XXXXXXXXXXXXXXXXXXXXXXXXXX as the school for the student to attend. The complainant provided consent for special education services, and elected to transport the student until bus transportation could be arranged (Doc. o).
15. On February 11, 2015, the complainant withdrew the student from XXXXXXXXXXXX and enrolled him at XXXXXXXXXXXXXXXXXXXXXXXXXX (Docs. a and p).
16. There is no documentation that the student was provided with speech and language services, occupational therapy services, physical therapy services, and counseling services while enrolled at XXXXXXXXXXXX. The school system staff report that the student did not attend school at XXXXXXXXXXXX, and was therefore unavailable for such services. However, the student's attendance record reflects that he was present for eight (8) days, and was absent eleven (11) days, while enrolled at XXXXXXXXXX XXX (Doc. a, review of the student's educational record, and interview with the school system staff).
17. On April 27, 2015, the complainant withdrew the student from XXXXXXXXXXXX XXXXXXXXXXXX. The complainant reports that the family relocated to XXXXXXXXXX where they continue to reside, and where the student currently attends school receiving specialized instruction and related services pursuant to an IEP (Doc. q and interview with the complainant).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that each student with a disability is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .103).

³ In 2012, when the student was a student in the PGCPs, the PGCPs conducted assessments of the student and determined that he is a student with a disability requiring specialized instruction and related services (Docs. b - e).

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If a student with an IEP in one state transfers to a public agency in another state, the new public agency, in consultation with the student's parent, must provide the student with a Free Appropriate Public Education (FAPE). The new public agency must implement the student's IEP from the previous public agency as written, until the new public agency determines comparable services, or conducts an evaluation, if determined to be necessary, and develops, adopts, and implements a new IEP, if appropriate (34 CFR §300.323).

"Comparable services" is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, as determined by the IEP team in the new public agency [emphasis added] (Analysis of Comments and Changes to IDEA, Federal Register, Vol. 71, No. 156, p. 46681, August 14, 2006).

Based on the Findings of Facts #1 - 17, the MSDE finds that the PGCPS did not implement the student's XX IEP, and did not convene a meeting to determine comparable services. Therefore, this office finds that the PGCPS did not ensure that the student was provided with a FAPE and that a violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the PGCPS to provide documentation, by April 1, 2016, of efforts made to contact the complainant and obtain information regarding the school system in which the student is now receiving educational services. The PGCPS must also provide documentation of efforts made to convene an IEP team meeting with the new school system in order to determine compensatory services for the violations identified in this Letter of Findings.

Systemic

The MSDE requires the PGCPS to provide documentation by May 1, 2016, of the steps it has taken, including appropriate staff training, to ensure compliance by all PGCPS schools with the IDEA and related State requirements that students who transfer to a PGCPS school with an IEP developed by another State must be provided with FAPE, and specifically, that the PGCPS must implement the out of state IEP as written until it determines comparable services, or at such time as the public agency conducts an evaluation, if necessary, and develops, adopts, and implements a new IEP, if appropriate, in accordance with 34 CFR §§300.323.

Documentation of all corrective action taken is to be submitted to this office to: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Bireunbaum, 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 requirement as 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 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:ksa

c: Kevin Maxwell
Gwendolyn Mason
Kerry Morrison
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