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February 19, 2016

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Mrs. Joan M. Rothgeb
Director of Special Education
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #16-062

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 21, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX 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 did not ensure that the student was consistently provided with special education instruction in reading and math, by a highly qualified special education teacher, from December of 2014¹ to June of 2015, in accordance with 34 CFR §300.18.

¹ While the complainant alleged that the violations have occurred for a longer period of time, she was notified, in writing, that only those violations of the IDEA that are alleged to have occurred within one year of the filing of a State complaint may be addressed through the State complaint procedure (34 CFR §300.153).

XXX

Mrs. Joan M. Rothgeb

February 19, 2016

Page 2

2. The PGCPS has not ensured that the student's Individualized Education Program (IEP) addresses the student's occupational therapy needs since December 2014¹, in accordance with 34 CFR §§300.320 and 324.
3. The PGCPS has not ensured that the student was provided the services of a dedicated assistant to work with him on a one-on-one basis since September of 2015, as required by the IEP, in accordance with 34 CFR §§300.101 and .323.
4. The PGCPS has not ensured that the student was provided the services of a "scribe" during instruction and testing, since August of 2015, as required by the IEP, in accordance with 34 CFR §§300.101 and .323.
5. The PGCPS did not ensure proper procedures were followed when determining that the student did not require Extended School Year (ESY) services during the summer of 2015, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08B.

INVESTIGATIVE PROCEDURES:

1. On December 21, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS.
2. On January 4, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and her advocate, Ms. Debrah Martin, and identified the allegations for investigation.
3. On January 6, 2016, 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 allegation and requested that the school system review the alleged violations.
4. On January 7, 2016, Mr. Loiacono contacted Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS, to arrange a document review and site visit.
5. On February 1, 2016, Mr. Loiacono and Albert Chichester, Complaint Investigator, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record and interviewed the following school staff:
 - a. Mr. XXXXXXX, School Psychologist;
 - b. Mr. XXXXXXXXXXX, Special Educator and Case Manager;
 - c. Mr. XXXXXXXXXXX, Principal;
 - d. Ms. XXXXXXXXXXX, Occupational Therapy Instructional Specialist; and
 - e. Ms. XXXXXXXXXXX, Academic Dean.

XXX

Mrs. Joan M. Rothgeb

February 19, 2016

Page 2

Ms. Morrison 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 January 21, 2015, the PGCPS provided the MSDE with documentation to be considered.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated May 7, 2015;
 - b. IEP, dated January 12, 2015;
 - c. IEP, dated January 6, 2016;
 - d. Prior Written Notice, dated January 16, 2015
 - e. Prior Written Notice, dated June 18, 2015;
 - f. Prior Written Notice, dated November 4, 2015;
 - g. Prior Written Notice, dated November 16, 2015;
 - h. Prior Written Notice, dated December 5, 2015;
 - i. Prior Written Notice, dated January 7, 2016;
 - j. Teacher Meeting Agendas and Planning Materials, various dates;
 - k. Electronic mail from PGCPS staff to MSDE, dated February 4, 2016;
 - l. Occupational Therapy Assessment, dated December 28, 2015; and
 - m. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on December 21, 2015.

BACKGROUND:

The student is fifteen years old and attends XXXXXXXXXXXXXXXX. 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 (Docs. c).

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 (Docs. a-i).

ALLEGATION #1: QUALIFIED PERSONNEL

FINDINGS OF FACTS:

1. The IEP requires that the student be provided with special education instruction in a separate special education classroom by a special education teacher (Docs. a-c).

XXX

Mrs. Joan M. Rothgeb

February 19, 2016

Page 4

2. The PGCPS staff acknowledges that the student was not provided with special education instruction from teachers who hold certifications in special education or in the content areas in which instruction was provided. There is documentation that the instruction was provided by staff who worked with teachers who hold certifications in the content areas in which instruction was provided. However, these supervising teachers did not hold teaching certifications in special education (Docs. j and k).

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 means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography (34 CFR §300.10). However, this requirement does not create a right of action on behalf of an individual student or class of students for the lack of the provision of instruction by an individual who is not highly qualified (34 CFR §300.18).

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*, United States Department of Education, Office of Special Education Programs (OSEP), January 2007).

Paraprofessionals and assistants may be used to assist in the provision of special education and related services to students with disabilities if they are appropriately trained and supervised (*Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities*, OSEP, January 2007).

Based on Findings of Facts #1 and #2 the MSDE finds that the teachers assigned to provide instruction to the student did not hold the required teaching certifications nor have they provided instruction under the supervision of a teacher with the required certifications. Therefore, this office finds that a violation occurred with respect to the allegation.

XXX

Mrs. Joan M. Rothgeb

February 19, 2016

Page 5

Notwithstanding the violation identified, because the teacher qualification requirements do not create a right of action for a student, no student specific corrective action is required.

ALLEGATION #2: OCCUPATIONAL THERAPY NEEDS

FINDINGS OF FACTS:

3. The May 7, 2014 IEP developed for the student identified fine motor weaknesses which impacted the student's ability to write legibly. The IEP team developed fine motor skill goals related to copying sentences, writing within borders and spacing between words. The IEP includes occupational services for the student to be provided indirectly on a monthly basis through a consultation between the occupational therapist and the student's teachers, and quarterly through direct meetings between the occupational therapist and the student (Doc. a).
4. On January 12, 2015, the IEP team revised the IEP and continued the provision of occupational therapy services. However, the fine motor skills goals were discontinued. The IEP team did not document the basis for this decision (Docs. b and d).
5. On both June 12, 2015 and November 4, 2015, the IEP team met at the request of the complainant to address her concerns about whether the IEP addresses the student's occupational therapy needs. In both instances, the team was unable to address the complainant's concerns about the student's occupational therapy needs because the appropriate staff were not in attendance to address her concerns (Docs. e and f).
6. On November 11, 2015, the IEP team met to conduct a reevaluation. Based on the complainant's concerns with the student's occupational therapy needs, the IEP team recommended that an occupational therapy assessment be completed (Doc. g).
7. On January 6, 2016, the IEP team met and discussed the results of the occupational therapy assessment. The assessment identified weaknesses in handwriting, typing, and physical stamina. The IEP was revised to require the provision of support on the use of "adapted equipment, positioning needs, organizational strategies and modifications to instructional manipulatives" (Docs. c and i).

DISCUSSION/CONCLUSIONS:

The public agency is required to develop an IEP that includes special education and related services designed to meet the unique needs of each student that arise from the student's disability. In developing an IEP, the team must consider concerns of the parent, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

XXX

Mrs. Joan M. Rothgeb

February 19, 2016

Page 6

Based on Findings of Facts #3-7, the IEP team did not consider the concerns of the complainant about the occupational therapy needs of the student from June 12, 2015 to November 11, 2015, when the IEP team met and addressed those concerns. The MSDE finds that this resulted in a delay in addressing the student's needs, and therefore finds that a violation occurred with respect to this allegation.

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

FINDING OF FACT:

8. The PGCPs staff acknowledge that due to lack of adequate staffing, the occupational therapy services required by the IEP were not consistently provided to the student from December 2014 to the present (Doc. k and interview with the PGCPs staff).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student is provided with the special education instruction and related services required by the student's IEP (34 CFR §300.101). In this case, based on Findings of Fact #10, the MSDE finds that a violation occurred.

ALLEGATION #3: PROVISION OF A "DEDICATED ASSISTANT" SINCE SEPTEMBER 2015

FINDINGS OF FACTS:

9. The student's IEP, developed on January 12, 2015, requires the provision of a "dedicated assistant" (Doc a).
10. The PGCPs staff acknowledge that the student has not been consistently provided with a "dedicated assistant" since September 2015 (Doc. k and interview with the PGCPs staff).

DISCUSSION/CONCLUSIONS:

As stated above, 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 and .323). Based on Findings of Facts #9-10, the MSDE finds that a violation occurred with respect to this allegation.

ALLEGATION #4: PROVISION OF A “SCRIBE” SINCE AUGUST 2015

FINDINGS OF FACTS:

11. The student’s IEP, developed on January 12, 2015, requires the provision of a “scribe”, on a daily basis, during instruction and testing (Doc a).
12. There is no documentation to that the services of a “scribe” have been provided to the student (Review of Record).

DISCUSSION/CONCLUSIONS:

As stated above, 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 and .323). Based on Findings of Fact #11-12, the MSDE finds that a violation occurred with respect to this allegation.

ALLEGATION #5: DETERMINATION OF EXTENDED SCHOOL YEAR SERVICES FOR THE SUMMER OF 2015

FINDINGS OF FACTS:

13. On January 14, 2015, the IEP team determined that the student does not require Extended School Year (ESY) services during the summer of 2015. The documentation states that it based its decision on the determination that the student “does not have critical life skills in his IEP and does not qualify for ESY” (Doc. b).
14. On June 8, 2015, the IEP team reconvened to address the complainant’s concerns about the ESY services decision made on January 14, 2015. At that meeting, the team determined that the student does not require ESY services because he did not demonstrate regression of skills during breaks that occurred during the regular school year. However, the IEP team did not document its consideration of other factors that must be considered when making the ESY decision (Doc. e).

DISCUSSION/CONCLUSIONS:

ESY services are an individualized extension of specific services beyond the regular school year that are designed to meet specific goals included in the student’s IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of a Free Appropriate Public Education (FAPE) by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)).

XXX

Mrs. Joan M. Rothgeb

February 19, 2016

Page 8

When determining whether ESY services are required for the provision of FAPE, the IEP team must consider all of the factors below:

1. Whether the student's IEP includes annual goals related to critical life skills;
2. Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time;
3. The student's degree of progress toward mastery of the annual IEP goals related to critical life skills;
4. The presence of emerging skills or breakthrough opportunities;
5. Interfering behaviors;
6. The nature and severity of the disability; and
7. Special circumstances (COMAR 13A.05.01.08B (2) (b)).

After considering the required factors, the IEP team must decide whether the benefits that a student receives from the education program during the regular school year will be significantly jeopardized if the student is not provided with ESY services (MM v. School District of Greenville Co. (S.C.), 303 F3d. 523, 37 IDELR 183 (4th Cir. 2002)). The school system must provide written notice to the parent of the team's decisions regarding the student's need for ESY services. This includes informing the parent of the decisions and providing the parent with an explanation of the basis for the decisions (34 CFR §300.503(b)).

Based on the Findings of Facts #13 and #14, the MSDE finds that the IEP team did not follow proper procedures when making the ESY services decisions on January 14, 2015 and June 8, 2015 because it did not document its consideration of all of the required factors. Therefore, this office finds that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by April 1, 2016 that an adult staff member is assigned to work exclusively with the student each day, in accordance with his IEP.

The MSDE also requires that the PGCPS provide documentation by April 1, 2016 that "scribe" services and occupational therapy services are provided to the student, in accordance with his IEP.

The MSDE further requires the PGCPS to provide documentation by May 1, 2016 that the IEP team has determined the compensatory services to remediate the violations identified through this investigation.

Similarly-Situated Students

The MSDE requires the PGCPS to provide documentation by June 1, 2016 that it has identified similarly-situated students who did not receive the amount of occupational therapy services required by their IEP. For each student identified, the PGCPS must provide documentation that those services are now being provided and that an IEP team has convened and determined the amount compensatory services needed to remediate the violation.

School-Based

The MSDE further requires that, the PGCPS provide documentation by June 1, 2016 that steps have been taken to ensure supervision of non-credentialed teachers by those with special education and subject matter credentials.

In addition, the MSDE requires the PGCPS to provide documentation by June 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 XXXXXXXXXXXXXXXX.

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 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

XXX

Mrs. Joan M. Rothgeb

February 19, 2016

Page 10

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
XXXXXXX
Marcella E. Franczkowski
Anita Mandis
Gerald Loiacono