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Interim State Superintendent of Schools

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April 28, 2016

Ms. Jessica Williams
Education Due Process Solutions, LLC
9602 Canterbury Riding
Laurel, Maryland 20723

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: #16-081

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 March 9, 2016, the MSDE received a complaint from Ms. Jessica Williams, the complainant, on behalf of the above-referenced student and her mother, Ms. XXXXXXXXXXXX. 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 allegation that the PGCPS has not ensured that proper procedures were followed to provide the student with a Free Appropriate Public Education (FAPE) since her transfer to the PGCPS at the start of the 2015 – 2016 school year, in accordance with 34 CFR §§300.101, .103, and .323.

INVESTIGATIVE PROCEDURES:

1. On March 10, 2016, 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.
2. On March 17, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant about the allegation. On the same date, the complainant provided documentation to the MSDE.
3. On March 18, 2016, 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.
4. On March 22, 2016, the MSDE requested documentation from the PGCPS.
5. On April 11 and 19, 2016, the PGCPS provided documentation to the MSDE.
6. On April 19, 2016, Ms. Austin and Ms. Ms. Nicole Green, Dispute Resolution Analyst, MSDE, conducted a site visit at XXXX High School to review the student's educational record, and interviewed Ms. XXXXXXXXXXX, Special Education Coordinator, XXXXXX High School. Ms. Morrison participated in the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The PGCPS Department of Special Education Process Guide, Chapter Thirteen, IEPs From Other Jurisdictions, May 2012;
 - b. The PGCPS Student Enrollment Guide, July 28, 2009;
 - c. The PGCPS "Request for Information" form, undated;
 - d. The student's withdrawal form identifying her withdrawal from Anacostia High School, dated August 24, 2015;
 - e. The student's registration form, dated September 9, 2015, and the school staff's sign-in sheet of student registrations on September 9, 2015;
 - f. The student's enrollment history for the 2015 - 2016 school year;
 - g. The student's IEP developed by the XXXXXX Public Schools, dated November 20, 2013; and
 - h. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on March 9, 2015.

BACKGROUND:

The student is seventeen (17) years old. She enrolled in XXXXX High School for the 2015 - 2016 school year, after her family relocated to Maryland from the XXXXXX. At that time, she was identified as a student with a Specific Learning Disability under the IDEA, and had an IEP requiring specialized instruction and supports (XXX IEP) (Docs. d - h).

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 Special Education Guidelines). The PGCPs Special Education Guidelines set forth the following procedures:
 - The student must register at his/her boundary school.¹ The boundary school “must immediately (within three [3] business days) contact the student’s previous school to request the complete and official record, whether or not the parent provides copies of records.”
 - The special education chairperson must 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.
 - The special education chairperson must schedule an IEP team meeting “no later than (30) days after the student enrolls” to review the student’s IEP and either adopt the previous IEP or develop a new IEP (Doc. a).
2. With respect to students with incomplete records, the PGCPs Special Education Guidelines require the following additional procedures:
 - The receiving school must document all efforts to obtain the student’s records from the previous school. If the records are not received in a reasonable amount of time, an emergency IEP meeting must be convened to determine the student’s needs.
 - The IEP team must “consider whether a reevaluation is required when the meeting is convened to either adopt the previous IEP or develop a new IEP.”

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

- The IEP team must “conduct an expedited reevaluation if the new student does not have evaluation data or an IEP that clearly indicates the student’s needs and services. Assessment shall be conducted and reviewed by the IEP team within twenty (20) days of the evaluation meeting. A new IEP shall also be developed at that meeting” (Doc. a).
3. The PGCPs Student Enrollment Guide requires the registrar to notify the Special Education Building Contact (SEBC) person² “once a student with an IEP is identified” (Doc. b).
 4. The PGCPs has developed a form to request a student’s educational record from another school (Doc. c).
 5. On August 24, 2015, the student withdrew from XXXXX High School, a XXXXX Public School (Doc. d).
 6. On September 9, 2015, the student enrolled at XXXXXX High School. On the same date, as part of the registration process, the student’s mother completed the student registration form developed by the PGCPs. The registration form reflects that the student’s mother checked the box indicating that she has an IEP (Docs. e and f).
 7. There is no documentation that the registrar notified the special education chairperson that the student has an IEP (Interview with the school system staff).
 8. There is no documentation that the school staff contacted the student’s previous school, within three (3) business days of her enrollment at XXXXXX High School, to request her “complete and official record” (Interview with the school system staff and review of the student’s educational record).
 9. There is documentation that the XXXXXX Public Schools developed an IEP for the student, dated November 20, 2013, identifying her as a student with a disability based on a Specific Learning Disability (the XXX IEP) (Doc. g).
 10. The XXX IEP required that the student receive five (5) hours of specialized instruction in a separate special education classroom, and eleven and one-half (11.5) hours of specialized instruction in the general education classroom, in order to assist the student in achieving the six (6) annual IEP goals in the areas of reading, math and written expression. The XXX IEP also reflected that the student required accommodations and

² The school system staff report that the SEBC is typically the special education chairperson (Interview with the school system staff).

supplementary supports, including repetition of directions, simplification of oral directions, the use of calculators, small group testing and preferential seating (Doc. g).

11. In March 2016, the student's mother met with the school staff to discuss the student's grades. The parties agree that, during this meeting, the student's mother discussed that the student previously had an IEP (Interviews with the parties).
12. There is no documentation of any efforts by the school staff, since the student's enrollment on September 9, 2015, to obtain her educational record, including her special education records, from her previous school in the XXXXXX³ (Interview with the school system staff).
13. There is no documentation that the special education chairperson has consulted with the student's parent to determine how the services required by the student's XXX IEP will be provided (Interview with the school system staff).
14. There is no documentation that the IEP team has convened to review the student's XXX IEP, and either adopt the XXX IEP or develop a new IEP. While the school staff report that an IEP team meeting has been scheduled for April 29, 2016, to conduct an initial evaluation of the student, there is no documentation that the school staff have provided the student's mother with notice of such meeting (Interview with the school system staff and review of the student's educational record).
15. The school system staff acknowledge that the student's XXX IEP has not been implemented and that the IEP team has not determined comparable services (Review of the student's educational record and interview with the school system staff).

DISCUSSION/CONCLUSIONS:

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” are 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

³ The school system staff report that recent efforts, via telephone calls, have been made to obtain the student's special education records from the XXXX Public Schools (Interview with the school system staff).

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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).

In order to ensure the provision of appropriate services to a transferring student, the new public agency must take reasonable steps to promptly obtain the student's educational record, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled (34 CFR §300.323).

Based on the Findings of Facts #1 - #8, and #12, the MSDE finds that the PGCPs did not follow proper procedures, including its own PGCPs procedures, to obtain the student's complete educational record from her previous school in the XXXXXX, and to convene an IEP team meeting to review the student's IEP and either adopt the previous IEP or develop a new IEP, or conduct an evaluation. Therefore, the MSDE finds a violation occurred with regard to this aspect of the violation.

Based on the Findings of Facts #6, #9 - #11, and #13 - #15, the MSDE finds that the PGCPs did not implement the student's XXX IEP. Therefore, this office finds a violation because the PGCPs did not ensure that the student was provided with a FAPE, and that the violation is ongoing.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the PGCPs to provide documentation, by June 1, 2016, that the following actions have taken place:

1. Efforts have been made to obtain the student's complete educational record, including special education records, from her previous school in the XXXXXX, consistent with the PGCPs procedures; and
2. The IEP team has reviewed the student's XXX IEP,⁴ and decided to adopt it or has made revisions to the IEP. If the IEP team decides that an evaluation is required, documentation must be provided that it is conducted on an expedited basis;
3. The IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the violation, and developed a plan for the provision of those services with one (1) year of the date of this Letter of Findings.

⁴ The MSDE obtained the student's XX IEP from the complainant and provided it to the PGCPs on April 13, 2016.

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School-Based/Systemic

In the Letter of Findings of the investigation of State Complaint #16-060, dated February 4, 2016, the MSDE has already required 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. Specifically, the MSDE required that the PGCPS 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.

By copy of this Letter of Findings, the MSDE is informing Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, of the continuous violation, and requesting that this information be considered when reviewing the corrective action required in State Complaint #16-060.

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 Bireunbaum 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

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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

c: Kevin Maxwell
Shawn Joseph
Gwendolyn Mason
LaRhonda Owens
Kerry Morrison
XXXXXXXXX
Anita Mandis
K. Sabrina Austin
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