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May 16, 2016

Ms. Gretchen Levine
Educational Consultant
Eric A. Levine & Associates
6733-C Clifton Road
Frederick, Maryland 21703

Mrs. Joan Rothgeb
Director of Special Education
Prince George's County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #16-087

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 March 18, 2016, the MSDE received a complaint from Ms. Gretchen Levine, Educational Consultant, hereafter, "the complainant," on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXX. 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 provide the parent with a draft Individualized Education Program (IEP) at least five (5) business days before it was considered at the February 1, 2016 IEP team meeting, in accordance with COMAR 13A.05.01.07.
2. The PGCPS has not ensured the provision of additional adult support to assist with the collection of student data, and to assist the student with maintaining positive behaviors in the school setting, transitioning during the school day, providing redirection, and the

provision of accommodations, since December 2015, as required by the IEP, in accordance with 34 CFR §§300.101 and .323.

3. The PGCPS has not ensured that the student has been provided with a “supportive wooden chair with sides” and modified worksheets since December 2015, as required by the IEP, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On March 18, 2016, the complainant provided the MSDE with documentation to be considered.
2. On March 21, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS.
3. On March 22, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
4. On March 25, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Mrs. Rothgeb of the allegations to be investigated and requested that her office review the alleged violations.
5. On April 28, 2016, Mr. Chichester and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a site visit to the XXXXXXXXX Elementary School to review the student’s educational record, and interviewed Ms. Tynetta Dempsey, CSEP Coordinator. Ms. Kerry Morrison, Central Office 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. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated October 14, 2015;
 - b. IEP, dated February 1, 2016;
 - c. Meeting summary, dated February 5, 2016;
 - d. Meeting summary, dated March 23, 2016;
 - e. Correspondence, dated between January 26, 2016 and January 29, 2016, among school staff members;
 - f. Correspondence, dated between March 8, 2016 and March 17, 2016, among PGCPS Central Office staff and school staff members; and
 - g. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on March 18, 2016.

BACKGROUND:

The student is seven (8) years old and is identified as a student with Multiple Disabilities under the IDEA, including an Intellectual Disability and Other Health Impairments, related to Attention Deficit Hyperactive Disorder (ADHD), and a seizure disorder. He has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services (Docs. a and b).

During the time period covered by this investigation, the parent participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a and b).

ALLEGATION #1 PROVISION OF DOCUMENTS

FINDINGS OF FACTS:

1. On February 1, 2016, the IEP team convened to review and revise the student's IEP. Although a draft IEP was reviewed at the meeting, the draft was not provided to the parent until the day of the meeting (Doc. g).
2. At the February 1, 2016 IEP meeting, the school staff explained to the parent that the teacher responsible for completing the draft IEP was a new staff member who had difficulties maneuvering through the Maryland Online IEP system, which resulted in a delay in the development of a draft IEP (Docs. e and g).

DISCUSSION/CONCLUSIONS:

The public agency must provide parents with a copy of each assessment, report, data chart, draft IEP, or other documents that the IEP team plans to discuss at the meeting at least five (5) business days before the meeting (COMAR 13A.05.01.07D).

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP documents were not provided to the parent five (5) days before the February 1, 2016 IEP meeting. Therefore, this office finds that a violation has occurred with respect to this allegation.

However, failure of school personnel to comply with this COMAR regulation does not constitute a substantive violation of the requirement to provide a Free Appropriate Public Education (FAPE) (Md. Code Ann., Educ., §8-405)(g)). Therefore, notwithstanding the violation, the MSDE further finds that the lack of the provision of documentation to the parent, five (5) days prior to the IEP meeting, does not require student-specific corrective action.

ALLEGATION #2 PROVISION OF ADULT SUPPORT

FINDINGS OF FACTS:

3. The IEP in effect in December 2015 documents that the student will be provided with additional adult support to assist with the collection of student data and to assist the student with maintaining positive behaviors in the school setting, transitioning during the school day, providing redirection, and the provision of accommodations (Docs. a and b).
4. Until December 2015, the student was assigned an adult assistant who was providing support exclusively to him. While the school was recruiting for new staff to replace that individual, who had been promoted, a para-educator and a crisis resource staff member were assigned to the classroom to provide additional adult support to student. However, school staff further report that while they worked with the student on a daily basis, they were unable to consistently provide all of the supports required by the IEP (Docs. c, d, g, and an interview with the school staff).
5. The school system staff correspondence documents that a new staff member was obtained and began providing support exclusively to the student as of April 5, 2016 (Doc. f and an interview with the school staff).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student is provided with the special education and supplementary aids and services required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings, of Facts #3 - #5, the MSDE finds that while the student was provided with additional adult support, he did not consistently receive all the supports required by the IEP while there was a vacancy in the adult assistant position. Therefore, this office finds that a violation has occurred with respect to this allegation.

ALLEGATION #3 PROVISION OF A SUPPORTIVE WOODEN CHAIR AND MODIFIED WORKSHEETS

FINDINGS OF FACTS:

6. The IEP in effect in December 2015 documents that the student is to be provided with a “supportive wooden chair with sides” and modified worksheets to assist with fine motor instructional activities (Docs. a and b).
7. During the site visit to XXXXXXXX Elementary School, the MSDE staff noted that the student’s classroom has a wooden chair with a high back and arms assigned to the student, which is used for proper positioning for writing activities. However, school staff report that the student also uses a plastic chair while engaged in other activities that involve fine motor

skills, including the use of the computer (MSDE observation and an interview with the school staff).

8. On March 7, 2016, the complainant observed the student on a school day in the classroom and reports that the student was not prompted by the teacher to use his wooden chair while engaged in writing activities (Doc. g and an interview with the complainant).
9. The MSDE noted that the student's "writing notebook" contains modifications, which included models of words and sentences written by an adult that enable the student to practice writing by tracing the words scribed by the adult. However, the worksheets which are provided to the student are not modified in content from those used by other students (Docs. a, b, g, and an interview with the school staff).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student is provided with the special education and supplementary aids and services required by the IEP (34 CFR §§300.101 and .323).

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).¹

Supportive Wooden Chair

Based on the Findings of Facts #6 and #7, the MSDE finds that the student is provided with the use of a wooden chair with arms for some, but not all, fine motor activities.

Further, based on the Findings of Facts #7 and #8, the MSDE finds that the IEP is not written clearly with respect to whether the wooden chair is required for all fine motor activities, and if not, the types of fine motor activities that require the use of the wooden chair. Therefore, this office finds that a violation occurred with regard to this allegation.

Modified Worksheets

Based on the Findings of Facts #6 and #9, the MSDE finds that while the student is provided with modifications for writing, there is no documentation that the student has been provided with modified worksheets. Therefore, this office finds that a violation occurred with regard to this allegation.

¹ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by the start of the 2016-2017 school year that the IEP team has reviewed and revised the IEP to provide clarification regarding how the wooden chair is to be utilized how the modified worksheets are to be provided. The MSDE also requires the IEP team to determine whether the violations related to the provision of modified worksheets and the IEP not clearly indicating when the wooden chair is to be used had a negative impact on the student's ability to benefit from the education program. If the team determines that there is a negative impact, then it must determine the amount and nature of compensatory services or other remedy to redress the violations.

The PGCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the PGCPS to provide documentation by July 31, 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 the XXXXXXXX Elementary 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.

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 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

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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 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:ac

c: XXXXXXXX c/o Gretchen Levine
 Kevin Maxwell
 LaRhonda Owens
 Kerry Morrison
 XXXXXXXX
 Dori Wilson
 Anita Mandis
 Albert Chichester