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State Superintendent of Schools

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September 22, 2010

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Ms. Joan Rothgeb
Interim Director of Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #11-004

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 June 3, 2010 and July 23, 2010,¹ MSDE received a complaint from Ms. XXXXXXXX, hereafter, "the complainant," on behalf of her daughter. 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. MSDE investigated the following allegations:

1. PGCPS did not provide the complainant with an opportunity to participate in the Individualized Education Program (IEP) team meeting on September 24, 2009,² in accordance with 34 CFR §300.322, COMAR 13A.05.01.07D, and MSDE policy guidance on the audio recording of IEP team meetings, dated February 7, 2006;

¹ On June 14, 2010, this office sent correspondence to the complainant informing her of the legal requirement that a State complaint include a proposed remedy that the local school system could provide in order to resolve the complaint, and that this office could not initiate an investigation into the allegations until such a remedy was provided. On July 23, 2010, the complainant's attorney provided, by facsimile, a proposed remedy on the complainant's behalf.

² This office initially identified the allegation as relating to a September 2, 2009 IEP team meeting. However, during the course of the investigation, this office became aware that the date of the meeting was actually September 24, 2009 (Docs. a and b).

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2. PGCPS has not provided the complainant with prior written notice of the IEP team's determinations since September 2009, in accordance with 34 CFR §300.503;
3. PGCPS has not followed proper procedures when responding to the complainant's request to amend the student's education record since September 2009, in accordance with 34 CFR §§300.618-.621;
4. PGCPS has not ensured that the IEP addresses the student's behavioral needs since September 2009, in accordance with 34 CFR §§300.301-.305 and .324; and
5. PGCPS has not ensured that an occupational therapy (OT) assessment has been conducted as recommended by the IEP team in November 2009, in accordance with 34 CFR §§300.101 and .301-.305 and COMAR 13A.05.01.06E.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On or about June 11, 2010, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone and explained that IDEA contains a requirement that a State complaint include a proposed remedy that the local school system could provide in order to resolve the complaint. Ms. Mandis also indicated that this office could not initiate an investigation into the allegations until such a remedy was provided.
3. On June 14, 2010, Ms. Dori Wilson, Chief, Complaint Investigation and Due Process Branch, MSDE, sent correspondence to the complainant, which reiterated that this office could not initiate an investigation into the complainant's allegations until she provided the proposed remedy.
4. On July 23, 2010, Ms. Diana Savit, attorney for the complainant, spoke with Ms. Mandis regarding the proposed remedy requirement and clarified the allegations to be investigated. On the same date, Ms. Savit provided, by facsimile, a proposed remedy on behalf of the complainant.
5. On July 26, 2010, MSDE sent a copy of the complaint, via facsimile, to Ms. Joan Rothgeb, Interim Director of Special Education, PGCPS; and Ms. Gail Viens, Associate Counsel, PGCPS.
6. On July 30, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Ms. Rothgeb of the allegations and requested that her office review the alleged violations.

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7. On August 10, 2010, Ms. Stump conducted a review of the student's education record at XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX). Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS, was present at the record review.
8. On September 2, 2010, Ms. Stump and Ms. Mandis conducted a site visit at XXXXXXXXXXXXXXX and interviewed the following PGCPS staff:
 - a. Mr. XXXXXXXX, School Psychologist, PGCPS;
 - b. Ms. XXXXXXXX, Principal, XXXXXXXXXXXXXXX; and
 - c. Mr. XXXXXXXXXXXXXXX, Assistant Principal, XXXXXXXXXXXXXXX.

Ms. XXXXXXXXXXX, IEP Team Chairperson, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX) participated in the site visit by telephone conference. Ms. Cheryl Riddick, Compliance Instructional Assistant, PGCPS, attended the site visit as a representative of PGCPS and to provide information on PGCPS policies and procedures, as needed.

9. On September 2, 7, and 8, 2010, Ms. Stump reviewed audio recordings of IEP team meetings held on September 24, 2009, October 8, 2009, and November 12, 2009. The complainant provided these recordings to MSDE with her complaint
10. On September 7, 2010, Ms. Stump unsuccessfully attempted to contact Mr. Roger Thomas, General Counsel, PGCPS, by telephone, to obtain information regarding the allegations in the complaint.
11. On September 9, 2010, Ms. Stump unsuccessfully attempted to contact Mr. Thomas, via electronic mail (e-mail), to obtain information regarding the allegations in the complaint.
12. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. Correspondence and attachments from the complainant to MSDE, dated June 3, 2010;
 - b. Correspondence and attachments from the complainant's attorney to MSDE, dated July 23, 2010;
 - c. IEP, dated April 29, 2009;
 - d. PGCPS Student Registration Form, dated August 24, 2009;
 - e. Functional Behavioral Assessment and Behavioral Intervention Plan, dated September 28, 2009;
 - f. IEP and meeting summary, dated October 8, 2009;
 - g. IEP team meeting summary, dated November 12, 2009;
 - h. E-mail correspondence from school staff to the complainant, dated April 2010;
 - i. IEP team meeting summary, dated May 17, 2010;
 - j. Signed consent for OT assessment, dated May 17, 2010;

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- k. E-mail correspondence from school staff to the complainant, dated June 14, 2010; and
- l. PGCPS "School MAX" attendance data print-out for the student for the 2009-2010 school year.

BACKGROUND:

The student is eight (8) years old, is identified as a student with an other health impairment under IDEA, related to a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD), and receives special education and related services. During the 2008-2009 school year, the student attended XXXXXXXXXXXX at the request of the complainant. On April 29, 2009, the student was identified as a student with a disability and an initial IEP was developed.

On August 24, 2009, the complainant enrolled the student at XXXXXXXXXXXX, her neighborhood school. During the period of time addressed by this investigation, the complainant was provided with notice of the procedural safeguards (Docs. a-d, f, g, i, and j).

ALLEGATION #1:

**OPPORTUNITY TO AUDIO RECORD THE
SEPTEMBER 24, 2009 IEP TEAM MEETING**

Findings of Fact:

1. There is documentation that, on September 2, 2009, the complainant informed school staff, via e-mail, that she intended to audio record the IEP team meeting that was scheduled to be held on September 24, 2009 (Doc. a).
2. There is documentation that the complainant began to record the IEP team meeting on September 24, 2009. PGCPS personnel informed her that she had to discontinue recording because school staff could not record as they did not have audio cassette tapes and therefore they were unable to also record the meeting. Before the complainant discontinued audio recording, she recorded a discussion that documents that school staff knew in advance that she intended to record the meeting and that school staff believed that recording of IEP team meetings could only occur if there was mutual agreement of the parties (Docs. a, b, and review of the audio recording of the September 24, 2009 IEP team meeting).
3. The documentation of the September 24, 2009 IEP team meeting indicates that the team began reviewing the student's program and progress, but did not complete the review due to time constraints. The team agreed to reconvene and IEP team meetings were held on October 8, 2009 and November 12, 2009 to complete the IEP review process. On each of these subsequent dates, the complainant was permitted to audio record the meetings (Docs. f, g, and review of audio recordings of IEP team meetings).

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4. PGCPS personnel indicate that it is the school system's practice to allow recording of IEP team meetings only when school staff also record the meeting. However, PGCPS personnel also acknowledge that it has no written policy regarding this limitation of a parent's ability to record IEP team meetings (Interview with PGCPS personnel).

Discussion/Conclusions:

The public agency must take steps to ensure that a parent of a student with a disability is present at each IEP team meeting or is afforded the opportunity to participate in the meeting. In this case, the complainant alleges that because she was not permitted to record the September 24, 2009 IEP team meeting, she was denied the ability to participate in the meeting (Docs. a and b).

Neither IDEA nor COMAR specifically addresses the use of audio recording devices at IEP team meetings and no other federal statute authorizes or prohibits the recording of an IEP team meeting by either a parent or a public agency. The United States Department of Education, Office of Special Education Programs (OSEP) has stated that a state educational agency or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP team meetings. However, if a public agency has a policy that prohibits or limits the use of recording devices at IEP team meetings, the policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP team process or to implement other parental rights guaranteed under IDEA (OSEP Letter to Anonymous, 40 IDELR 70, June 4, 2003).

Pursuant to IDEA, the State education agency (SEA) is responsible for ensuring that each public agency carries out the requirements of IDEA and that each public agency's educational program for students with disabilities meets the educational standard of the SEA (34 CFR §300.149). In February 2006, MSDE issued guidance to public agencies regarding the recording of IEP team meetings. The guidance indicates that MSDE does not have a policy that limits or prohibits the use of audio recording devices, and that each public agency may develop such a policy. The MSDE guidance further states that if the public agency determines that the audio recording of IEP meeting will be limited, it is required to ensure that its *written* policy is consistent with the intent of IDEA and any guidance issued by MSDE, the United States Department of Education, or applicable laws and that a copy of the written policy must be submitted to this office. As there is no regulatory requirement that specifically requires the use of audio recording devices at IEP team meetings, MSDE finds no regulatory violation with regard to this allegation.

However, based on Finding of Fact #4, MSDE finds that PGCPS has acknowledged that it limits the ability of parents to audio record IEP team meetings to instances where the school staff is also prepared to audio record the meeting, but does not have a written policy to that effect. Based on Findings of Fact #1 and 2, MSDE further finds that PGCPS prohibited the complainant from recording the September 24, 2009 IEP team meeting. Therefore, MSDE finds that PGCPS has not complied with written guidance from MSDE and a violation has occurred.

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Notwithstanding the violation of MSDE policy, based on Finding of Fact #3, MSDE finds that there is documentation that the complainant was permitted to record the subsequent IEP team meetings held in October 2009 and November 2009 to complete the review of the student's program. Therefore, MSDE requires no student-specific corrective action to redress the violation.

**ALLEGATION #2: PRIOR WRITTEN NOTICE OF IEP TEAM MEETINGS
SINCE SEPTEMBER 2009**

Findings of Fact:

5. The IEP team met to review the student's program and progress on September 24, 2009, October 8, 2009 and November 12, 2009, and revised the IEP following the November 12, 2009 meeting. The IEP states that revisions were effective October 9, 2009 (Docs. f and g).

6. The complainant reports that she received a copy of the November 12, 2009 IEP in January 2010, and there is no documentation that the complainant was provided with written notice of decisions made at the IEP meetings prior to January 2010 (Doc. a and review of student's education record).

7. The IEP team reconvened on May 17, 2010 to consider the student's need for extended school year (ESY) services. There is documentation that school staff provided the complainant with written notice of the decisions made at this meeting electronically on June 14, 2010 (Docs. i, k, and review of student's education record).

Discussion/Conclusions:

At least annually, the IEP team shall determine whether the student requires ESY services. This determination should be made early enough in the school year to allow the parent sufficient time to exercise procedural safeguard rights if the parent disagrees with the proposal made by the public agency. Each public agency must ensure that a parent of a student with a disability is notified of the availability of ESY services. That notice must include information regarding the ESY decision making process. All procedural safeguards, including the provision of written notice of the IEP team's decision regarding the student's need for ESY services, are applicable to the provision of ESY services (34 CFR §§300.309 and .503, COMAR 13A.05.01.03B(23), COMAR 13A.05.01.08B(2), and MSDE Technical Assistance Bulletin 5, July 2003).

The public agency is required to provide parents with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student (34 CFR §300.503).

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Based on Findings of Fact #5 and 6, MSDE finds that there is no documentation that PGCPs provided the complainant with notice of the team's decisions *prior* to the implementation of those decisions. Further, based on Finding of Fact #7, MSDE finds that although school staff provided the complainant with written notice of the determination regarding ESY services, it did not do so early enough in the school year so that the complainant could exercise her parental rights, if she chose to do so, in accordance with the requirements of COMAR. Therefore, MSDE finds a violation with regard to this allegation since September 2009.

ALLEGATION #3: **RESPONSE TO THE COMPLAINANT'S REQUEST TO
AMEND THE STUDENT'S EDUCATION RECORD**

Findings of Fact:

8. On October 29, 2009, the complainant's attorney sent correspondence to PGCPs personnel indicating the belief that school staff's notes of the September 24, 2009 IEP team meeting, which were read to the team at the October 8, 2009 meeting, were "incomplete" and requested that notes taken by the complainant's attorney on her behalf be attached to those taken by school-based team members and included in the student's education record (Doc. b).

9. There is no documentation that PGCPs personnel responded to the complainant's October 29, 2009 request (Review of student's education record and attempted telephone and e-mail contacts with PGCPs General Counsel).

Discussion/Conclusions:

A parent of a student with a disability who believes that information in the student's education record is inaccurate, misleading, or violates the privacy or other rights of the student may request the public agency that maintains the information to amend the record (34 CFR §300.618). If the public agency refuses to amend the information in accordance with the request, it must inform the student's parent of the refusal and advise the parent of the right to request a hearing conducted by the public agency³ to challenge the information in the student's education record to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student (34 CFR §300.619).

If, as the result of the hearing, the public agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must amend the information accordingly and inform the student's parent in writing. If, as a result of the hearing, the public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must inform the parent of the parent's right to place in the record a statement regarding information in the record or to set forth any reasons for disagreeing with the decision of the agency (34 CFR §300.620).

³ This hearing is conducted within the local school system and is not a due process hearing conducted by the Office of Administrative Hearings, pursuant to 34 CFR §§300.508-.515.

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Any explanation placed in the student's education record must be maintained by the public agency as part of the record of the student as long as the record or contested portion is maintained by the public agency. If the education record of the student or the contested portion is disclosed by the public agency to any party, the explanation must also be disclosed to the party (34 CFR §300.620).

Based on Findings of Fact #8 and 9, MSDE finds that there is no documentation that PGCPSS has ensured that proper procedures have been followed in response to the complainant's request to amend the student's education record. Therefore, MSDE finds a violation with regard to the allegation.

**ALLEGATION #4: IEP THAT ADDRESSES THE STUDENT'S BEHAVIORAL
NEEDS SINCE SEPTEMBER 2009**

Findings of Fact:

10. The IEP in effect in September 2009 was developed as an initial IEP at a team meeting on April 29, 2009. The documentation of the meeting indicates that the team considered the evaluative data, including the report of a parentally-obtained neuro-psychological evaluation, which indicates that the student has, in addition to her academic needs, behavioral needs related to ADHD in the area of attentiveness, impulsivity, hyperactivity, and executive functioning. Based on that data, the team determined that the student has, in addition to her academic needs, behavioral needs in the areas of social-emotional functioning, self-management skills, and attention (Doc. c).
11. The documentation of the April 29, 2009 meeting indicates that the IEP team determined that the student required the following in order to address the identified behavioral needs:
 - a. Annual goals to assist the student with improving her self-control, organizing, and maintaining attention;
 - b. Special education instruction in reading and math in both the general education classroom and a separate special education classroom;
 - c. Instructional and testing accommodations, including verbatim reading of the entire test, visual cues, graphic organizers, extended time, and reduced distractions to the student; and
 - d. Supplementary aids and services, including, modified classwork and homework assignments, organizational routines and checklists, and breaking assignments into smaller pieces (Doc. c).

12. On September 24, 2009, when the IEP team reconvened to consider the student's progress toward achieving the annual goals being addressed since April 2009, the team determined that a functional behavior assessment (FBA) and a behavioral intervention plan (BIP) were necessary in order to address problems the student was demonstrating with respect to "social skills, adaptability, self-concept, off-task behavior, poor concentration, and low self-esteem" (Doc. e).
13. Following IEP meetings held on September 24, 2009, October 8, 2009, and November 12, 2009, a FBA was conducted and a BIP developed. The BIP includes strategies such as the use of verbal praise, graphic organizers, immediate feedback, a behavior chart, and preferential seating to address the behaviors identified in the FBA, which include distracting herself with "inappropriate noises from her mouth, sucking on her arm, putting the book on her head, and playing in her desk" (Docs. e-g and review of audio recordings of IEP team meetings).
14. A review of the attendance data indicates that during the 2009-2010 school year, the student missed thirty-five (35) days of school and was late to school on sixty (60) days. There is documentation that the student's attendance and tardiness became a problem that interfered with her learning (Doc. l).
15. The audio recording of the November 12, 2009 IEP team meeting documents that the assistive technology (AT) evaluator reported to the team that during her interview with the student, the student shared that she does not like to come to school "when kids are mean" to her and that the student provided her with specific examples of this behavior (Review of audio recording of November 12, 2009 IEP team meeting).
16. There is documentation that at the May 17, 2010 IEP team meeting, the team raised the concern about the student's absences and the impact of those absences on her ability to learn. Although the complainant reported that the student's absences were due to anxiety, the school-based members of the IEP team indicated that they did "not see evidence of anxiety." However, the team agreed that the school psychologist would meet with the student to address the complainant's concerns (Doc. i).
17. Interview information indicates that the school psychologist met with the student after the May 17, 2010 IEP team meeting and that the student acknowledged that she did not like coming to school because the "kids tease" her and because the work is "too hard." The school psychologist indicated that he shared this information with school staff informally on May 27, 2010, but acknowledged that he has not shared the information with the complainant or with the IEP team (Interview with school staff).
18. Neither the BIP nor the IEP addresses the student's school attendance needs and there is no documentation that the team has considered how to address those needs (Docs. e, f, and review of education record).

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Discussion/Conclusions:

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. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based on Findings of Fact #10-13, MSDE finds that there is documentation that the IEP in effect in September 2009 identified and addressed the student's behavioral needs related to her ADHD. However, based on Findings of Fact #14-18, MSDE finds that there is no documentation that the IEP team has addressed the student's school attendance needs since November 2009. Therefore, MSDE finds a violation with regard to this allegation.

ALLEGATION #5: CONDUCTING OF ASSESSMENTS

Findings of Fact:

19. There is documentation that at the October 8, 2009 and November 12, 2009 IEP team meetings, the complainant requested that the student be evaluated for a specific learning disability. A review of the audio recording of the November 12, 2009 IEP team meeting documents that the school-based members of the IEP team indicated that there was no data that led them to suspect that the student has a specific learning disability. However, there is no documentation that the IEP team provided the complainant with written notice of this decision (Docs. f, g, review of the audio recording of the November 12, 2009 IEP team meeting, and review of student's education record).
20. There is documentation that at the November 12, 2009 IEP team meeting, the team determined that an OT assessment was necessary in order to determine if the student had needs in this area. However, the complainant did not provide written consent for the assessment to be conducted until May 17, 2010 (Doc. g).
21. There is documentation that school staff attempted to obtain the complainant's consent to conduct the OT assessment in April 2010, but there is no documentation that school staff took steps to obtain her consent prior to that date (Doc. h, interview with school staff, and review of education record).
22. School staff report that since the complainant provided written consent in May 2010, she has not made the student available for conducting the OT assessment. However, there is no documentation to support this assertion. As of the date of this LOF, there is no documentation that the OT assessment has been completed (Interview with PGCPS personnel and review of education record).

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Discussion/Conclusions:

The public agency must ensure that a re-evaluation of a student with a disability is conducted if the student's parent requests a re-evaluation (34 CFR §300.303). As part of a re-evaluation, the IEP team must review existing data on the student and on the basis of that review, and input from the student's parents, identify what additional data, if any, is needed to determine the educational needs of the student (34 CFR §300.305).

If the IEP team determines the need for additional data, the public agency shall conduct assessment procedures and the IEP team shall review and revise, as appropriate, the student's IEP within ninety (90) days of the IEP team meeting at which the additional data was determined necessary. If the team determines that no additional data is needed, it must give written notice that includes the right of the parent to request a public agency to conduct assessment procedures. A public agency is not required to conduct assessment procedures unless requested to do so by the student's parent, among other reasons (COMAR 13A.05.01.06E).

A public agency must obtain informed parental consent prior to conducting any re-evaluation of a student with a disability. If the parent refuses to consent to the re-evaluation, the public agency may, but is not required to pursue the re-evaluation by using the consent override procedures of IDEA. The informed parental consent need not be obtained if the public agency can demonstrate that it made reasonable efforts to obtain such consent and the student's parent has failed to respond (34 CFR §300.300).

OT Assessment

Based on Findings of Fact #20 and 21, MSDE finds that there is no documentation that school staff took reasonable steps to obtain the complainant's written consent to conduct the OT assessment until April 2010. Based on Finding of Fact #22, MSDE further finds that there is no documentation that the OT assessment determined necessary at the November 12, 2009 IEP team meeting has been completed. Therefore, MSDE finds a violation with regard to this aspect of the allegation.

Evaluation for Specific Learning Disability

Based on Finding of Fact #19, MSDE finds that there is documentation that the complainant requested that the student be evaluated for a specific learning disability, and that the school-based members of the IEP team determined that the evaluative data did not indicate a reason to suspect a specific learning disability. However, based on that same Finding, MSDE also finds that the IEP team did not provide the complainant with written notice of this decision, including the right to request an assessment be conducted. Therefore, MSDE finds a violation with regard to this aspect of the allegation.

ADDITIONAL VIOLATIONS:

Maintenance of the Student's Education Record

Finding of Fact:

23. The following documents were not maintained in the student's education record:
 - a. The student's IEP, dated April 29, 2009;
 - b. The report of the results of the AT assessment, that was reviewed at the November 12, 2009 IEP team meeting;
 - c. IEP team summaries from the IEP team meetings during the 2009-2010 school year; and
 - d. The complainant's notes, provided through her attorney, from the September 24, 2009 IEP team meeting, which the complainant requested be included in the student's education record (Review of education record).

Discussion/Conclusions:

In order to ensure that students are provided with services in accordance with the requirements of IDEA, each public agency must accurately record information about each student, as specified in the Maryland Student Records System Manual (Manual) (COMAR 13A.08.02.04 and 13A.08.02.28). The Manual requires that each public agency maintain a copy of the student's IEP and related documentation of the student's program in the student's education record.

Based on Finding of Fact #23, MSDE finds that the student's education record does not include all of the information required. Therefore, MSDE finds that violations have occurred with respect to the proper maintenance of the student's education record.

Transfer of the Student's Education Record Within PGCPS Schools

Findings of Fact:

24. There is documentation that the student was enrolled in XXXXXXXXXXXX on August 24, 2009 and that the complainant indicated on the enrollment form that the student is a student "with an IEP" (Doc. d).
25. A review of the audio recording of the October 8, 2009 IEP team meeting indicates that school staff stated, "we are just receiving" the record from the student's previous school. There is no documentation of a request by school staff for the record from the previous school (Review of audio recording of October 8, 2009 IEP team meeting).

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Discussion/Conclusions:

To facilitate the transition of a student with a disability who transfers from one public agency to another within the same State, the public agency must take reasonable steps to promptly obtain the student's records, 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 Findings of Fact #24 and 25, MSDE finds that XXXXXXXXXXXXXXXXXXXX staff did not take steps promptly to obtain the student's education record upon her transfer, as required. Therefore, MSDE finds that violations occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

MSDE requires PGCPs to provide documentation no later than December 1, 2010, of the following:

1. The OT assessment determined necessary at the November 12, 2009 IEP team meeting has been conducted;
2. The complainant has been provided with written notice regarding her right to request an amendment of the student's education record and her right to a hearing should XXXXXXXX XX refuse to amend the record according to her request; and
3. The complainant has been provided with proper written notice of the IEP team's determination that no additional data is needed to determine whether the student is a student with a specific learning disability.

Additionally, MSDE requires PGCPs to provide documentation by December 1, 2010, that an IEP team meeting has convened. At the meeting, the team must:

1. Consider the results of the OT assessment, if it is conducted, and revise the student's IEP, if appropriate, based on that review;
2. Ensure that the IEP addresses the student's behavioral needs as they relate to school attendance; and
3. Determine the nature and amount of *compensatory services*⁴ necessary to redress the violations identified in the LOF.

⁴ Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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PGCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

School-based

MSDE requires PGCPS to provide documentation by January 15, 2011, of the steps it has taken to determine if the procedural violation related to prior written notice is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXX. If there is a pattern of noncompliance, PGCPS shall also provide MSDE with documentation of the steps that have been taken to ensure compliance with the requirements, including a description of how it will evaluate the effectiveness of the steps taken to ensure that the violation does not recur.

Systemic

MSDE requires PGCPS to provide documentation of the following by January 15, 2011:

1. PGCPS has a written policy in place regarding the limitations that it places on a parent's ability to audio record an IEP team meeting, that the policy has been submitted to MSDE as required by the February 2006 MSDE guidance, and that those limitations are provided to the parents; and
2. PGCPS has a written policy in place regarding requests to amend student education records and that the policy has been disseminated to appropriate PGCPS personnel.

The MSDE Office of Quality Assurance and Monitoring (QAM) is monitoring the maintenance of education records in PGCPS through the Monitoring for Continuous Improvement and Results activities. Therefore, no specific corrective action is required to redress the violation related to maintenance of education records. This LOF is being shared with QAM for their use with this activity.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties 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 LOF. The additional written documentation must not have been

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provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. If additional information is provided, it will be reviewed and 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 LOF.

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 FAPE for the student, including issues subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAH:ks

cc : William R. Hite
Bonita Coleman-Potter
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXXX
Dori Wilson
Martha Arthur
Kathy Stump