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State Superintendent of Schools

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September 24, 2010

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

RE: XXXXX
Reference: #11-005

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 August 4, 2010, MSDE received a complaint from Ms. XXXXXXXX, hereafter, "the complainant," filed on behalf of her son. In that correspondence, the complainant alleged that 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. This office investigated the following allegations:

1. PGCPS did not follow proper procedures when determining the student's proposed educational placement for the 2010-2011 school year, in accordance with 34 CFR §§300.114 and .116;
2. PGCPS did not ensure that proper procedures were followed in response to the complainant's June 14, 2010 request for an Individualized Education Program (IEP) team meeting, as required by 34 CFR §§300.324 and .503; and

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3. PGCPS has not ensured that the IEP developed for the 2010-2011 school year includes appropriate measureable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, independent living skills, and transition services, in accordance with 34 CFR §300.320 and COMAR 13A.05.01.09.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 4 and 19, 2010 MSDE received correspondence from the complainant that contained allegations of violations of IDEA.
3. On August 6, 2010, a copy of the complaint was provided by facsimile to Ms. Joan Rothgeb, Interim Director of Special Education, PGCPS; Ms. Gail Viens, Deputy General Counsel, Office of Legal Counsel, PGCPS; and Ms. Kerry Morrison, Compliance Specialist, PGCPS.
4. On August 9, 2010, Ms. Moyo contacted the complainant by telephone to clarify the allegations to be investigated.
5. On August 16, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. MSDE also notified Ms. Rothgeb of the allegations to be investigated and requested that her office review the alleged violations.
6. On August 26, 2010, Ms. Moyo reviewed the student's education record at PGCPS Central Office and was provided with documentation from the student's education record. Ms. Morrison attended the record review as a representative of PGCPS and to provide information about school system policies and procedures, as needed.
7. On September 8, 2010, PGCPS provided MSDE with additional documentation from the student's education record.
8. On September 16, 2010, MSDE conducted a phone interview with the complainant. On the same date, PGCPS provided additional information to MSDE via electronic mail.
9. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Correspondence from the complainant to MSDE, received August 4 and 19, 2010;
 - b. Psychological assessment report, dated May 9, 2008;
 - c. Educational assessment report, dated August 12, 2008
 - d. Individualized Service Plan from XXXXXXXXXXXX, dated February 13, 2009;

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- e. Achievement test report, dated November 17 and 19, 2009;
- f. Speech and language assessment report, dated December 16, 2009;
- g. Correspondence from the PGCPs Private, XXXXXX and XXXXXX office to the PGCPs Child Find office, dated April 20, 2010;
- h. Notice of an expedited IEP team meeting, dated May 14, 2010;
- i. Consent for assessment, dated May 20, 2010;
- j. IEP team meeting sign-in sheet, dated May 20, 2010;
- k. Assessment referral form, dated May 20, 2010;
- l. PGCPs release to receive information from XXXXXXXXXXXX, dated May 20, 2010;
- m. Statement regarding the student's health from the student's physician, dated June 1, 2010;
- n. Assistive technology assessment report, dated June 7, 2010;
- o. IEP, dated June 8, 2010;
- p. Correspondence from the complainant to XXXXXXXXXXXXXXXXXXXX staff, dated June 14, 2010;
- q. Electronic mail correspondence from PGCPs to MSDE, dated August 23, 2010;
- r. Electronic mail correspondences between PGCPs staff regarding scheduling an IEP team meeting with the complainant, dated August 23 and 24, 2010;
- s. Notice of an IEP team meeting, dated September 3, 2010; and
- t. Electronic mail correspondence from PGCPs to MSDE, dated September 16, 2010.

BACKGROUND:

The student is fourteen (14) years old and is identified as a student with an other health impairment under IDEA related to attention deficit hyperactivity disorder (ADHD). During the 2009-2010 school year, the student attended XXXXXXXXXXX (XXXXXXXX), a private school, where he was placed by the complainant.

Since the start of the 2010-2011 school year, the student has been enrolled in PGCPs and is attending XXXXXXXXXXX. During the period of time addressed by this investigation, the student's mother participated in the education decision-making process and was provided with notice of the procedural safeguards, as required (Docs. a, d, f – k, n, p and interviews with PGCPs staff and the complainant).

ALLEGATION #1

DETERMINING THE EDUCATIONAL PLACEMENT FOR THE 2010-2011 SCHOOL YEAR

Findings of Fact:

- 1. On May 20, 2010, an IEP team meeting was convened in response to the complainant's April 2009 request that PGCPs develop the student's IEP for the 2010-2011 school year. At the meeting, the team reviewed the following:

- a. The student's IEP from XXXXXXXX which indicates, among other things, that the student is at a fourth to sixth grade instructional level, that the student needs to improve his ability to work independently and that the student is eager to participate in class; and
 - b. The complainant's concern that the student be provided with a placement that addresses his "learning style" by providing him with small classes, individual attention, and frequent repetition of the material being taught; and
 - c. A report of the student's private school which indicates that most of the student's classes consisted of ten (10) or less students with two (2) teachers in the classroom. The report further indicates that the student was able to transition independently between classes, was provided with a word processing assistive technology (AT) device to assist with writing and was provided with a tutor twice a week to help catch up with school work following absences from school due to illness (Docs. a and d – h).
2. Based on its review, the IEP team determined that additional data was necessary in order to develop the IEP and the IEP team recommended that an AT assessment and classroom observation be conducted. Additionally, the complainant provided written consent for school staff to obtain copies of the psychological and educational assessments from the student's education record at XXXXXXXX (Docs. d, f, and i – l).
3. On June 8, 2010, the IEP team re-convened and considered the following:
- a. An education assessment report from XXXXXXXX which indicates that the student is performing in the low average range in the areas of reading comprehension and fluency, the low average to average range in the area of written language, and in the average to low average range in the area of mathematics calculations, fluency, and practical problem solving;
 - b. The results of the PGCPs AT assessment and classroom observation, which state that the student would benefit from a setting with reduced distractions and that the student needs assistance in the areas of planning and organization. The report also indicates that the student continues to require the use of a word processing device and that after a trial period of using the AT device, the IEP team should re-convene to determine if its use is effective for the student; and
 - c. A psychological assessment report from XXXXXXXXXXXXXXXXXXXX which states that the student's ADHD may negatively impact his ability to move forward academically and that as a result the student should be placed in a separate special education classroom with a low teacher to student ratio, where he could receive more individualized attention. The report also indicates that the student should be in a classroom setting that minimizes distractions, by allowing him to sit near the front or near the teacher where he could easily be monitored (Doc. b – f and n).

4. At the June 8, 2010 IEP meeting, after reviewing the data, the team determined the student's educational placement for the 2010-2011 school year. The documentation indicates that the team considered whether the IEP could be implemented in a general education classroom and decided that the least restrictive environment (LRE) in which the IEP can be implemented is a separate special education classroom taught by a special education teacher with the provision of supplementary aids and supports, including:
- a. Assistance with organizing and maintaining materials;
 - b. Checking assignment sheets for accuracy;
 - c. Modifying school materials , as needed;
 - d. Varying methods of instruction;
 - e. Reduction of written work;
 - f. Restating and rephrasing directions;
 - g. Extended time to complete assignments;
 - h. The use of graphic organizers in content area;
 - i. Specialized instructions for assignments; and
 - j. Preferential seating away from distractions (Doc. o).

Discussion/Conclusions:

When determining the educational placement for a student with a disability, the placement decision must be made by an IEP team in conformity with the requirement that students be educated in the LRE (34 CFR §300.116). To the maximum extent appropriate, the student must be educated with students who are not disabled. The removal of the student from the regular education environment may occur only if the nature or severity of the student's disability is such that being educated in the regular education classroom with the use of supplemental aids and services cannot be achieved satisfactorily. Unless the IEP of a student requires some other arrangement, the student is educated in the school setting that the student would attend if not disabled (34 CFR §§300.114-116).

Based on Findings of Fact #1 – 4, MSDE finds that when the team met on May 20, 2010 and June 8, 2010, they reviewed the evaluative data and considered a placement in the general education classroom with the use of supplementary aids and services. However, based upon this review, the IEP team determined that the LRE for the student is a separate special education classroom with the use of supplementary aids and services. Therefore, MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION #2:

RESPONSE TO THE COMPLAINANTS REQUEST FOR AN IEP TEAM MEETING

Findings of Fact:

5. On June 14, 2010, following the June 8, 2010 IEP meeting, the complainant sent correspondence to PGPCS requesting that an IEP team meeting be convened to consider her request that the IEP be implemented in a nonpublic school (Doc. p).

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6. In response to the complainant's request, PGCPs scheduled an IEP team meeting for August 20, 2010. On August 18, 2010, the complainant notified school staff that she intended to bring her attorney to the meeting. At that time, PGCPs and the complainant agreed to reschedule the meeting so that PGCPs staff could ensure that their attorney could also attend the meeting (Docs. q, r, and interviews with PGCPs staff and the complainant).
7. On September 3, 2010, a meeting invitation was sent to the complainant for an IEP team meeting scheduled for September 15, 2010 (Doc. s).
8. On September 8, 2010, the complainant requested that the IEP team meeting scheduled for September 15, 2010 be rescheduled to accommodate her attorney's schedule. As of today's date, the parties are in the process of determining a mutually convenient date for the meeting (Docs. s, t, and interviews with PGCPs staff and the complainant).

Discussion/Conclusions:

The public agency must ensure that the IEP team reviews each student's IEP periodically, but not less than annually. In addition, the public agency must ensure that the IEP is reviewed, as appropriate to address information about the student provided to or by the parents (34 CFR §300.324). If a parent requests an IEP team meeting and the public agency rejects the request, the public agency must provide the parent with prior written notice of the decision, including the basis of the decision (34 CFR §300.503).

Based on Findings of Fact #5, 6, and 7, MSDE finds that PGCPs followed proper procedures when scheduling the August 20, 2010, IEP team meeting in response to the complainant's request. Additionally, based on Finding of Fact #8, MSDE finds that the parties are continuing to determine a mutually convenient time in which to convene a meeting to address the complainant's concerns. Therefore, MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION #3

DEVELOPING A TRANSITION PLAN

Finding of Fact:

9. There is no documentation that a transition assessment was conducted or that a transition plan has been developed for the student (Doc. o and review of the student's education record).

Discussion/Conclusions:

The public agency must ensure that beginning not later than the first IEP that is in effect when a student turns fourteen (14) years old, and younger, if appropriate, the IEP must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and independent living, as appropriate. It must also ensure that the IEP includes the course of study and services needed to assist the student in achieving those goals (34 CFR §300.320(b) and COMAR 13A.05.09 (A)(3)).

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Based on Finding of Fact #9, MSDE finds that although the student is fourteen (14) years old, PGCPs has not ensured that a transition plan has been developed for the student, as required. Therefore, MSDE finds that a violation has occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINE:

MSDE requires PGCPs to ensure that an IEP team meeting is convened no later than November 30, 2010, to develop a transition plan based on an age-appropriate transition assessment. At the meeting the IEP team must also determine whether the delay in developing the transition plan has negatively impacted the student's ability to benefit from his educational program. If the team determines that there has been a negative impact, then it must determine the nature and amount of *compensatory services*¹ necessary to remediate the violation.

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

Documentation of completion of the required actions 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 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.

¹ 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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Questions regarding the findings of fact, conclusions, and corrective actions contained in this LOF 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 free appropriate public education for the student, including issues subject to a State complaint investigation, in accordance with IDEA. MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

CAH/km

c: William R. Hite
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