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State Superintendent of Schools

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November 12, 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: #11-020

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.

ALLEGATION:

On September 16, 2010, MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, "the complainant," on behalf of her son. 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 allegation that PGCPS has not followed proper procedures when identifying and evaluating the student to determine if he is a student with a disability requiring special education and related services, since September 2009¹, in accordance with 34 CFR §§300.301-.311 and COMAR 13A.05.01.06.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.

¹ The complaint alleges violations dating back to 2001. However, the complainant was informed in writing on September 21, 2010, that this office only has authority to investigate allegations of violations of IDEA that occurred not more than one (1) year prior to the date that the complaint is received, in accordance with 34 CFR §300.153.

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2. On September 16, 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.
 3. On September 20, 2010, Ms. Stump spoke with the complainant and clarified the allegation to be investigated.
 4. On September 21, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified Ms. Rothgeb of the allegation and requested that her office review the alleged violation.
 5. On October 1, 2010, Ms. Stump reviewed the student's education record at XXXXX High School (XXXXXX). Ms. XXXXXXX, Special Education Department Co-Coordinator, XXXXXXXXXXXX, PGCPS, was present at the record review.
 6. On October 14, 2010, Ms. Stump and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, conducted a site visit at XXXXXXXXXXX and interviewed the following PGCPS personnel:
 - a. Ms. XXXXXXX, Special Education Department Co-Coordinator, XXXXXXXXXXX;
 - b. Mr. Jason Mathison, School Pyschologist, PGCPS; and
 - c. Ms. Cordelia Polley, Special Education Coordinator, XXXXXXXXXXXXXXXXXXXX, PGCPS.
- Ms. Barbara VanDyke, Assistant Supervisor, Compliance, PGCPS, attended the site visit as a representative of PGCPS and to provide information on PGCPS policies and procedures, as needed.
7. On November 1, 2010, PGCPS provided MSDE with additional documentation from the student's education record, via electronic mail (e-mail).
 8. 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, received September 16, 2010;
 - b. School Instructional Team Notes, dated January 23, 2008;
 - c. Correspondence from the complainant to school staff at XXXXXXXXXXXXXXXXXXXX XXXX (XXXXXXXXXXXXXXXX), dated January 23, 2008;
 - d. Correspondence from XXXXXXXXXXXXXXXXXXXX to XXXXXXXXXXXXXXX staff, dated February 8, 2008;
 - e. PGCPS *Parent/Guardian Questionnaire*, dated February 11, 2008;
 - f. PGCPS *School Student ARD Referral*, dated February 13, 2008;
 - g. PGCPS *Present Levels of Educational Performance*, dated March 28, 2008;

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- h. Correspondence from the complainant to PGCPS personnel, dated August 26, 2010;
- i. IEP team meeting invitation for a September 15, 2010 meeting;
- j. IEP team meeting sign-in sheet, dated September 15, 2010;
- k. *PGCPS Notice and Consent for Assessment*, dated September 16, 2010;
- l. Psychological Assessment report, dated October 12, 2010;
- m. Educational Assessment report, dated October 28, 2010;
- n. IEP team meeting invitation for a November 5, 2010 meeting; and
- o. Electronic mail (e-mail) correspondence from XXXXXXXX personnel to MSDE, dated November 10, 2010.

BACKGROUND:

The student is sixteen (16) years old and attends XXXXXXXX. He has a 504 Accommodations Plan, pursuant to the Rehabilitation Act of 1973, based on a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD). On November 5, 2010, the IEP team completed its initial evaluation and determined that the student is a student with a disability under IDEA as a student with an other health impairment, related to the ADHD diagnosis, and is eligible to receive special education and related services.

During the period of time addressed by this investigation, the complainant participated in the education decision-making process, and was provided with written notice of IEP team decisions and notice of the procedural safeguards as required (Docs. a, b, h-o, and interview with PGCPS personnel).

FINDINGS OF FACT:

1. There is documentation contained in the student's education record that an evaluation to determine the student's eligibility under IDEA was started during the 2007-2008 school year but there is no documentation that the evaluation was completed (Docs. b-g and review of education record).
2. On August 26, 2010, the complainant made another request that her son be evaluated under IDEA to determine if he is a student with a disability eligible for special education services (Doc. h).
3. The IEP team convened on September 15, 2010, to consider the complainant's request for an evaluation. The documentation of the meeting indicates that team determined that additional data was needed to make the eligibility determination and recommended that psychological and educational assessments to be conducted (Docs. i-k).
4. There is documentation that the assessments were completed in October 2010 and that the IEP team convened on November 5, 2010 in order to review the results of the assessment and determine the student's eligibility under IDEA. School staff reported, in an e-mail to MSDE, that, at this meeting, the team determined that the student is a student

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with a disability under IDEA. School staff also report that the team will reconvene to develop the student's IEP, but no date for this meeting has yet been determined (Docs. 1-o and interview with PGCPs personnel).

DISCUSSION/CONCLUSIONS:

The "child find" requirements of IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services or are suspected of having disabilities and being in need of special education and related services (34 CFR §300.111). The IEP team must complete an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral. (34 CFR § 300.301 and COMAR 13A.05.01.06(A)). The public agency must ensure that a meeting to develop an IEP for a student is conducted within thirty (30) days of the determination that the student needs special education and related services (34 CFR §300.323).

At least five (5) business days before a scheduled IEP team meeting, the student's parent must receive an accessible copy of each assessment, report, data chart, draft IEP, or other document the team plans to discuss at the meeting. If the public agency is unable to provide an accessible copy of the materials because of extenuating circumstances, it must communicate the nature of the extenuating circumstance to the student's parent and document that communication (Md. Code Ann., Educ., §8-405 (2010)).

Based on the above Findings of Fact, MSDE finds that PGCPs did not ensure that the evaluation of the student that began in the 2007-2008 school year was completed within the required timelines and therefore did not meet its child find obligations. Since this office only has the authority to resolve allegations of violations that occurred within one year of the date the complaint was filed, MSDE finds a violation with respect to the allegation since September 2009.¹

CORRECTIVE ACTIONS/TIMELINE:

Student-specific

MSDE requires PGCPs to convene an IEP team meeting no later than December 5, 2010, which is thirty (30) days from the date of eligibility determination meeting in order to develop the student's IEP. MSDE reminds PGCPs of its obligation under Maryland law to ensure that the student's parent receives an accessible copy of each assessment, report, data chart, draft IEP, or other document the team plans to discuss at the meeting five (5) days prior to the meeting.

At the meeting, in addition to developing the student's IEP, the team must also determine the nature and amount of *compensatory services*² necessary to redress the delay in identifying the student since September 2009.¹

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/Systemic:

MSDE requires PGCPS to provide documentation of the steps taken to determine if the procedural violation related to the identification and evaluation of students is unique to this case or if it represents a pattern of noncompliance at XXXXXXXX. This documentation is due no later than February 15, 2011.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirement is not being implemented, the school system must identify the actions that will be taken to ensure that the violation does not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date the school system's initial determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

The findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during future monitoring. Verification of the school system's compliance will also be conducted consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP), Memorandum #09-02. In addition, MSDE will conduct a review to verify compliance with the requirement to ensure that students are identified and evaluated according to the regulations.

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.

² 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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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.

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 free appropriate public education 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

c: William R. Hite
Bonita Coleman-Potter
Gail Viens
LaRhonda Owens
Kerry Morrison
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