



Nancy S. Grasmick
State Superintendent of Schools

200 West Baltimore Street, Baltimore, MD 21201 410-767-0100 410-333-6442 TTY/TDD

November 19, 2010

XXX
XXX
XXX

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: #11-021

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 September 28, 2010¹, MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX, 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 has not ensured that the student’s Individualized Education Program (IEP) addresses his academic and behavioral needs since September 2009², in accordance with 34 CFR §300.324; and

¹ On September 23, 2010, the complainant provided MSDE with correspondence containing allegations of violations of IDEA which did not include all of the necessary information to initiate a State complaint investigation. On September 28, 2010, the complainant provided the required information and a complaint investigation was initiated (34 CFR §300.153).

² The complaint included allegations of violations that occurred more than a year before the date it was received. The complainant was advised, in writing, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

XXX

Ms. Joan Rothgeb
November 19, 2010
Page 2

2. PGCPS has not followed proper procedures when disciplinarily removing the student from school since September 2009², in accordance with 34 CFR § 300.530.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 23, 2010, MSDE received correspondence from the complainant that contained allegations of violations of IDEA.
3. On September 27, 2010, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone to clarify the allegations and to inform her that additional information was necessary to initiate a State complaint.
4. On September 28, 2010, the complainant provided MSDE with the additional information required, and MSDE initiated the State complaint investigation. On that same date, 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.
5. On October 7, 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 allegations.
6. On October 28, 2010, Ms. Moyo reviewed the student's education record at XXXXXXXXX XXXXXXX (XXXXXXX) 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 November 9, 2010, Ms. Moyo and Ms. Mandis conducted a site visit at XXXXXXXXX to further review the education record and interview the following school staff:
 - a. Ms. XXXXXXXX, Assistant Principal;
 - b. Ms. XXXXXXXX, Assistant Principal;
 - c. Ms. XXXXXXXX Special Education Chairperson;
 - d. Mr. XXXXXXXX, Special Education Case Manager; and
 - e. Ms. XXXXXXXX, Counselor.

Ms. Morrison attended the site visit as a representative of PGCPS and to provide information on CCPS policies and procedures, as needed.

XXX

Ms. Joan Rothgeb
November 19, 2010
Page 3

8. On November 15, 2010, Ms. Moyo conducted a telephone interview with the complainant.
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 September 23 and 28, 2010;
 - b. Behavior Intervention Plan (BIP), dated February 25, 2008;
 - c. Functional Behavior Assessment (FBA), dated February 25, 2008;
 - d. Psychological assessment report, dated September 15, 2008;
 - e. Psycho-Educational assessment report, dated September 15, 2008;
 - f. PGCPS psychological assessment report, dated February 9, 2009;
 - g. IEP team meeting notice, mailed on January 13, 2009;
 - h. IEP, dated January 22, 2009;
 - i. Consent for assessment, dated January 22, 2009;
 - j. Report of progress, dated November 6, 2009;
 - k. IEP team meeting notice, mailed on March 23, 2010;
 - l. IEP, dated April 2, 2009;
 - m. IEP team meeting notice, mailed on January 21, 2010;
 - n. IEP, dated January 26, 2010;
 - o. Referral for Expulsion, dated April 27, 2010;
 - p. Report of progress, dated April 28, 2010;
 - q. IEP team meeting notice, dated April 27, 2010;
 - r. IEP team meeting summary, dated May 3, 2010;
 - s. Report of progress, dated June 2, 2010;
 - t. Correspondence from PGCPS Board of Education to the complainant, dated September 13, 2010;
 - u. Correspondence from the PGCPS Office of Appeals to the complainant, dated September 28, 2010;
 - v. Student's attendance record for the 2009-2010 school year; and
 - w. Excerpt from student enrollment status report from August 24, 2009 to August 20, 2010.

BACKGROUND:

The student is nineteen (19) years old and is identified as a student with an other health impairment under IDEA related to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). At the start of the 2009-2010 school year, the student attended XXXXXXXXX. On April 26, 2010, the student was involved in a physical altercation that resulted in a referral for expulsion from school. The student has not received instruction since April 26, 2010.

On September 28, 2010, the expulsion was rescinded, and the student was informed in writing that he was re-enrolled at XXXXXXXXXXXX and could return to school. The student has not attended school since the expulsion was rescinded. The complainant reports that on

XXX

Ms. Joan Rothgeb
November 19, 2010
Page 4

November 15, 2010, she withdrew the student from XXXXXXXXX. During the period of time addressed by this investigation, the complainant was provided with notice of the procedural safeguards, as required (Docs. a, g – w, and interviews with PGCPs staff and the complainant).

FINDINGS OF FACT:

Development of the IEP that was in effect at the start of the 2009-2010 School year

1. On January 22, 2009, the IEP team met to develop the IEP that was in effect at the start of the 2009-2010 school year. At the meeting, the team reviewed assessments provided to school staff by the Department of Juvenile Services (DJS)³ and discussed the complainant's concerns about the student's placement. At the meeting, the team reviewed the following:
 - a. A psycho-educational report conducted by a community-based psychologist which indicates that the student is repeating the 10th grade for the third time. The report further indicates that the student's cognitive functioning is in borderline range overall and that the student's adaptive functioning is in the average to above-average range. However, in the areas of academic functioning, such as reading comprehension, written language, and math reasoning the student is functioning in the extremely low range and is at a 3rd grade level. The report recommends, among other things, that the student be provided with counseling to give him emotional support and to address his mood issues, mentoring for additional social support, and further assessment by a psychiatrist to address the student's ADHD and determine if medication is necessary to assist the student with handling his emotional issues;
 - b. A psychological assessment report conducted by a community-based psychologist which indicates that the student has issues with following rules and regulations and that he continues to have "difficulty sustaining attention, is easily distracted, has poor self-control, acts impulsively, disrupts or interrupts others' activities and has difficulty waiting his turn." The report further states that the student's sadness and sense of inadequacy are caused, in part, by his academic and cognitive challenges. The report indicates that the student has a depressive disorder that impacts his behavior. The report also indicates that the student's behavioral history and recent legal entanglements suggest that the student also has a disruptive behavior disorder. The report concludes that, as a way of coping with his feelings of inadequacy, the student seeks support from peers and the use of illegal substances to numb his feelings;

³ During the 2008-2009 school year the student was briefly in the custody of DJS. While in DJS custody, a psychological and a psycho-educational assessment were conducted (Docs. d and e and interview with the complainant).

XXX

Ms. Joan Rothgeb

November 19, 2010

Page 5

- c. Reports from teachers indicating that the student continues to demonstrate behaviors consistent with a diagnosis of ADHD and that the student is failing a number of his classes. Additionally, the teachers report that the student is not attending class and though he often comes to school, he leaves the building or he does not attend class;
 - d. The complainant's concern that the student has difficulty being patient and responsible and as a result may not be able to succeed in life. She further indicates that she is looking for a different setting for the student such as, private, alternative, and vocational schools because she does not believe that the current placement is appropriate. Additionally, she believes that school staff are not interested in providing her support with finding an appropriate placement that can assist the student with his challenges; and
 - e. A report from the previous re-evaluation conducted by the IEP team at XXXXXXXXXX on February 25, 2008, which indicates that the student continued to demonstrate behaviors consistent with a diagnosis of ADHD. The report also indicates that the IEP team determined that the student demonstrated borderline cognitive abilities (Docs. b – e and h).
2. At the January 22, 2009 IEP team meeting, following the team's review of the assessment data, the IEP team determined that additional psychological testing was needed. On the same date, the complainant provided consent for an assessment (Docs. h and i).
3. On April 2, 2009, the IEP team re-convened to review the results of the psychological assessment that was ordered at the January 22, 2009 IEP team meeting and considered the following:
 - a. The report of the psychological assessment conducted by PGCPs which indicates that the student displays the capacity to think logically and coherently and has the ability to come to reasonable conclusions. However, while the student is able to understand social situations and desires positive outcomes, he has poor coping and problem solving skills. As a result, when the student is faced with a difficult situation, he will often engage in "wishful thinking or avoidance" and may not independently be able to bring about change in a negative situation. The report indicates that the student's does not display a significant level of the symptoms of depression. Additionally, the report indicates that the student continues to have issues with attention in unstructured situations, consistent with his diagnosis of ADHD; and
 - b. The complainant's continued concerns about the student's poor performance in school and her belief that the student's program and placement are inappropriate to address the student's identified needs (Docs. f and l).
4. There is no documentation that the IEP team reviewed and revised the student's IEP to address the behaviors identified by the assessments or the complainant's concerns

XXX

Ms. Joan Rothgeb
November 19, 2010
Page 6

regarding the student's program and placement at the April 2, 2009 meeting (Docs. b, c, l and review of the student's education record).

2009-2010 School Year

5. On January 26, 2010, the IEP team met to conduct the student's annual IEP review and to discuss the student's program and placement. During the meeting, the team reviewed the following:
 - a. The complainant's continued concerns that the current placement is not appropriate for the student and her belief that school staff have not been addressing the student's needs;
 - b. Reports from school staff indicating that the student is again repeating 10th grade because of poor attendance and that he refuses to participate in the classroom and as a result, the student is unavailable to receive instruction; and
 - c. Reports of progress and attendance which document that the student was not attending his classes on a consistent basis and was not making progress towards achieving some of his goals (Docs. j and n).
6. There is no documentation that the IEP team revised the student's program to address the student's lack of expected progress, the interfering behaviors identified by school staff or the complainant's continuing concerns (Docs. m and n and review of the student education record).
7. On April 26, 2010, the student was involved in a physical altercation with a group of students. In response to this incident, on April 27, 2010, the student was disciplinarily removed from school and a referral for expulsion was completed by school staff (Doc. o).
8. On April 27, 2010, school staff sent an IEP team meeting notice to the complainant requesting that she be present for an IEP team meeting on May 3, 2010. Although, the complainant reports that she did not receive notice of the meeting until after the date the meeting was held, there is documentation that school staff contacted the complainant by telephone and that she indicated that she was not willing to attend any more meetings (Docs. o and p).
9. Reports of the student's progress from April 2010 indicate that the student was not making sufficient progress towards achieving the IEP goals and that school staff believed that the team should meet to address the student's lack of progress. However, there is no documentation in the student's education record that the IEP team met to address the student's lack of progress after the April 2010 progress report (Doc. p and review of the student education record).

XXX

Ms. Joan Rothgeb
November 19, 2010
Page 7

10. On May 3, 2010, the IEP team meeting was convened, and the complainant did not attend. At the meeting, school staff reviewed the following:
 - a. Documentation about the incident that occurred on April 26, 2010;
 - b. Attendance records for the 2009-2010 school year which indicate that the student had been absent for thirty-seven (37) days during the school year and tardy on sixty-three (63) days;
 - c. Reports from school staff indicating that the student frequently “skips” class; and
 - d. Discipline records which indicate that as of May 3, 2010, following the April 26, 2010 disciplinary removal, the student had been removed from school for a total of five (5) days during the 2009-2010 school year (Docs. o, r, and v).
11. At the May 3, 2010, IEP team meeting, following its review of the documentation, the IEP team determined that the student’s behavior was not a manifestation of his disability. The team also developed an interim alternative educational program for the student at XXXXXXXXX. The team determined that the student would be provided with instruction in the afternoons, on a one-to-one basis, so that he could continue to work on making progress towards achieving his IEP goals. The alternative placement was scheduled to begin on May 11, 2010 and continue until the end of the 2009-2010 school year. While the documentation indicates that school staff reviewed the student’s BIP, there is no documentation that the BIP was revised to address the behaviors that resulted in the student’s removal (Docs. b, c, r, and review of the student’s education record).
12. Reports of the student’s progress from June 2010 indicate that the student was not making sufficient progress towards achieving the IEP goals and that school staff believed that they should meet to address the student’s lack of progress; however there is no documentation in the student’s education record that the IEP team met to address the student’s lack of expected progress after the June 2010 progress report (Doc. s and review of the student’s education record).
13. Records of the student’s attendance reflect that the student was absent from school due to disciplinary removals on the following dates, April 26, 2010 until June 16, 2010. All other absences on the student’s attendance records are documented as absences for other reasons (Docs. v and r).

2010-2011 School Year

14. On September 13, 2010, the complainant was notified, in writing, by the PGCPs Superintendent’s Designee that the student’s expulsion was affirmed and that the student could “apply for enrollment in an alternative program.” PGCPs provided a telephone number in the correspondence that the complainant could use to contact staff and begin the application process. The complainant reports that this is the first written communication

XXX

Ms. Joan Rothgeb
November 19, 2010
Page 8

that she received from PGCPs regarding the student's expulsion (Docs. a, t and interview with the complainant).

15. On September 28, 2010, the complainant received correspondence from the PGCPs Office of Appeals indicating that the student's expulsion was rescinded and the student could return to XXXXXXXX effective September 29, 2010 (Doc. u).
16. On November 15, 2010, the complainant reported that she withdrew the student from XXXXXXXX because he has not been attending the school and because she believes that the school cannot provide him with an appropriate program to meet his identified needs (Interview with the complainant).

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP that addresses the student's behavioral and academic needs

The public agency must ensure that each student is provided with an IEP that addresses all of the needs that arise from the student's disability. In order to identify the needs, the public agency must consider all functional, developmental, and academic information about a student. When determining the levels of academic achievement and functional performance, the team must consider information from evaluations conducted, concerns of the parents, and information from the student's teachers (34 CFR §300.324).

In the case of a student whose behavior impedes his or her learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior. Additionally, the public agency must ensure that the IEP team reviews each student's IEP periodically, to determine whether the annual goals are being achieved and revise the IEP, as appropriate, to address any lack of expected progress toward achieving the goals (34 CFR §300.324).

In this case, the complainant alleges that the IEP team has not developed an IEP that addresses the student's academic and behavioral needs. Consequently, the complainant believes that the student has avoided school and has continued to fall behind in the curriculum.

Based on Findings of Fact #1 – 6, MSDE finds that the IEP has not addressed the student's identified interfering behaviors. Based on Findings of Fact #5, 6, 9, and 12, MSDE finds that IEP team did not revise the student's program to address the lack of expected progress. Therefore, MSDE finds that the IEP has not addressed the student's identified needs and that a violation has occurred with regard to this allegation.

Allegation #2 Disciplinary Removals

The IDEA provides specific protections to students with disabilities who are disciplinarily removed from school in excess of ten (10) school days in a school year. On the eleventh (11th) day of removal, the student must be provided with educational services to enable the student to continue

XXX

Ms. Joan Rothgeb
November 19, 2010
Page 9

to participate in the general education curriculum, although in another setting, and to make progress toward achieving the annual IEP goals. The student must also receive, as appropriate, a FBA and behavioral intervention services designed to address the behavior so that it does not recur (34 CFR §300.530 and COMAR 13A.08.03.03).

Within ten (10) school days of any decision to remove a student in excess of ten (10) school days, the public agency must ensure that the IEP team determines whether the student's behavior, which resulted in the decision to disciplinarily remove the student, was a manifestation of the student's disability. If the team determines that the behavior was a manifestation of the student's disability, the public agency may not remove the student from the current educational placement. If the team determines that the student's behavior was not a manifestation of the disability, the student may be removed to an alternative setting to receive educational services (34 CFR §300.530).

If the IEP team determines that the student's behavior was a manifestation of the disability, a FBA must be conducted and a BIP developed to address the student's behavior. If a BIP already exists, the team must review the plan and revise it, as appropriate (34 CFR §300.530).

In this case, the complainant alleges that school staff repeatedly removed the student from school rather than provide him with an appropriate program. Based on Findings of Fact #10 and 13, MSDE finds that attendance and discipline records document that there were no disciplinary removals prior to April 26, 2010. Based on Findings of Fact #7, 8, 10, and 11, MSDE finds that the team convened and held an IEP team meeting within ten (10) school days of the date that the decision was made to change the placement as a result of the April 26, 2010 removal.

Based on Finding of Fact #11, MSDE finds that PGCPS made special education services available to the student, after he was removed, from May 11, 2010 until the end of the 2009-2010 school year. However, based on Findings of Fact #14, 15 and 16, MSDE finds that PGCPS did not take steps to ensure special education services were made available from the start of the 2010-2011 school year until September 28, 2010, when PGCPS re-enrolled the student. Therefore, MSDE finds that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-specific

MSDE requires that PGCPS meet no later than February 28, 2011 to revise the student's IEP to ensure that the student's program addresses his behavioral and academic needs. At the meeting, the IEP team must also determine the amount of *compensatory services*⁴ necessary to redress the violations identified in this LOF that have occurred since September 2009 and provide documentation from these meetings to MSDE. If the student re-enrolls in PGCPS, the school system must ensure that the student is provided with the services that are determined at this meeting.

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).

XXX

Ms. Joan Rothgeb
November 19, 2010
Page 10

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.

School-Based/Systemic:

Disciplinary Removal

MSDE requires PGCPS to provide documentation by March 1, 2011 of the steps taken to determine if the procedural violations found in this investigation are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXX. 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 requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date that the school system initially determines non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement currently has a Corrective Action Plan in place to address previous violations regarding PGCPS discipline procedures. Additionally, MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement will be conducting a comprehensive monitoring of PGCPS policies and procedures in May of 2011. Verification of the school system's compliance will also be conducted through this process consistent with the requirements of the United States Department of Education, Office of Special Education Programs, Memorandum #09-02.

In addition, MSDE will conduct a review to verify compliance with the requirement to ensure that proper procedures are followed. Documentation of the completion of corrective 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

XXX

Ms. Joan Rothgeb
November 19, 2010
Page 11

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 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
Bonita Coleman-Potter
Joan Rothgeb
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXXX
Dori Wilson
Anita Mandis
Koliwe Moyo