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State Superintendent of Schools

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June 7, 2011

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

RE: XXXXXX
Reference: # 11-081

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 April 11, 2011, MSDE received correspondence from Ms. XXXXXXXXXXXX, 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) and the corresponding State regulations with respect to the above-referenced student. The allegation investigated by this office is that PGCPS did not ensure the complainant's son, who had an Individualized Education Program (IEP) in XXX, was provided with a free appropriate public education (FAPE) after the student enrolled in PGCPS in August 2010, in accordance with 34 CFR §§ 300.101, .323, and COMAR 13A.08.02.01.

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INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 12, 2011, a copy of the complaint was provided by facsimile to Ms. Joan Rothgeb, Director of Special Education, PGCPS.
3. On April 14, 2011, Ms. Williams contacted the complainant and clarified the allegation to be investigated.
4. On April 14, 2011, the complainant sent correspondence to MSDE, via facsimile and electronic mail (email), to be considered during the investigation.
5. On April 19, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. MSDE also notified Ms. Rothgeb of the complaint and requested that her office review the alleged violation.
6. On May 3, 2011, Ms. Williams and Ms. Anita Mandis, Section Chief, Complaint Investigation and Due Process Branch, MSDE, conducted a site review at XXXXXXXXXXXXX to review the student's education record. Ms. Kerry Morrison, Special Education Instruction Specialist, Central Office Compliance, PGCPS, attended the on-site visit as a representative of PGCPS and to provide information on PGCPS policies and procedures, as needed.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXX) IEP Meeting Notice, dated February 9, 2010;
 - b. XXXX Notice of Proposal to Evaluate, dated February 9, 2010;
 - c. XXXX Written Summary of an IEP Team meeting, dated February 25, 2010;
 - d. XXXXX Notice of Proposal or Refusal to Provide Services, dated February 25, 2010;
 - e. PGCPS School Registration form, dated August 2, 2010;
 - f. PGCPS Request for Information to XXX, dated August 2, 2010;
 - g. PGCPS Records Request Facsimile Confirmation Sheet, dated August 9, 2010;
 - h. Email from the complainant to PGCPS, dated September 1, 2010;
 - i. PGCPS Meeting Notice, dated September 21, 2010;
 - j. PGCPS IEP Team Meeting Sign-In Sheet, dated October 5, 2010;
 - k. PGCPS IEP Meeting Invitation, dated October 5, 2010;
 - l. PGCPS IEP Meeting Sign-In Sheet, dated October 18, 2010;

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- m. PGCPS Request for Consent for Assessment, dated October 18, 2010;
- n. PGCPS Meeting Notes, dated October 18, 2010;
- o. Complainant's note requesting assessments, dated November 14, 2010;
- p. PGCPS 504 Plan, dated October 25, 2010;
- q. PGCPS Educational Assessment Report, dated January 5, 2011;
- r. PGCPS IEP Meeting Notice, dated January 9, 2011; and
- s. PGCPS Psychological Assessment Report, dated January 25, 2011.

BACKGROUND:

The student is 15 years old, is identified as a student with a disability under a Section 504 of the Rehabilitation Act of 1974 based on Attention Deficit Hyperactivity Disorder (ADHD), and has a 504 Plan.

The student was enrolled in PGCPS on August 2, 2010, after moving to Maryland from XXXX and he attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX). An evaluation was conducted under IDEA by PGCPS during the 2010-2011 school year and the student has not been identified as a student with a disability under IDEA.

During the period of time addressed in this investigation, the complainant participated in the education decision-making process. She has also been provided with notice of the procedural safeguards (Doc. n).

ALLEGATION: PROVISION OF FAPE FOR INTER-STATE TRANSFER STUDENTS

Findings of Fact:

1. When the complainant enrolled the student at XXXXXXXXXXXX in August 2010, the complainant did not indicate that the student had an IEP in XXXX (Doc. e).
2. On August 9, 2010, PGCPS obtained the student's education record from XXXX, which indicates that an evaluation under IDEA was completed February 25, 2010, and that the XXXX IEP team determined that the student did not meet the criteria for identification as a student with a disability under IDEA (Docs. a, b, c, and d).

Discussion/Conclusion:

The public agency is required to ensure that a student is provided with the special education and related services required by the IEP (34 CFR §§300.101, .103). If a student with an IEP in one state transfers to a public agency in another state, the new public agency, in consultation with the parents, must provide the student with FAPE.

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The provision of FAPE includes services comparable to those described in the student's IEP from the previous state. These comparable services must be provided until the new public agency:

- a. Conducts an evaluation if determined to be necessary; and
- b. Develops, adopts, and implements a new IEP, if appropriate (34 CFR §300.323).

In this case, the complainant alleges the student had an IEP in XXX, which has not been implemented since he has been enrolled in PGCPs. Based on Findings of Facts #1 and #2, MSDE finds that the information and documents do not support the assertion that the student had an IEP in XXX and should have continued to receive special education services when he moved to Maryland and transferred to PGCPs. As a result, the requirements to ensure that a student continues to be provided with FAPE following an inter-state transfer are not applicable in this case. Therefore, MSDE does not find that a violation occurred with respect to the allegation.

ADDITIONAL VIOLATION: COMPLETION OF IDEA EVALUATION WITHIN REQUIRED TIMELINES

Findings of Fact:

3. On September 1, 2010, the complainant met with school staff and requested that "reasonable accommodations" be provided to address the student's behavioral needs (Doc. h).
4. On October 5, 2010, IEP team members noted their presence on a "sign-in sheet" that indicates a meeting was convened. Although school staff confirmed that the meeting occurred, there is no documentation of any information considered by the team or decisions made by the team. School staff report that when the team discussed that the student did not have an IEP in XXXX, the complainant left the meeting and the meeting was halted (Doc. J and interview with school staff).
5. On October 18, 2010, an IEP team, which included the complainant, convened and reviewed data from the student's education record. The team recommended that psychological and educational assessments be conducted, and also referred the student to a 504 team to consider his eligibility for a 504 Plan (Docs. k, l, m, n, and o).
6. On October 25, 2010, a 504 Plan was developed to provide the student with accommodations to address his needs related to the diagnosis of ADHD (Doc. p).
7. On November 14, 2010, the complainant provided written consent for PGCPs to conduct assessments. The education record contains a copy of the education assessment, which was completed on January 5, 2011 and a copy of the psychological assessment completed on January 25, 2011 (Docs. q and s).

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8. School staff reported that on January 19, 2011 the team convened and that the student was found to not be eligible under IDEA. However, this meeting occurred prior to the completion of the psychological assessment and the education record does not contain an evaluation report and other documentation that the evaluation has been completed (Docs. s and interview with school staff).

Discussion/Conclusion:

When an initial evaluation is conducted to determine if a student is a student with a disability under IDEA, it must be completed 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).

Based on Finding of Fact #7, MSDE finds that, to date, there is no evaluation report or other documentation that the evaluation process that was begun on November 14, 2010, has been completed. Therefore, MSDE finds that a violation has occurred.

CORRECTIVE ACTION/TIMELINE:

MSDE requires PGCPs to provide documentation no later than August 31, 2011, that the IEP team has properly completed the evaluation process. If the student is determined to be eligible for special education services under IDEA, the team must also determine the amount and nature of *compensatory services*¹ or other remedy needed to redress the delay in completing the evaluation process within the required timelines.

PGCPs must ensure the complainant is provided with written notice of the team's decisions in accordance with the regulations. If the complainant disagrees with the team's decisions, she maintains the right to request mediation or to file a due process complaint to resolve the dispute.

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

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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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 the corrective action consistent with the timeline requirement as reported in this LOF.

Questions regarding the findings, conclusions and corrective action 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//tw

cc: William R. Hite
Bonita Coleman-Potter
Joan Rothgeb
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXXX
Dori Wilson
Martha Arthur
Tyra Williams