



Nancy S. Grasmick
State Superintendent of Schools

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

June 17, 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: XXXXX
Reference: #11-090

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 April 29, 2011, MSDE received a complaint from Ms. XXXXXXXXX, 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 following allegations:

1. PGCPS has not ensured that the student has been provided with the accommodations and supplementary aids and services required by the Individualized Education Program (IEP) since April 2010, in accordance with 34 CFR §300.101;
2. PGCPS did not follow proper procedures when amending the IEP to discontinue the accommodation of "the use of notes and outlines" outside of the IEP team process, in accordance with 34 CFR §§300.324 and .503;

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3. PGCPS did not follow proper procedures when responding to the complainant's written March 3, 2011, request to amend the student's education record, in accordance with 34 CFR §§300.618-.621; and
4. PGCPS did not follow proper procedures when responding to the complainant's February 15, 2011 request for an assistive technology consultation, in accordance with 34 CFR §§300.324 and .503.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 2, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Joan Rothgeb, Director of Special Education, PGCPS; Ms. LaRhonda Owens, Supervisor of Compliance, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On May 3, 2011, Ms. Stump spoke with the complainant by telephone and clarified the allegations to be investigated.
4. On May 6, 2011, 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.
5. On May 10, 2011, the complainant provided MSDE with additional documentation related to the allegations, via facsimile.
6. On May 19, 2011, Ms. Stump reviewed the student's education record at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXX). Ms. Morrison and Mr. XXXXXX, Special Education Department Chairperson, XXXXXXXXXXXXXXXX were present at the record review.
7. On May 23, 2011, PGCPS provided MSDE with documentation related to the allegations, via electronic mail (e-mail).
8. On May 26, 2011 Ms. Stump and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX and interviewed Mr. XXX and Mr. XXXXXXXXXXX, Special Education Teacher.
9. On June 6, 2011, Ms. Stump conducted a telephone conference with Ms. Morrison and Ms. Maxine Swann, Assistant Supervisor of Compliance, PGCPS.

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10. On June 14, 2011, PGCPs provided MSDE with additional documentation related to the allegations, via e-mail;
11. 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 April 29, 2011;
 - b. IEP, dated March 5, 2010;
 - c. IEP, dated June 1, 2010;
 - d. E-mail correspondence between the complainant and school staff, dated February 7, 2011;
 - e. IEP team meeting summary, dated February 14, 2011;
 - f. Written correspondence from the complainant to school staff, dated February 15, 2011;
 - g. IEP team meeting summary, dated February 25, 2011;
 - h. IEP, dated March 2, 2011;
 - i. E-mail correspondence between the complainant and school staff, dated between March 3, 2011 and March 7, 2011;
 - j. Written correspondence from the complainant to school staff, dated March 7, 2011;
 - k. IEP progress reports for the 2010-2011 school year; and
 - l. PGCPs Administrative Procedure *Individual Student School-Based Records*.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with an other health impairment related to a diagnosis of Attention Deficit/Hyperactivity Disorder under IDEA. He attends XXXXXXXXX, where he receives special education instruction 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 the procedural safeguards (Docs. a, b, c, e, g, h, and k).

ALLEGATIONS #1 and 2: PROVISION OF ACCOMMODATIONS AND SUPPLEMENTARY AIDS AND SERVICES SINCE APRIL 2010 AND REMOVAL OF THE REQUIREMENT TO PROVIDE "NOTES AND OUTLINES" FROM THE IEP

Findings of Fact:

1. The IEP since April 2010 requires that the student be provided with accommodations and supplementary aids and services, including verbatim reading of tests, preferential seating, provision of extended time to complete assignments and assessments, and the provision

- of notes and outlines for science and social studies when notes are taken in those classes (Docs. b, c, and h).
2. The IEP progress reports, dated April 2010, June 2010, November 2010, and January 2011, indicate that the student was making sufficient progress to achieve the annual goals. Although the progress reports indicate that the student was being provided with some of the accommodations required by the IEP, there is no documentation that the student is being provided with verbatim reading, preferential seating, extended time to complete assignments, or provision of notes and outlines (Doc. k).
 3. At an IEP team meeting in February 2011, the team determined that the student requires the additional support of the use of an “organizational checklist” to help him “establish and maintain routines” and to help him “remain on task.” However, the IEP, as amended at that meeting, no longer requires that the student be provided with the provision of “notes and outlines” (Docs. e, g, and h).
 4. There is no documentation that the decision to remove “notes and outlines” from the IEP was made by the IEP team. There is also no written agreement between the complainant and school staff to amend the IEP outside of the IEP team process (Interview with school staff and review of student’s education record).
 5. The IEP progress reports, dated April 2011, indicate that the student is making sufficient progress toward achieving the annual goals. Although the progress reports indicate that the student is being provided with some of accommodations required by the IEP, there is no documentation that the student is being provided with verbatim reading, preferential seating, extended time, or the use of an “organizational checklist” (Doc. k).

Discussion/Conclusions:

Allegation #1: Provision of accommodations and supplementary aids and services

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). In this case the complainant specifically alleges that the student has not been provided with verbatim reading, preferential seating, provision of extended time, provision of notes and outlines, and the use of the “organizational checklist” (Doc. a).

Based on Findings of Fact #1, 2, and 5, MSDE finds that although there is documentation that the student has been provided with some of the accommodations and supplementary aids and services required by the IEP, there is no documentation that the student has been provided with the specific supports about which the complainant complains. Therefore, MSDE finds a violation regarding this allegation.

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Allegation #2: Removal of the provision of “notes and outlines” from the IEP

Changes to the IEP may be made by the IEP team at an IEP team meeting or by amending the IEP without convening an IEP team meeting (34 CFR §300.324(a)(6)). In order to amend the IEP without convening an IEP team meeting, the student’s parent and the public agency must agree not to convene an IEP team meeting in order to change the IEP and must develop a written document to amend or modify the current IEP (34 CFR §300.324(a)(4)).

Based on Findings of Fact #3 and 4, MSDE finds that the support of the provision of “notes and outlines” was removed from the student’s IEP and there is no documentation that this decision was made by the IEP team or by agreement of the parties to amend the IEP outside of the IEP team process. Therefore, MSDE finds a violation regarding this allegation.

ALLEGATION #3: RESPONDING TO A REQUEST TO AMEND THE STUDENT’S EDUCATION RECORD

Findings of Fact:

6. On March 3, 2011, the complainant sent e-mail correspondence to school staff in which she requested that staff make corrections to the following errors in the IEP document so that the document reflected the IEP team’s decisions that she believes were made:
 - a. Adding the “notes and outlines” accommodation back into the IEP because the complainant asserts that there is no documentation that it was to be removed from the student’s program;
 - b. Listing the student’s interest in the transition section as “customizing and designing cars;” and
 - c. Fixing an incomplete sentence in the “discussion of service delivery” section of the special education services (Doc. i).

7. There is documentation that school staff received the complainant’s request, but there is no documentation that school staff have amended the student’s education record, informed the complainant of her right to a hearing in front of the school system, or determined whether the IEP team needed to reconvene to address her concerns (Docs. i, l, review of education record, and interview with school staff).

Discussion/Conclusions:

A parent of a student with a disability who believes that information in the student’s education record is inaccurate or misleading may request the public agency that maintains the information to amend it (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. The public

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agency must also advise the parent of the right, upon the request of the parent, to a hearing conducted by the public agency¹ to challenge the information in the student's education record to ensure that it is not inaccurate or misleading (34 CFR §300.619).

If, as the result of the hearing, the public agency decides that the information is inaccurate or misleading, it must amend the information and inform the student's parent in writing. If, however, the public agency decides that the information is not inaccurate or misleading, 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).

Based on Finding of Fact #6, MSDE finds that the complainant requested an amendment to the student's education record. Based on Finding of Fact #7, MSDE finds that, although PGCPs has policies and procedures regarding amending student records, there is no documentation that those procedures have been followed in this case. Therefore, MSDE finds a violation regarding this allegation.

Additional Violation: **Determining if the IEP team needed to reconvene to address the complainant's concerns**

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, p.12479, March 12, 1999*).² In addition, the IEP team must consider the concerns of the parents for enhancing the education of the student (34 CFR §300.324).

Based on Findings of Fact #6 and 7, MSDE finds that there is no documentation that school staff determined whether the IEP was written clearly or whether the IEP team needed to reconvene in order to address the complainant's concerns regarding the accuracy of the student's education record. Therefore, MSDE finds that additional violations have occurred.

ALLEGATION #4: **RESPONDING TO A REQUEST FOR AN ASSISTIVE TECHNOLOGY CONSULTATION**

Findings of Fact:

8. In February 2011, the complainant sent written correspondence to school staff requesting that an assistive technology (AT) consultation be conducted (Docs. d and f).

¹ This hearing is **not** a due process hearing conducted by the Office of Administrative Hearings, pursuant to 34 CFR §§300.508-.515.

² In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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9. On February 25, 2011, the IEP team convened to review the student's program and progress and to revise the student's program, as appropriate. The documentation of the meeting indicates that the team considered the complainant's request for an AT consultation, but there is no documentation regarding whether the team accepted or rejected her request (Docs. g and h).
10. On March 7, 2011, the complainant made another request, in writing, for an AT consult. School staff report that no response has been given to the complainant and no AT consult has been conducted (Doc. j and interview with school staff).

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 (34 CFR §300.324). If an assessment is requested when continued eligibility is not in question, the public agency must either conduct the assessment or provide notice to the parent as to why the public agency believes an assessment is unnecessary (34 CFR §§300.301 - .306 and *Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46644, August 14, 2006). The notice must include, among others, a description of the action proposed or refused, an explanation of the action, and a description of each evaluation procedure, assessment, record, or report used as a basis for the decision (34 CFR §300.503).

Based on Findings of Fact #8-10, MSDE finds that there is documentation that the complainant has made two (2) written requests for an evaluation of the student's AT needs and that the IEP team convened to consider the request. However, based on Findings of Fact #9 and 10, MSDE finds that there is no documentation that the IEP team made a determination regarding the complainant's request. Therefore, MSDE finds a violation regarding this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

MSDE requires PGCPs to provide documentation by July 31, 2011 that school staff have responded to the complainant's request to amend the education record by either amending it or by providing the complainant with notice of its refusal to amend the record and informing her of her right to a hearing in the school system to challenge the record.

In addition, MSDE requires PGCPs to provide documentation by the start of the 2011-2012 school year that an IEP team has convened and done the following:

1. Determined whether an AT consultation is necessary;

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2. Determined the amount and nature of *compensatory services*³ needed to redress the lack of provision of accommodations and supplementary aids and services; and
3. Addressed, if necessary, the complainant's concerns regarding the accuracy of the IEP document and revised the IEP if appropriate.

If the IEP team determines that an AT consultation is necessary, MSDE requires that PGCPS ensure that it is conducted in an expedited manner and that the results of the consultation are considered by the IEP team. If the student's program is revised because of the AT consultation, the IEP team must also determine the amount and nature of *compensatory services*² necessary to redress the delay in providing these services since February 15, 2011.

PGCPS must provide the complainant with proper written notice of the determinations made at these IEP team meetings, including a written explanation of the basis for the determinations, in accordance with 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 the start of the 2011-2012 school year, of the steps it has taken to determine if the violations identified in the LOF 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 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 initial date that the school system determines non-compliance.

Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of United States Department of Education, Office of Special Education Programs. Additionally, this office will share the findings in the LOF with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of PGCPS.

³ 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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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, which must be received 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

cc : William R. Hite
Bonita Coleman-Potter
Gail Viens
LaRhonda Owens

Kerry Morrison
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Martha Arthur
Kathy Stump