



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

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July 10, 2012

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Mrs. 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: #12-088

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 May 11, 2012, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter “the complainant,” on behalf of her son, the above-referenced student. 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 student. The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the student has been consistently provided with the special education instruction and accommodations required by the Individualized Education Program (IEP) during the 2011-2012 school year, in accordance with 34 CFR §§300.101 and .323;
2. The PGCPS has not ensured that reports of the student’s progress toward achievement of the annual IEP goals have been provided since the start of the 2011-2012 school year, in accordance with 34 CFR §§300.101, .320 and .323;

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3. The PGCPS did not provide the complainant with a written invitation to the December 15, 2011 IEP team meeting that included all the required content, including information that the student was invited to attend the meeting, in accordance with 34 CFR §§300.321 and .322, and COMAR 13A.05.01.07;
4. The PGCPS did not ensure that the December 15, 2011 IEP team included at least one (1) of the student's regular education teachers, in accordance with 34 CFR §300.321; and
5. The PGCPS has not ensured that the student's needs that arise out of his disability have been identified since the December 15, 2011 IEP team meeting, in accordance with 34 CFR §§300.320 and .324.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 11, 2012, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On May 22, 2012, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On May 22, 23, and 29, 2012, June 1 and 5, 2012, and July 3 and 5, 2012, the complainant provided Ms. Hartman with documents to be considered during the investigation of the complaint, via electronic mail (email).
5. On May 29, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
6. On June 7, 2012, Ms. Hartman and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXX to review the student's educational record, and interviewed the following XXXXXXXXXX staff:
 - a. Ms. XXXXXXXXXXXX, Assistant Principal;
 - b. Ms. XXXXXXXXXXXX, Special Education Department Chair;
 - c. Ms. XXXXXXXXXX, Regular Education English Teacher;
 - d. Ms. XXXXXXXXXX, Special Education Math Teacher; and
 - e. Ms. XXXXXXXXXX, School Counselor.

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

7. On June 13, 2012 and July 5, 2012, the PGCPS provided the MSDE with documents to be considered during the investigation of the complaint, via email.
8. On June 26 and 28, 2012, and July 2, 3, and 5, 2012, Ms. Hartman communicated with the PGCPS staff to obtain information about the allegations in the complaint, via telephone and email.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated December 20, 2010, with amendments, dated January 19 and 25, 2011, and February 2, 2011;
 - b. IEP, dated December 15, 2011, with amendments, dated February 3, 2012, and March 8, 14, and 16, 2012;
 - c. Email correspondence from the PGCPS staff to the complainant, dated November 1, 2011;
 - d. Email correspondences between the complainant and the PGCPS staff, dated December 19 and 21, 2011, and January 4, 2012;
 - e. Student's Report Card for the 2011-2012 school year;
 - f. Student's class schedule and teacher assignment for the 2011-2012 school year;
 - g. Email correspondences between the complainant and the PGCPS staff, dated between October 31, 2011 and April 27, 2012;
 - h. Graphic Organizer sample for use in Math;
 - i. Student work samples in English, for dates in March, April, and May 2012;
 - j. Regular education English teacher's "Present Performance Information" form, dated June 5, 2012;
 - k. Email correspondences between the complainant and the PGCPS staff, dated between November 29, 2011 and December 8, 2011;
 - l. Email correspondence from the complainant to the MSDE, dated May 23, 2012; and
 - m. State complaint, received by the MSDE on May 11, 2012.

BACKGROUND:

The student is fourteen (14) years old and is identified as a student with an Other Health Impairment under the IDEA, related to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). He attends XXXXXXXXXXXX, where he receives special education instruction. During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a and b).

ALLEGATIONS #1 AND #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION AND ACCOMMODATIONS AND PROGRESS REPORTS REQUIRED BY THE IEP DURING THE 2011-2012 SCHOOL YEAR

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2011-2012 school year contained annual goals for the student to improve his performance in reading comprehension, math problem solving, and written language expression. To assist the student in achieving the annual goals, the IEP required the provision of special education instruction by both special education teachers and regular education teachers in Math and English classes (Doc. a).
2. The IEP also required that the student be provided with accommodations and modifications in all of his classes. These accommodations and modifications included verbatim reading of written assignments, copies of notes, outlines and instructions, a graphic organizer to assist him in organizing his thoughts and ideas, and extended time to complete tasks and respond to questions. The IEP also required that the complainant be provided with reports of the student's progress toward achieving the annual goals of the IEP on a quarterly basis (Doc. a).
3. On December 15, 2011, the IEP team reviewed and revised the student's annual goals in reading comprehension, math problem solving, and written language expression, as well as the location and frequency of the special education instruction to be provided (Doc. b).
4. On March 14, 2012, the IEP was amended, with the agreement of the complainant, to revise the amount and frequency of the special education instruction to be provided, as well as to correct typographical errors in the document¹ (Doc. b).
5. There is documentation that, on November 1, 2011, the student's regular education English teacher was provided a summary of the student's IEP. There is documentation that the student's special education English teacher, who was assigned to the student's English class from November 2011 to February 2012, had access to the student's IEP and was aware of the subsequent amendments. Due to a position vacancy, no special education teacher was assigned to the student's English class from the start of the 2011-2012 school year to November 2011, and since February 2012 (Docs. c and d, interviews with the complainant and the PGCPSS staff, and review of the Maryland Online IEP database).
6. There is no documentation that any other teachers had access to the IEP or were informed of their respective roles in implementing the IEP (Interviews with the PGCPSS staff,

¹ The IEP was also amended on February 3, 2012, and March 8 and 16, 2012, with the agreement of the complainant, to correct typographical errors (Doc. b, interviews with the complainant, and review of the Maryland Online IEP database).

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review of the Maryland Online IEP database, and review of the student's educational record).

7. There is documentation that the student was provided with the accommodations and modifications required by the IEP in math and English. However, there is no documentation that the accommodations and modifications were provided in any of the student's other classes (Docs. e – j, interviews with the PGCP staff, and visual inspection of the student's "intervention notebook" maintained by the student's math teacher).
8. There is no documentation that the annual goals were addressed during the first (1st) and fourth (4th) quarters of the 2011-2012 school year (Docs. a and b, and review of the student's educational record).
9. There is no documentation that reports of the student's progress toward achieving the annual IEP goals for the second (2nd) and third (3rd) quarters were provided to the complainant (Review of the student's educational record).

DISCUSSION/CONCLUSIONS:

Allegation #1: Provision of Special Education Instruction and Accommodations Required by the IEP

The public agency is required to ensure that each student is provided with the special education instruction and related services required by the IEP (34 CFR §§300.101 and .103). In order to ensure the implementation of the IEP, the public agency must inform each teacher and service provider of his or her specific responsibilities related to implementing the IEP (34 CFR §300.323).

The MSDE finds that violations occurred with respect to this allegation as indicated below.

- Based on the Findings of Facts #5 and #6, the MSDE finds that there is no documentation that the PGCPs ensured that all of the student's teachers were informed of their specific responsibilities related to implementing the IEP throughout the 2011-2012 school year.
- Based on the Findings of Facts #1 – #5, the MSDE finds that there is no documentation that the student was consistently provided with special education instruction by a special education teacher in English during the 2011-2012 school year, as required by the IEP.
- Based on the Findings of Facts #2 – #4 and #7, the MSDE finds that there is no documentation that the student was consistently provided with the accommodations and modifications required by the IEP throughout the 2011-2012 school year.
- Based on the Finding of Fact #8, the MSDE finds that there is no documentation that the annual IEP goals were addressed during the first (1st) and fourth (4th) quarters of the 2011-2012 school year.

Allegation #2: Progress Reports

As stated above, the public agency must ensure that all of the requirements of the IEP are implemented. This includes ensuring that progress reports are provided as required by the IEP (34 CFR §§300.101, .320, and .323).

Based on the Findings of Facts #2 – #4, #8, and #9, the MSDE finds that the PGCPS did not ensure that the complainant was provided with reports of the student’s progress toward achievement of the annual goals in accordance with the IEP during the 2011-2012 school year. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

ALLEGATIONS #3 AND #4: INVITATION TO THE DECEMBER 15, 2011 IEP TEAM MEETING, AND PARTICIPATION OF A REGULAR EDUCATION TEACHER AT THE IEP TEAM MEETING

FINDINGS OF FACTS:

10. At the complainant’s request, the IEP team convened on December 15, 2011 to review the student’s IEP. There is documentation that the school staff scheduled the meeting at a time that was convenient for the complainant, and, on November 30, 2011 and December 5 and 8, 2011, provided the complainant with information concerning the date, time, and location of the meeting by email. However, the PGCPS staff acknowledges that the complainant was not provided with a written invitation to the meeting that contained the purpose of the meeting, nor did the invitation indicate that the student was invited to attend (Docs. b and k, and interviews with the PGCPS staff).
11. At the December 15, 2011 IEP team meeting, the IEP team, including the complainant, revised the IEP, including the student’s transition plan. The transition plan was revised based on information obtained from an Interest Inventory Assessment administered to the student on December 14, 2011. At the meeting, the school staff offered to have the student excused from class in order to participate in the meeting. The complainant indicated that she did not want the student removed from class because he would not be prepared since he did not have advance notice that he would be attending the meeting (Doc. b, and interviews with the complainant and the PGCPS staff).
12. There is no documentation that the IEP team included at least one (1) of the student’s regular education teachers, or that the complainant and the school system agreed to excuse the attendance of a regular education teacher (Doc. b, and interviews with the complainant and the PGCPS staff).

DISCUSSION/CONCLUSIONS:

Allegation #3: Invitation to the December 15, 2011 IEP Team Meeting

The public agency is required to take steps to ensure that the parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings, including notifying the parent of the meeting early enough to ensure that the parent will have an opportunity to attend, and scheduling the meeting at a mutually convenient time and place. To ensure parent participation in IEP team meetings, the school system must provide parents with written notice at least ten (10) days in advance of the meeting. The notice must state the purpose, time, date, and location of the meeting, and who will be in attendance (34 CFR §300.322 and COMAR 13A.05.01.07).

If one of the purposes of an IEP team meeting is to discuss the student's post-secondary goals and transition needs, the student must be invited to participate in the meeting. Additionally, the written invitation to the parent must inform the parent that the student will be invited to attend the meeting. If a student does not attend the IEP team meeting in which his or her transition needs are discussed, the school system is required to take other steps to ensure that the student's preferences and interests are considered during the meeting (34 CFR §§300.321 and .322, and COMAR 13A.05.01.07).

Based on the Finding of Fact #10, the MSDE finds that the complainant was not provided with a written invitation to the December 15, 2011 IEP team meeting at least ten (10) days prior to the meeting that included the required content. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

However, based on the Finding of Fact #11, the MSDE finds that, because the meeting was scheduled with the complainant's input, the violation did not impact the complainant's ability to participate in the IEP team meeting. Accordingly, no student-specific corrective action will be required with regard to this violation.

Based on the Findings of Facts #10 and #11, the MSDE finds that the student was not invited to the December 15, 2011 IEP team meeting during which his transition needs were considered. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

However, based on the Finding of Fact #11, the MSDE finds that the IEP team considered information concerning the student's preferences and interests obtained from assessment data when developing the transition plan. Therefore, the MSDE finds that the violation did not have a negative impact on the student's ability to benefit from his education program. Accordingly, no student-specific corrective action will be required regarding this violation.

Allegation #4: Participation of a Regular Education Teacher in the December 15, 2011 IEP Team Meeting

The IEP team must include at least one (1) regular education teacher of the student if the student is, or may be, participating in the regular education environment. However, the specific members of the IEP team may be excused from attending an IEP team meeting, in whole or in part, if the parent and the public agency consent to the excusal in writing (34 CFR §300.321).

Based on the Finding of Fact #12, the MSDE finds that the PGCPS did not ensure that a regular education teacher of the student participated in the December 15, 2011 IEP team meeting, as required. Based on the same Finding of Fact, the MSDE finds that the complainant and the PGCPS did not consent to the excusal of a regular education teacher from the meeting. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

ALLEGATION #5: IDENTIFICATION OF THE STUDENT'S NEEDS SINCE THE DECEMBER 15, 2011 IEP TEAM MEETING.

FINDINGS OF FACTS:

13. At the December 15, 2011 meeting, the IEP team revised the statement of the student's present levels of performance in the area of reading. The IEP had previously identified weaknesses in using context to determine the meaning of words, and identifying and explaining information stated in text. On December 15, 2011, the team documented that the student continues to demonstrate weakness in understanding the meaning of unknown words and identified a weakness in the area of completing work in a timely manner. The team did not determine whether the student continued to demonstrate a weakness in identifying and explaining information presented in text (Docs. a and b).
14. On December 15, 2011, the IEP team revised the goal for the student to improve reading comprehension to require the student to distinguish among types of narrative text and to identify the theme within a story. The goal continues to require the student to improve skills in identifying and explaining information in text, which is no longer identified as a weakness in the present levels of performance. Additionally, the goal, as revised, does not address the weakness in the area of work completion that was identified as a need in the present levels of performance (Docs. a and b).
15. At the December 15, 2011 meeting, the IEP team also revised the statement of the student's present levels of performance in the area of math. The IEP had previously described specific math skills that were identified as areas of weakness. On December 15, 2011, the statement of the present levels of performance was revised to indicate that the student "still needs guidance and support," and is "shy to ask [the] lead educator a question," but does not reflect that the team determined whether the student continued to demonstrate weaknesses that were previously identified with respect to specific math skills (Docs. a and b).

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16. The math goal developed on December 15, 2011 continues to require the student to improve skills that are no longer identified as areas of weakness in the present levels of performance, and does not address the weakness in self-advocacy that was identified by the team (Docs. a and b).
17. At the December 15, 2011 meeting, the IEP team also revised the statement of the student's present levels of performance in the area of written language expression. The IEP had previously identified weaknesses in expounding on written assignments without prompting, writing paragraphs with complete thoughts, selecting writing topics, and editing work for content, grammar, organization and accuracy. This was revised to indicate that the student has difficulty with sentence expression and understanding unknown words. The team did not determine whether the student continued to demonstrate weakness in the specific areas of written language expression previously identified in the present levels of performance (Docs. a and b).
18. The written language goal developed on December 15, 2011 continues to require the student to improve skills that are no longer identified as areas of weakness in the present levels of performance (Docs. a and b).

DISCUSSION/CONCLUSIONS:

Allegation #5: Identification of the Student's Needs

In order to provide a Free Appropriate Public Education (FAPE) to a student with a disability, the public agency must ensure that an IEP team develops an IEP that includes a statement of the student's present levels of academic achievement and functional performance. This includes information about how the student's disability affects the student's involvement and progress in the general curriculum. Based on that information, the team must develop annual measurable goals designed to meet the needs that result from the disability to enable the student to be involved in and make progress in the general education curriculum and to meet any other educational needs that result from the student's disability (34 CFR §§300.320 and .324, and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006).

The IEP must also include a statement of the special education instruction and related services to be provided to assist the student in achieving the annual goals, a description of how the student's progress toward achieving those goals will be measured and when that progress will be reported to the student's parents. Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to be involved in and make progress in the general education curriculum, the annual IEP goals must be aligned with the student's present levels of performance (34 CFR §§300.320 and .324, and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006).

In this case, the complainant alleges that the statement of the student's present levels of performance does not include sufficient information to determine whether the annual IEP goals address the needs that arise out of the student's disability (Docs. l and m).

Based on the Findings of Facts #12 – #17, the MSDE finds that, on December 15, 2011, the IEP team did not determine whether the student continues to have weaknesses in the areas previously identified. Based on the same Findings of Facts, the MSDE further finds that there is no documentation that the annual IEP goals are aligned with the areas of need that were identified by the IEP team. Therefore, this office finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the PGCPS to provide documentation, by the start of the 2012-2013 school year, that an IEP team that includes the required participants has reviewed and revised, as appropriate, the student's IEP to ensure that all areas of need arising out of the disability are identified in the present levels of performance and addressed by the annual goals. At this meeting, the IEP team must also determine the amount and nature of *compensatory services*² or other remedy necessary to redress the loss of services related to the development of the IEP since December 15, 2011 and the implementation of the IEP since the start of the 2011-2012 school year.

The 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 the IDEA.

Similarly Situated Students

The PGCPS must provide documentation by October 1, 2012, that it has identified all students with disabilities at XXXXXXXXXXXX who did not receive special education services as a result of the lack of a special education teacher in English during the 2011-2012 school year, and offered *compensatory services*³ to those students.

School Based

The MSDE requires the PGCPS to provide documentation by October 1, 2012, of the steps it has taken to determine if the violations related to ensuring proper participants at the IEP team

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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meeting and identifying and addressing the student's needs 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 the MSDE. If the school system reports compliance with the requirements, the 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, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the PGCPs.

System Based

The MSDE also requires the PGCPs to provide documentation of the steps it has taken to fill the vacant special education teacher position in order to ensure the violations related to the vacancy do not recur. This documentation must be provided prior to the start of the 2012-2013 school year, and, thereafter, on a monthly basis, until the position is filled.

Documentation of all corrective action taken is to be submitted to this office to the attention of the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the PGCPs by Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both the complainant and the PGCPs 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 facts or conclusions reached in this Letter of Findings. 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 Letter of Findings. 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 Letter of Findings.

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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 FAPE for the student, including issues subject to the State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/ch

cc: William R. Hite
Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Christine Hartman