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State Superintendent of Schools

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July 13, 2012

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

RE: XXXXX
Reference: #12-089

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 15, 2012, the MSDE received a complaint from Mr. XXXXXXXXXX, hereafter, "the complainant," on behalf of his 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. The MSDE investigated the following allegations:

1. The PGCPS did not ensure that the student has been provided with the services required by the Individualized Education Program (IEP) including the use of a visual schedule, sensory strategies and special education instruction by a substitute teacher who is a highly qualified teacher, during the 2011-2012 school year, in accordance with 34 CFR §§300.156 and .323; and

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2. The PGCPS has not ensured that the IEP addresses the student's behavioral needs, since the start of the 2011-2012 school year, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 16, 2012, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Ms. Gail Viens, Deputy General Counsel, Office of Legal Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On June 1, 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 Mrs. Rothgeb of the allegations and requested that her office review the alleged violations.
4. On June 4, 2012, Ms. Moyo conducted a telephone interview with the complainant about the allegations being investigated.
5. On June 14, 2012, Ms. Moyo and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and conducted interviews with Ms. Cheryl Clinton, Special Education Instructional Specialist, PGCPS and Ms. Betty Adkins, Autism Specialist, PGCPS. Ms. Morrison attended the site visit as a representative of the PGCPS and to provide information on the PGCPS policies and procedures, as needed.
6. On June 27, 2012 and July 3, 2012, the MSDE staff contacted the PGCPS staff via electronic mail in order to obtain additional information and documentation from the student's educational record previously requested, during the site visit, on June 4, 2012.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated June 6, 2011;
 - b. Reports of progress, dated October 28, 2011;
 - c. Reports of progress, dated October 31, 2011;
 - d. IEP, dated November 1, 2011;
 - e. IEP, dated November 21, 2011;
 - f. IEP, dated December 20, 2011;
 - g. Functional Behavioral Assessment (FBA), dated December 20, 2011;
 - h. Behavioral Intervention Plan (BIP), dated December 20, 2011;
 - i. Reports of progress, dated January 28, 2012;

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- j. Psychologist behavior observation report, dated March 19, 2012;
- k. Reports of progress, dated March 28, 2012;
- l. BIP, dated March 30, 2012;
- m. Correspondence and attachments from the complainant to MSDE, received on May 15, 2012;
- n. Reports of progress, dated May 28, 2012;
- o. IEP, dated June 4, 2012;
- p. Occupational therapy service logs for the 2011-2012 school year; and
- q. Speech and Language therapy service logs for the 2011-2012 school year.

BACKGROUND:

The student is six (6) years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA and 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 – q).

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2011-2012 school year was developed on June 6, 2011. At the meeting, the team considered information from the complainant and the student's mother that the student was exhibiting good social behavior at home. The team also considered information from the student's teachers that while the student was nonverbal and continued to demonstrate needs related to improving his social and communication skills, he was following class rules and demonstrating awareness of the classroom routine (Doc. a).
2. The IEP team developed an IEP that includes goals to assist the student with improving his play skills, his ability to use appropriate greetings with familiar adults and peers, and his ability to identify himself by name, which was consistent with the needs identified in the data. The IEP requires that the student be provided with special education instruction in a separate special education classroom by a special education teacher and with occupational and speech and language therapy, as related services, to assist him in achieving the goals (Doc. a).
3. The IEP requires that the student be provided with a visual schedule and the use of sensory strategies, manipulatives, reduction of distractions, and the provision of breaks to help him attend to his tasks. The IEP also requires that the student be provided with cues, gestural prompts, and repetition of directions to assist him with maintaining focus during activities. The IEP further requires that the student be provided with a dedicated assistant to engage him in sensory activities and assist with the provision of supports throughout the school day. The student must also be provided with positive reinforcement to

encourage him to work independently, and consultative adapted physical education services to assist with the improvement of his play skills (Doc. a).

4. During the 2011-2012 school year, IEP team meetings were convened on November 1, 2011, November 21, 2011, December 20, 2011, May 23, 2012, and June 4, 2012, to review the student's program and progress. At the meetings, the team considered information from the student's teachers indicating sufficient progress towards achieving the annual IEP goals, transition between activities, self-confidence when playing alongside peers, and increased self-direction. However, the team also considered information from the teachers that, while the student's behavior was improving in some areas, he also displayed interfering behaviors such as XXXX¹, crying and screaming without a clear cause, difficulty taking turns with peers, and difficulty attending to tasks. Teachers further reported that the student was displaying "perseverative and compulsive" behaviors related to numbers (Docs. b - q).
5. Based on this information, the IEP was revised to require that the student be provided with the use of several different methods of communication. The IEP team decided that, in order to assist him with achieving the goal of increasing self-management of his behaviors, he would be permitted to take breaks when he indicates the desire to do so. The IEP was revised to require that the student be provided with individualized activities to engage in with the dedicated assistant during periods of time that he has to wait his turn. The IEP team also decided that the PGCPs Autism Specialist would meet with the special education teacher in order to develop additional strategies for addressing the student's behavior (Docs. a, d - f, h, l, and o).
6. At the November 1, 2011 IEP team meeting, the complainant and the student's mother expressed concern that the student was experiencing problems with behavior because school staff was not providing the student with the behavioral supports required by the IEP. In response to the mother's concerns, the team documented that school staff would ensure that the behavioral supports be provided consistently in the future. The team further agreed that a Functional Behavioral Assessment (FBA) would be conducted to obtain additional information about the student's behaviors (Docs. d).
7. At the December 20, 2011 IEP team meeting, a Behavioral Intervention Plan (BIP) was developed based on the information collected in the FBA report. The report indicates that the student displays interfering behaviors when he is not provided with a desired object, when he is experiencing difficulty understanding information that is communicated verbally, and when he is required to remain seated and attend to an activity for an extended period of time. During the meeting, the complainant indicated that he was concerned that school staff had not obtained sufficient information about the

¹ XXXX is defined as the persistent craving and compulsive eating of nonfood substances (<http://medical-dictionary.com>).

student's behavior in the FBA. In response to this concern, the team determined that the school psychologist would conduct a classroom observation of the student to gather additional data (Docs. f - h).

8. At the May 23, 2012 IEP team meeting, the team considered information gathered from the school psychologist during her observation of the student in class. The information gathered indicates that the student remains on task when he is involved in structured activities, but that he experiences difficulty remaining on-task during activities involving other students. The psychologist observed that when the student is off-task he makes loud vocalizations, shakes his hands and counts with his fingers. The psychologist also noted that the student responds to requests that include physical or visual cues (Docs. j and o).
9. There is no documentation that the behavioral supports were provided to the student on a consistent basis during the 2011-2012 school year, as required by the IEP (Review of the educational record).
10. The special education teacher assigned to the student's class left the school after the start of the 2011-2012 school year and was replaced by another special education teacher during the second (2nd) quarter of the school year. There is no documentation that a highly qualified teacher was assigned to the student's class, as a substitute teacher, after the student's teacher left and before a teacher was assigned on a permanent basis to replace that teacher. Further, there is no documentation of the date when the student teacher left and when the new teacher was assigned (Docs. d, e, m, interview with PGCPs staff, and review of the educational record).

DISCUSSION/CONCLUSIONS:

Provision of Special Education Instruction by a Highly Qualified Teacher

Public agencies must ensure that personnel are appropriately and adequately prepared and trained in order to certify that special education instruction and related services are provided by "highly qualified" personnel. In order to meet the "highly qualified" requirement, special education teachers must obtain State certification as a special education teacher or pass the State special education teacher licensing examination, and hold a license to teach in the State as a special education teacher. This requirement does not create a right of action on behalf of an individual student for the lack of the provision of special education instruction by highly qualified teachers (34 CFR §§300.18 and .156).

Based on the Finding of Fact #10, the MSDE finds that there is no documentation that the student was provided with special education instruction by a highly qualified teacher during the period of time when a substitute teacher was assigned to the class. Therefore, the MSDE finds

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that a violation occurred with regard to this aspect of the allegation. However, because no individual right exist in this case, no student specific corrective action is required.

Provision of Supports

The IDEA requires that the public agency ensure that each student with a disability be provided with the special education services as stated in the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #1 - #3, the MSDE finds that the IEP required that the student be provided with instructional and behavioral supports. Based on the Finding of Fact #9, the MSDE finds that there is no documentation that the student was provided the supports required by the IEP, during the 2011-2012 school year. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Addressing the Student's Behavioral Needs

The public agency is required to provide each student with a disability requiring special education instruction with a Free Appropriate Public Education (FAPE) (34 CFR §300.101). A FAPE is defined as special education instruction and related services that is provided at public expense in conformity with a properly developed IEP (34 CFR §300.17).

An IEP must include annual goals for the student to improve skills in the areas of need arising from the student's disability, identified from information about the student's present levels of academic achievement and functional performance. It must also include a statement of the special education instruction and related services necessary to assist the student in achieving those goals (34 CFR §300.320).

When identifying the areas of need, the team must determine the present level of academic developmental, and functional levels of the student's performance. In doing so, the IEP team must consider the strengths of the student, the concerns of the parent for enhancing the education of the student, and the results of the most recent evaluation. 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 (34 CFR §300.324).

The complainant alleges that school staff did not obtain the necessary data to determine the supports required to address the student's behavioral needs. Based on the Findings of Facts #4 - #8, the MSDE finds that the IEP team met on several occasions during the 2011-2012 school year and considered assessment data, information from the student's teachers, and the concerns of the complainant and the student's mother, and developed a program to address the student's behavior needs consistent with the data. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the PGCPS to provide documentation by September 30, 2012, that the IEP team has convened to determine whether the violation related to the lack of provision of the supports required by the IEP had a negative impact on the student's ability to benefit from the program. If the team determines that there has been a negative impact, the team must determine the amount and nature of *compensatory services*² or other remedy necessary to redress the violation.

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, he maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

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 the complainant and the PGCPS staff 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 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. If additional information is provided, it will be reviewed and the 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 Letter of Findings.

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

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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subject to a 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/km

cc William R. Hite
Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Koliwe Moyo