



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

August 3, 2012

XXX  
XXX  
XXX

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: #12-094

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 June 5, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, 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. The MSDE investigated the following allegations:

1. The PGCPS did not provide the complainant with reports of the student's progress toward achieving the annual IEP goals during the 2011-2012 school year, in accordance with 34 CFR §300.320.
2. The PGCPS did not ensure that the student's Individualized Education Program (IEP) was implemented during the 2011-2012 school year, in accordance with 34 CFR §300.101. Specifically:
  - a. The student was not provided with the required behavioral supports; and
  - b. The student was not provided with the required accommodations and supplementary aids and services.

XXX

Mrs. Joan Rothgeb

August 3, 2012

Page 2

3. The PGCPS did not follow proper procedures when disciplinarily removing the student from school during the 2011-2012 school year, in accordance with 34 CFR §§300.530-.536.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 8, 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, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On June 11, 2012, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On June 12, 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.
5. On July 18, 2012, Ms. Stump and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX) to review the student's educational record, and interviewed Ms. XXXXXXXXXXXXXXX, Assistant Principal. Ms. Valerie Nelson, Special Education Instructional Specialist, PGCPS, attended the site visit as a representative of the PGCPS and to provide information on the PGCPS policies and procedures, as needed.
6. On July 23, 2012, Ms. Stump conducted a telephone conference call with Ms. XXXXXXXXX, Principal, XXXXXXXXXXXXXXX and Mr. XXXXXXXXXXXXXXX., IEP team chairperson, XXXXXXXXXXXXXXX. Ms. Morrison participated in the telephone conference call as a representative of the PGCPS and to provide information on the PGCPS policies and procedures, as needed.
7. On July 25, 2012, the PGCPS provided the MSDE with additional documentation related to the allegations, via electronic mail (e-mail).
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainant to the MSDE, received on June 5, 2012;
  - b. Functional Behavioral Assessment, dated February 17, 2011;
  - c. Behavior Intervention Plan, dated February 17, 2011;

XXX

Mrs. Joan Rothgeb

August 3, 2012

Page 3

- d. IEP, dated February 17, 2011;
- e. IEP, dated February 8, 2012;
- f. PGCPs Manifestation Determination form, dated May 9, 2012;
- g. Prior Written Notice form for the May 9, 2012 IEP team meeting;
- h. IEP Team meeting sign-in sheet, dated June 6, 2012;
- i. IEP, dated June 6, 2012;
- j. Prior Written Notice form for the June 6, 2012 IEP team meeting;
- k. Functional Behavioral Assessment, dated June 6, 2012;
- l. Behavior Intervention Plan, dated June 6, 2012;
- m. E-mail correspondence between PGCPs personnel, dated between May 2012 and June 2012;
- n. E-mail correspondence between school staff and the complainant, dated between May 2012 and June 2012;
- o. IEP progress reports for the 2011-2012 school year;
- p. Student's discipline record for the 2011-2012 school year; and
- q. E-mail correspondence from the PGCPs to the MSDE, dated July 31, 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. The student attends XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX), where he receives special education instruction and related services. During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a, b, d, e, and p).

**ALLEGATION #1:                      PROVISION OF IEP PROGRESS REPORTS**

**Findings of Facts:**

- 1. The IEP in effect for the 2011-2012 school year states that the complainant will be provided with written reports on the student's progress toward achieving the annual IEP goals on a quarterly basis (Docs. d, e, and i).
- 2. The student's educational record contains copies of written IEP progress reports, dated October 31, 2011, January 20, 2012, March 29, 2012, and June 8, 2012. School staff report that these progress reports were sent to the complainant on a quarterly basis, via the United States mail, as per school protocol. However, there is no documentation to support school staff's assertion (Doc. o and interview with school staff).

**Discussion/Conclusions:**

The IEP must include, among other things, a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parents (34 CFR §300.320).

XXX

Mrs. Joan Rothgeb

August 3, 2012

Page 4

Based on the Findings of Facts #1 and #2, the MSDE finds that while there is documentation in the educational record that the quarterly progress reports were generated, there is no documentation that the complainant was provided with copies of these reports of the student's progress toward achieving the annual IEP goals during the 2011-2012 school year. Therefore, the MSDE finds a violation regarding this allegation.

**ALLEGATION #2:                    IEP IMPLEMENTATION**

**Findings of Facts:**

**Behavioral Supports**

3.     The IEP in effect during the 2011-2012 school year requires that the student be provided with the supports of a Behavioral Intervention Plan (BIP). The supports include use of a behavior checklist, use of a "homework folder" in which to collect his assignments, a "checklist" to use in his locker to assist him in bringing the correct materials to class, preferential seating, and "organizational support" from the special education teacher (Docs. b-e, and i).
4.     The IEP progress reports for the 2011-2012 school year document that the student was offered the accommodations required by the IEP but he frequently refused to utilize them (Doc. o).

**Accommodations**

5.     The IEP in effect at the start of the 2011-2012 school year requires that the student be provided with monitoring of his test responses, use of calculation devices, use of graphic organizers, extended time to complete assignments and assessments, multiple breaks, and reduced distractions (Doc. d).
6.     On February 8, 2012, the IEP team convened to review the student's program and progress. The IEP team determined that the student no longer required the use of graphic organizers or reduced distractions. The IEP team determined that the student required the additional support of verbatim reading of assessments and determined that the remainder of the supports remained appropriate (Doc. e).
7.     The IEP progress reports for the 2011-2012 school year document that the student was offered the accommodations required by the IEP but he frequently refused to utilize them (Doc. o).

**Supplementary Aids and Services**

8.     The IEP in effect for the 2011-2012 school year requires that the student's teachers check with the student for understanding by providing positive feedback and prompting, reviewing instructions with the student frequently, breaking down assignments into

XXX

Mrs. Joan Rothgeb

August 3, 2012

Page 5

smaller units, monitoring independent work and asking the student to restate instructions or concepts in his own words (Docs. d, e, and i).

9. The IEP in effect for the 2011-2012 school year also requires that the student be encouraged to demonstrate appropriate behavior in the academic and the non-academic setting and have appropriate behavior reinforced. The IEP states that this will be accomplished by providing positive feedback and prompting, providing redirection, and reviewing expectations and routines with the student (Docs. d and i).
10. The IEP progress reports for the 2011-2012 school year document that the student was offered the supplementary aids and services required by the IEP but he frequently refused to utilize them (Doc. o).

### **Discussion/Conclusions:**

The public agency is required to ensure that the student is provided with the special education instruction and related services required by the IEP (34 CFR §300.101). In this case, the complainant alleges that the student was not provided with the supports required by the BIP, and the accommodations and the supplementary aids and services required by the IEP during the 2011-2012 school year (Doc. a and interview with the complainant).

### **Behavioral Supports**

Based on the Findings of Facts #3 and #4, the MSDE finds that there is documentation that the student was offered the behavioral supports required by the IEP during the 2011-2012 school year but did not use them. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

### **Accommodations and Supplementary Aids and Services**

Based on the Findings of Facts #5-#10, the MSDE finds that there is documentation that the student was offered the accommodations and supplementary aids and services required by the IEP but did not use them. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

### **ALLEGATION #3: DISCIPLINARY REMOVALS**

#### **Findings of Facts:**

11. On April 24, 2012, the student engaged in conduct that violated the code of student conduct and was recommended for expulsion. There is documentation that, on that same day, school staff spoke with the complainant by telephone and informed her of the conduct and of the recommendation for expulsion. The suspension notice, dated April 24, 2012, documents that the complainant was provided with a copy of the procedural safeguards (Doc. p).

XXX

Mrs. Joan Rothgeb

August 3, 2012

Page 6

12. The student's first day of the disciplinary removal for this incident was April 25, 2012. Prior to this date, the student had been disciplinarily removed from school for a total of nine (9) school days during the 2011-2012 school year (Doc. p).
13. There is documentation that, between May 3, 2012 and May 9, 2012, when the IEP team made the determination of whether the student's behavior was a manifestation of his disability, the student was offered special education instruction at the school building and transportation services, but the complainant did not make the student available to receive those services (Doc. m and interview with school staff).
14. At the May 9, 2012 IEP team meeting, the team determined that the student's behavior was a manifestation of his disability and he was returned to school the following day. The team also determined that an updated Functional Behavioral Assessment (FBA) would be conducted, but there is no documentation that the team reviewed and revised the existing BIP, as necessary, to ensure that it addressed the student's behaviors consistent with the existing data (Docs. f and g).
15. Following the May 9, 2012 meeting, the team began collecting data in order to complete the updated FBA, but there is no documentation that the complainant provided written consent for the assessment to be conducted (Docs. f, g, and k).
16. On June 6, 2012, the IEP team completed the FBA and revised the BIP. The complainant did not attend this meeting. There is documentation that school staff unsuccessfully attempted to schedule the meeting at a mutually convenient time and place with the complainant and that, when the complainant indicated she could not attend on the date determined by school staff, offered the opportunity to participate through a telephone conference call (Docs. i-l, n, and interview with school staff).
17. The PGCPS *School Max* computer-based record of the student's disciplinary removals for the 2011-2012 school year includes a three (3) day disciplinary removal, which occurred in November 2011. The information related to this disciplinary removal is not maintained in the student's educational record (Docs. p and q).

### **Discussion/Conclusions:**

#### **Disciplinary Removal**

The IDEA and the COMAR provide protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year. A student with a disability may be removed from the student's current placement for up to ten (10) consecutive school days for each incident of misconduct in a school year if the cumulative effect of the removals does not constitute a change in placement (34 CFR §300.530). A change in placement occurs if the removal is for more than ten (10) consecutive school days or the student has been subjected to a series of removals that constitute a pattern because they total more than ten (10) school days in a

XXX

Mrs. Joan Rothgeb

August 3, 2012

Page 7

school year and the student's behavior is substantially similar to the behavior in previous incidents that resulted in the removals (34 CFR §§300.530 and .536).

In order to ensure that students are provided with disciplinary removal protections and special education instruction in accordance with the requirements of the IDEA, each public agency must accurately record information, including student attendance and disciplinary removals, as specified in the *Maryland Student Records System Manual* (COMAR 13A.08.02.04).

Based on the Finding of Fact #17, the MSDE finds that the PGCPS has not maintained accurate documentation of the number of days that the student was disciplinarily removed from school during the 2011-2012 school year. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

### **Notification of Disciplinary Removal**

On the date in which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of the code of student conduct, the public agency must notify the parent of that decision and provide the parent the procedural safeguards notice (34 CFR §300.530).

Based on the Finding of Fact #11, the MSDE finds that there is documentation that the complainant was notified of the student's April 24, 2012 disciplinary removal in accordance with the requirement. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

### **Manifestation Determination and Review of BIP**

Within ten (10) school days of the date on which the decision is made to change the placement of a student because of a violation of a code of student conduct, the IEP team must convene to determine whether the student's behavior was caused by, or had a direct and substantial relationship to, the student's disability or if the behavior was the direct result of the school's failure to implement the IEP.

If the team determines that the behavior was a manifestation of the student's disability, it must either conduct a FBA and implement a BIP or review the existing BIP and modify it, as necessary, to address the behavior that led to the disciplinary removal. The team also must return the student to the educational placement from which the student was removed immediately (34 CFR §300.530 and COMAR 13A.08.03.08). If the public agency conducts a FBA, it must obtain written parental consent before conducting an assessment (COMAR 13A.05.01.13).

Based on the Finding of Fact #11, the MSDE finds that the date on which the decision was made to change the placement of the student was April 24, 2012. Therefore, the IEP team should have convened to make the manifestation determination and review the BIP no later than May 8, 2012. Based on the Finding of Fact #14, the MSDE finds that the IEP team convened on May 9, 2012. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

XXX

Mrs. Joan Rothgeb

August 3, 2012

Page 8

Based on the Findings of Fact #15 and #16, the MSDE finds that, while the IEP team determined that an updated FBA would be conducted, the team did not modify the BIP, as necessary, to address the behavior within the required time frame and school staff did not ensure that parental consent was obtained prior to conducting the FBA. Therefore, the MSDE finds that violations occurred regarding this aspect of the allegation.

### **Provision of Services**

For each period of removal after a student with a disability has been removed for the cumulative equivalent of ten (10) school days in a school year, school personnel shall consult with at least one (1) of the student's teachers to determine what services to provide to enable the student to appropriately progress in the general curriculum and advance toward achieving the goals of the student's IEP (COMAR 13A.08.03.03).

Based on the Finding of Fact #12, the MSDE finds that the tenth (10<sup>th</sup>) *cumulative* day of disciplinary removal during the 2011-2012 school year was April 25, 2012. Therefore, services should have been provided to the student beginning on April 26, 2012. Based on the Finding of Fact #13, the MSDE finds that services were not offered to the student until May 3, 2012. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

A student who is removed from the current placement for more than ten (10) consecutive school days, and whose behavior has been determined *not* to be a manifestation of the disability must continue to receive educational services, as determined by the IEP team, to enable the student to appropriately progress in the general curriculum and advance toward achieving the goals of the student's IEP (34 CFR §300.530 and COMAR 13A.08.03.08).

Based on the Finding of Fact #14, the MSDE finds that the student was returned to school immediately after the team determined that his behavior was a manifestation of his disability. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

### **Parent Participation at June 6, 2012 IEP Team Meeting**

The public agency is required to take steps to ensure that a 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. If the parent cannot attend an IEP team meeting, the public agency must use other methods to ensure participation, including by individual or conference telephone calls (34 CFR §300.322).

Based on the Finding of Fact #16, the MSDE finds that there is documentation that school staff attempted to schedule the June 6, 2012 IEP team meeting at a mutually convenient date and offered the complainant an alternative means of participating in the meeting. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.



## **CORRECTIVE ACTIONS/TIMELINES:**

### **Student-Specific**

The MSDE requires the PGCPS to provide documentation by September 30, 2012 that an IEP team convened and determined whether the violations related to the delay in offering educational services to the student had a negative impact on the student's ability to benefit from his program, and if so, the nature and amount of *compensatory services*<sup>1</sup> or other remedy necessary to redress the violations.

### **School-Based**

The MSDE requires the PGCPS to provide documentation by October 31, 2012, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXX.

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 re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of The United States Department of Education, 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.

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.

---

<sup>1</sup> 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

Mrs. Joan Rothgeb

August 3, 2012

Page 10

Please be advised that 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 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 Free Appropriate Public Education (FAPE) for the student, including issues 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:ks

cc : William R. Hite  
Gail Viens  
LaRhonda Owens  
Kerry Morrison  
XXXXXXXXX  
Dori Wilson  
Anita Mandis  
Martha J. Arthur  
Kathy Stump