



August 20, 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: #12-100

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.

**ALLEGATION:**

On June 27, 2012<sup>1</sup>, 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 Public Schools violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the allegation that the PGCPS did not follow proper procedures when conducting an evaluation since December 2011<sup>2</sup>, in accordance with 34 CFR §§300.111, .301-.311, and COMAR 13A.05.02.13(A).

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<sup>1</sup> On June 18, 2012, the complainant provided MSDE with correspondence containing an allegation of a violation of IDEA, which did not contain all of the necessary information to initiate a State complaint investigation. On June 27, 2012, the complainant provided the additional required information and the complaint investigation was initiated (34 CFR §300.153).

<sup>2</sup> The allegation was initially identified as beginning in January 2012. However, during the course of the investigation, it was determined that the evaluation process was started in December 2011 (Docs.).

XXX

Mrs. Joan Rothgeb

August 20, 2012

Page 2

**INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 18, 2012, the MSDE received correspondence from the complainant containing an allegation of a violation of the IDEA and State regulations.
3. On June 19, 2012, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE spoke with the complainant by telephone to clarify her allegation. During that conversation, Ms. Mandis informed the complainant that additional information was required to initiate a State complaint investigation.
4. On June 27, 2012, the complainant provided the MSDE with the information required to initiate the State complaint investigation. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPSS; Ms. Gail Viens, Deputy General Counsel, Office of Legal Counsel, PGCPSS; and Ms. LaRhonda Owens, Coordinating Supervisor, Special Education Compliance Office, PGCPSS.
5. On July 3, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. The MSDE also notified Mrs. Rothgeb of the allegation and requested that the PGCPSS office review the alleged violation, at this time.
6. On July 26, 2012, Ms. Moyo and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record and interviewed Ms. XXXXXXXX, Principal. Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPSS attended the site visit as a representative of the PGCPSS and to provide information on the PGCPSS policies and procedures, as needed.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Section 504 Accommodations Plan, dated November 28, 2011;
  - b. School Instructional Team (SIT) meeting notes, dated November 28, 2011;
  - c. Individual Education Program (IEP) team meeting notice, dated December 12, 2011;
  - d. SIT meeting notes, dated December 12, 2011;
  - e. Consent for assessment, dated December 12, 2011;
  - f. Assessment report, dated February 10, 2012;
  - g. IEP team meeting notes, dated February 14, 2012;
  - h. Child Find referral, dated March 14, 2012;
  - i. IEP team meeting notes, dated April 30, 2012;

XXX

Mrs. Joan Rothgeb

August 20, 2012

Page 3

- j. IEP team meeting notice, dated May 3, 2012;
- k. IEP team meeting notes, dated May 20, 2012;
- l. IEP team meeting notice, dated May 25, 2012;
- m. IEP team meeting notes, dated June 10, 2012;
- n. IEP, dated June 11, 2012;
- o. IEP team meeting notice, dated June 11, 2012; and
- p. Correspondence and attachments from the complainant to MSDE, received on June 18 and 27, 2012.

### **BACKGROUND:**

The student is twelve (12) years old and he attends XXXXXXXXXXXXXXXXXXXX. On June 4, 2012 the student was identified as a student with Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD). Prior to that date, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 based on ADHD, and had a 504 Accommodations Plan (504 Plan).

On June 11, 2012, an IEP was developed for the student. 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 - p).

### **FINDINGS OF FACTS:**

1. On November 28, 2011, the Student Intervention Team (SIT) met to review the student's progress and 504 Plan, which identified the student's "disability condition" as ADHD. During the meeting, the student's teachers reported that he demonstrates difficulty with organization, maintaining attention, and completing assignments. They further reported that the student "shows little interest in his work" and does not participate in his academic classes. At that time, the team revised the 504 Plan to require that the counselor meet with the student on a weekly basis to address concerns about class participation and work completion. On the same date, the complainant indicated that she believed that the student requires greater support than the 504 Plan provided, and requested an evaluation to determine whether the student has a disability under the IDEA and requires special education services (Docs. a and b).
2. On December 12, 2011, the IEP team convened in response to the complainant's request and reviewed reports from the student's teachers, the complainant's concerns, the student's progress with the provision of the 504 Plan supports, and his grades. Based on this review, the team determined that additional data was needed and recommended that academic and cognitive assessments be conducted. On the same date, the complainant provided consent for the assessments to be conducted (Docs. a, and c - e).
3. On February 14, 2012, the IEP team reconvened and reviewed the assessment results. However, there is no documentation that a classroom observation was conducted for consideration by the team. At the meeting, the team determined that the student did not

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Mrs. Joan Rothgeb

August 20, 2012

Page 4

meet the criteria for identification as a student with a specific learning disability (SLD). In response, the complainant expressed her disagreement with the eligibility determination and reiterated her concerns that the student requires additional assistance in order to address the identified needs that arise out of his ADHD. The team decided that in order to address such concerns, the complainant would have to provide documentation that the student has been diagnosed with ADHD, and the complainant agreed to obtain this information (Docs. f and g).

4. Following the February 14, 2012 IEP team meeting, the IEP team met on several more occasions to review additional documentation provided by the complainant. However, the team did not complete the evaluation until June 4, 2012, when it determined that the student meets the criteria for identification as a student with an Other Health Impairment based on ADHD. To date, an evaluation report has not been completed in order to document the eligibility determination (Docs. h - n).

## **DISCUSSION/CONCLUSIONS:**

### Evaluation Timelines

When a written referral for evaluation is received from a parent, the public agency must promptly request parental consent for the evaluation and ensure that the evaluation is completed within sixty (60) days of parental consent and within ninety (90) days of the receipt of the referral (COMAR 13A.05.01.04 and .06).

Based on the Findings of Facts #2 - #4, the MSDE finds that the evaluation was not completed within the required timelines. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the violation.

### Evaluation Procedures

The public agency must ensure that assessment procedures are administered to ensure that the student is assessed in all areas related to the suspected disability. It must also ensure that each special education and related service needed by the student is identified, regardless of whether the need is commonly linked to the disability (COMAR 13A.05.01.04 and .05).

When determining whether a student meets the criteria for identification as a student with a specific learning disability, the IEP team must consider information from an observation of routine classroom instruction and from the monitoring the student's performance that occurred before the referral for evaluation. Alternatively, at least one (1) member of the team, other than the student's regular education teacher, must observe the student in the student's learning environment and provide information to the team about the student's academic performance and behavior in the areas of difficulty (34 CFR §300.310 and COMAR 13A.05.01.05).

Based on the Findings of Facts #1 - #3, the MSDE finds that the PGCPS did not ensure that the team had obtained the required evaluation data from a classroom observation when determining

that the student does not meet the criteria for identification as a student with a SLD. As a result, the IEP team did not follow proper procedures to ensure that a comprehensive evaluation was conducted.

Further, based on the Findings of Fact #3 and #4, the MSDE finds that because the IEP team did not ensure that the student was assessed in all areas of suspected disability, the complainant was required to obtain this additional information for review by the IEP team. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

#### Provision of an Evaluation Report

After the completion of an initial evaluation for a disability under the IDEA, the school system must develop an evaluation report. This report must document information provided by the parent, results of assessment procedures used as a basis for the eligibility determination, a statement as to whether the assessment procedures were valid for the purposes intended, and valid for the student, and whether the student is a student with a disability under the IDEA (34 CFR§300.503 and COMAR 13A.05.01.06).

Based on the Finding of Fact #4, the MSDE finds that there is no documentation in the student's educational record that the PGCPS developed an evaluation report once the evaluation process was completed. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

#### **CORRECTIVE ACTIONS/TIMELINES:**

##### **Student-specific**

The MSDE requires the PGCPS to provide documentation that the PGCPS has requested parental consent to conduct a classroom observation and, if provided, that the observation has been conducted. The IEP team must then convene to consider the results and determine if the student is eligible as a student with a SLD under the IDEA. If the student is identified with a SLD, the team must further review and revise the IEP as appropriate, consistent with the evaluative data.

The MSDE also requires the PGCPS to provide documentation that the IEP team has convened to determine the amount of *compensatory services*<sup>3</sup> required. Specifically, the IEP team must determine how to remediate the loss of services from the date that the evaluation should have been completed until the student was found eligible for special education services.

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

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<sup>3</sup> For the purpose of this letter, these are services, as determined by the IEP team, needed to remediate the denial of appropriate services to the student (34 CFR §300.151).

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.

All student specific corrective action must be completed no later than October 1, 2012.

**School-based**

The MSDE requires the PGCPs to provide documentation by October 30, 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 XXXXXXXXXXXXXXXXXXXX.

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.

Please be advised that both the school system and the complainant 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.

XXX

Mrs. Joan Rothgeb

August 20, 2012

Page 7

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 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/km

cc : William R. Hite  
Duane Arbogast  
Gail Viens  
LaRhonda Owens  
Kerry Morrison  
XXXXXXXX  
Dori Wilson  
Anita Mandis  
Koliwe Moyo