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Interim State Superintendent of Schools

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September 16, 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: #12-008

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 July 27, 2011, MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter. 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 did not provide the student with a free appropriate public education (FAPE) upon her transfer to PGCPS at the start of the 2010-2011 school year, in accordance with 34 CFR §§300.101 and .323;
2. PGCPS did not follow proper procedures when conducting an evaluation of the student in December 2010, in accordance with 34 CFR §§300.303-.306;
3. The Individualized Education Program (IEP) developed in March 2011 does not address the student’s identified behavioral and academic needs, in accordance with 34 CFR §300.324; and

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4. PGCPS did not follow proper procedures when determining the student's educational placement for the 2011-2012 school year, in accordance with 34 CFR §§300.114-.116 and .321.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 28, 2011, Ms. Stump spoke with the complainant by telephone to clarify the allegations to be investigated.
3. On July 29, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Joan Rothgeb, Director of Special Education, PGCPs; and Ms. Gail Viens, Deputy General Counsel, PGCPs.
4. On July 29, 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 August 9, 2011, Ms. Stump reviewed the student's education record at XXXXXXXX School. Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPs, was present at the record review.
6. On that same date, PGCPs provided MSDE with additional documentation related to the allegations via electronic mail (e-mail).
7. On August 30, 2011, Ms. Stump and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX School and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Guidance Secretary;
 - b. Mr. XXXXXXXXXXXX, Special Education Chairperson; and
 - c. Ms. XXXXXXXXXXXXXXXX, Guidance Counselor.

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

8. On September 7, 2011, PGCPs provided MSDE with additional documentation from the student's education record, via e-mail.
9. On September 12, 2011, PGCPs provided MSDE with additional documentation from the student's education record, via e-mail.

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10. 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 MSDE, received on July 27, 2011;
 - b. IEP, dated February 24, 2009;
 - c. Request for information form, dated August 23, 2010;
 - d. Student registration form, dated August 23, 2010;
 - e. IEP, dated September 16, 2010;
 - f. Notice and consent for assessment form, dated September 16, 2010;
 - g. Assessment report, dated November 16, 2010;
 - h. Psychological consultation/conference report, dated December 13, 2010;
 - i. IEP, dated March 24, 2011;
 - j. Central IEP team referral packet, dated March 24, 2011;
 - k. IEP progress reports for the 2010-2011 school year;
 - l. IEP, dated July 26, 2011;
 - m. Correspondence from PGCPS to the complainant, dated August 5, 2011;
 - n. Student registration form, dated August 22, 2011; and
 - o. The student's report card for the 2010-2011 school year.

BACKGROUND:

The student is fourteen (14) years old, is identified as a student with emotional disability under IDEA, and receives special education and related services. During the 2009-2010 school year, the student was parentally placed in XXXXXXXXXXXXXXXXXXXX.

The complainant enrolled the student in the PGCPS for the 2010-2011 school year and she attended XXXXXXXXXXXXXXXXXXXX School (XXXXXXXX), a PGCPS public school. She is currently a ninth (9th) grade student at XXXXXX School. 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, c, d, e, i, m, and n).

ALLEGATION #1: **PROVISION OF FAPE AT THE START OF THE 2010-2011 SCHOOL YEAR**

Findings of Facts:

1. On August 23, 2010, the complainant enrolled the student at XXXXXXXXXXXX. The enrollment form indicates that the student "has a current IEP." On the same date, school staff requested the student's educational records from the private school she attended during the 2009-2010 school year (Docs. c and d, interview with school staff, review of education record, and review of Guidance Secretary's log of receipt of records).
2. There is a copy of an IEP, XXXX XXXXXX, maintained in the student's education record from the XXXXX Public Schools ("XXXXX IEP"). The

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XXXX IEP requires that the student receive special education instruction outside of the general education classroom in a “highly structured therapeutic environment” (Doc. b).

3. At the start of the 2010-2011 school year, XXXXXXXXXXXXX staff enrolled the student in general education classes. The student’s schedule indicates that the academic subject classes, in which the student was enrolled, were taught by both a general education teacher and a special education teacher (Doc. o).
4. On September 16, 2010, the IEP team convened. The documentation of the meeting indicates that the team reviewed the most recent evaluative data available to them, including the XXXX IEP and input from the student’s parents. The team determined that additional data was needed to determine whether the student is a student with a disability under Maryland law and to determine current levels of academic achievement and developmental needs. The team recommended an educational assessment and determined that updated psychological information was not necessary. The complainant provided written consent for the assessment (Docs. e and f).
5. At the September 16, 2010 meeting, the IEP team also determined the comparable services that would be provided to the student pending the completion of the evaluation. The team developed annual goals in each of the areas of identified need and determined that the student required special education instruction in all academic subjects from a special education teacher in a general education classroom. The team also determined that the student required thirty (30) minutes per week of counseling as a related service. These counseling services were to be provided to the student outside of the general education classroom by the guidance counselor. The IEP team determined a general education classroom as the least restrictive environment in which the student’s IEP could be implemented (Doc. e).
6. At the September 16, 2010 meeting, the IEP team determined that in order to implement the IEP in the least restrictive environment, the student required accommodations and supplementary aids and services, including use of calculation devices and graphic organizers; extended time; frequent breaks; provision of extra response time to process both auditory and written information; provision of a consistent routine, clear expectations, simply stated consequences, firmly applied limits, and regular supervision; and use of frequent praise with the student (Doc. e).

Discussion/Conclusions:

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). If a student with an IEP in one state transfers to a public agency in another state, the new public agency, in consultation with the student’s parent, must provide the student with FAPE, including services comparable to those described in the student’s IEP from the previous state, until the new public agency conducts an evaluation if determined to be necessary; and develops, adopts, and implements a new IEP, if appropriate (34 CFR §300.323).

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To facilitate the transition of a student with a disability who transfers with an IEP from one state to another, the new public agency, in which the student enrolls, must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student from the previous public agency in which the student was enrolled (34 CFR §300.323).

Based on Finding of Fact #1, MSDE finds that school staff requested the student's educational record in a timely manner. Based on Findings of Facts #2-6, MSDE finds that the IEP team convened on September 16, 2010 and determined comparable services while awaiting the results of the evaluation that it had also determined necessary. However, based on Finding of Fact #3, MSDE finds that there is no documentation that the student was provided with comparable services from the start of the 2010-2011 school year until September 16, 2010. Therefore, MSDE finds a violation regarding this allegation for this time period.

ALLEGATION #2: EVALUATION PROCEDURES

Finding of Facts:

7. On December 13, 2010, the IEP team re-convened to review the results of the educational assessment recommended at the September 16, 2010 IEP team meeting. The report of the results of the assessment indicates that the student's overall "academic knowledge" is in the "low average range" and that she continues to have specific needs in math and written language. The documentation of the meeting indicates that the IEP team determined that the student meets the criteria as a student with a disability in need of special education instruction and related services and that the IEP developed in September 2010 remained appropriate (Docs. g-i).

Discussion/Conclusions:

As part of an initial evaluation, the IEP team must review existing evaluative data including evaluations; information provided by the student's parent; current classroom-based, local, or State assessments; classroom-based observations; and observations by teachers and related service providers. On the basis of that review, the team must identify what additional data, if any, is needed to determine, among other things, whether the student is a student with a disability and the educational needs of the student (34 CFR §300.305).

In conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student and must not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability or for determining an appropriate educational program for the student. The public agency must ensure that the student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities (34 CFR § 300.304). The evaluation of a student must be completed within sixty (60) days of parental consent for assessments and ninety (90) days of the receipt of a written referral (34 CFR § 300.301 and COMAR 13A.05.01.06(A)).

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Based on Finding of Fact #7, MSDE finds that the IEP team at the September 16, 2010 meeting reviewed the existing data, determined that additional data was needed, and recommended assessments. Based on that same Finding, MSDE finds that while the evaluation was not completed within sixty (60) days of parental consent, it was completed within ninety (90) days of the referral. Therefore, MSDE finds no violation regarding this allegation.

ALLEGATION #3: IEP THAT ADDRESSES THE STUDENT'S ACADEMIC AND BEHAVIOR NEEDS SINCE MARCH 2011

Findings of Facts:

8. On February 28, 2011, the IEP team reconvened at the request of the complainant to consider her concerns, which included a report from the student that she was not receiving the counseling services required by the IEP. The team determined that the student had not been receiving the counseling services as required by the IEP. However, school staff report that the team did not discuss how to make up the missed services or determine whether *compensatory services*¹ were required as a remedy for the missed services. School staff report that following the February meeting, the student was provided with counseling services as required by the IEP; there is no documentation of the provision of those services (Doc. i and interview with school staff).
9. The IEP team agreed to reconvene in March 2011 to complete its review of the complainant's concerns and to review and revise the student's program, as appropriate (Doc. i).
10. On March 24, 2011, the IEP team reconvened. The documentation of the meeting indicates that the team considered reports from the student's teachers that the student consistently completes class work assignments, participates appropriately in class, and is making progress. The teachers also reported that she is inconsistent in completing homework and is easily distracted in class. In addition, the team considered the concerns of the student's parents. After reviewing this information, the IEP team revised the annual goal related to behavior, added a second behavioral goal, and determined that the other annual goals remained appropriate. The team considered the need for a functional behavioral assessment or a behavior intervention plan and determined both were unnecessary. Her behavior needs could be addressed through accommodations, supplementary aids and services, and counseling services (Docs. i and j).

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,

¹ 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).

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the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324). Once the IEP is developed, 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).

Based on Findings of Facts #9 and 10, MSDE finds documentation that the IEP team considered all required data, including the input of the student's parents and developed an IEP based on that data. Based on Finding of Fact #10, MSDE finds that the March 2011 IEP includes positive behavior interventions and supports to address the student's behavior needs. Therefore, MSDE finds no violation regarding this aspect of the allegation.

However, based on Finding of Fact #8, MSDE finds that there is documentation that the student was not provided with the counseling services required by the IEP between September 16, 2010 and the end of the 2010-2011 school year. Therefore, MSDE finds that a violation has occurred.

ALLEGATION #4: **PLACEMENT DETERMINATION FOR THE 2011-2012 SCHOOL YEAR**

Findings of Facts:

11. At the March 24, 2011 IEP team meeting, the IEP team considered the concerns of the complainant that she believed that the student required a more restrictive environment to receive her special education services. The team also reviewed reports from the student's teachers and determined that the student requires a "small structured environment, with close monitoring and frequent redirection." The team agreed to reconvene to consider the complainant's request (Doc. i).
12. The IEP team reconvened on July 26, 2011. The documentation of the meeting indicates that the team considered the results of the most recent assessments, the student's progress toward achieving the annual IEP goals, and the student's progress in the general education curriculum. The team determined that she required special education instruction in math and "self-management," related to organizational issues, in a separate special education classroom. The team determined that the student required special education instruction in the remaining academic subjects in a general education classroom taught by both a general education and a special education teacher. The team also determined that the student continues to require weekly counseling as a related service (Docs. i-m).
13. The IEP team determined that the student's IEP could be implemented in both the general education classroom and a separate special education classroom and determined that the student could attend the school that she would otherwise attend if she were not disabled (Docs. l and m).

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Discussion/Conclusions:

The IDEA requires that the public agency ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled. Further, the IDEA requires that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved (34 CFR §§300.114 - .116).

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP team. The placement decision must be made in conformity with the least restrictive environment provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

Unless the IEP of a student requires some other arrangement, the student must be educated in the school setting that the student would attend if not disabled. In selecting the least restrictive environment, the public agency must consider any potentially harmful effect on the student or on the quality of services that the student needs (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

Based on Findings of Facts #11-13, MSDE finds that the IEP team considered all the data and determined the student's placement in accordance with the data. Therefore, MSDE finds no violation regarding this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

MSDE requires PGCPs to provide documentation by November 15, 2011, that an IEP team has convened and determined the nature and amount of *compensatory services*² or other remedy necessary to redress the violation related to the provision of comparable services between the beginning of the 2010-2011 school year and September 16, 2010 and the violation regarding the provision of counseling services between September 16, 2010 and the end of the 2010-2011 school year.

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 IDEA.

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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School-based

MSDE requires PGCPS to provide documentation by December 1, 2011 of the steps it has taken to determine if the violation related to implementation of related services as required by the IEP identified in the Letter of Findings is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXX.

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 The United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of 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 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 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 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.

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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 a State complaint investigation, consistent with IDEA. 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
Bonita Coleman-Potter
Gail Viens
LaRhonda Owens
Kerry Morrison
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Martha Arthur
Kathy Stump