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Interim State Superintendent of Schools

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November 18, 2011

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Ms. 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: #12-016

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.

ALLEGATION:

On September 26, 2011, the MSDE received a complaint from Mr. XXXXXXXX and Mrs. XXXXXXXX, hereafter, "the complainants," on behalf of their son. In that correspondence, the complainants 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. This office investigated the allegation that the PGCPS has not ensured that the student's Individualized Education Program (IEP) addresses his transportation needs since September 26, 2010, 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 September 26, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE spoke with the student's father by telephone to clarify the allegation to be investigated.

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XXX

Ms. Joan Rothgeb
November 18, 2011
Page 2

3. On September 27, 2011, a copy of the complaint was provided by facsimile to Ms. Joan Rothgeb, Director of Special Education, PGCPSS; Ms. Gail Viens, Deputy General Counsel, Office of Legal Counsel, PGCPSS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPSS.
4. On October 4, 2011, MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified Ms. Rothgeb of the allegation and requested that her office review the alleged violation.
5. On October 11, 2011, Ms. Moyo reviewed the student's education record at PGCPSS Central Office and obtained documentation from the student's record. Ms. Morrison was present during the record review, as a representative of the school system, to provide information on PGCPSS policies and procedures, as needed.
6. On November 7, 2011, Ms. Moyo conducted a telephone interview with the complainants regarding the allegation being investigated. On the same date, the complainants provided MSDE with additional documentation to be considered during the investigation.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Individualized Education Program (IEP), date January 28, 2010;
 - b. Behavior Intervention Program, dated December 28, 2010;
 - c. IEP, dated January 10, 2011;
 - d. Bus incident report, dated August 30, 2011;
 - e. Bus incident report, dated August 30, 2011;
 - f. IEP, dated September 1, 2011;
 - g. Complainant's correspondence to MSDE, received September 26, 2011; and
 - h. IEP, dated October 12, 2011.

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with autism under the IDEA, and receives special education instruction and related services. He attends XXXXXXXXXXXXXXX, a nonpublic separate special education school, where he was placed by the PGCPSS. During the time period covered by this investigation, the complainants participated in the education decision-making process and were provided with procedural safeguards as required (Docs. a, b, c, f, g, and h).

FINDINGS OF FACTS:

1. The IEP in effect on September 26, 2010 was developed on January 28, 2010. At that time, the IEP team determined that while the student required transportation services to and from school on a daily basis, he did not require the support of additional personnel on

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XXX

Ms. Joan Rothgeb

November 18, 2011

Page 3

the bus. There is no documentation that the student was identified with a need for the support of additional staff on the bus or that the complainants requested that the student be provided with such support (Doc. a and review of the education record).

2. On January 10, 2011 the IEP team met to conduct the annual review of the student's IEP. At the IEP team meeting, the team discussed the student's transportation needs and considered the information listed below.
 - a. The complainants' request that the student be provided with the services of a one-to-one aide while on the school bus to ensure his safety because he had been involved in a physical altercation with another student on the bus.
 - b. The reports of the school staff that the other student involved in the altercation had been removed from the bus and that the student's bus transports a total of six (6) students with a driver and two (2) aides, which they determined was sufficient to ensure that the student is not involved in another altercation on the bus (Doc. c).
3. Based on its review of this information, the IEP team determined that the student continues to require transportation services on a daily basis to and from school. However, the team rejected the request for a one-to-one aide and determined that the student requires "preferred seating" at the front of the bus, with the seats directly in front and behind him left empty in order to monitor the student's behaviors and lessen the chance that he will be disturbed by other students (Doc. c).
4. Transportation staff report that during the morning bus ride on August 30, 2011, the student grabbed school bus staff while the bus was in motion, spit, and threw his headphones¹. They further report that during the afternoon bus ride on the same day, the student stood up while the bus was in motion and hit bus staff (Docs. d and e and interview with the complainants).
5. On September 1, 2011, the IEP team convened to discuss the incidents that occurred on August 30, 2011. At the meeting, the team determined that in addition to the "preferred seating" on the bus, the bus staff would receive training on how to address the student's behaviors (Doc. f).
6. On October 12, 2011, the IEP team, including transportation staff, met at the complainants' request to discuss the student's transportation services. At the meeting, the team considered the information listed below.
 - a. The complainants' report that the student's behavior had improved on the bus since the IEP meeting held on September 1, 2011, but that a new student began riding the bus that makes vocalizations that bother the student.

¹ While on the bus, the student listens to music through headphones to avoid disturbances from loud noises that may agitate him (Docs. b and g).

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Ms. Joan Rothgeb

November 18, 2011

Page 4

- b. The report of transportation staff that on October 5, 2011 a student made a loud vocalization on the bus and that the student responded by banging his head on the seat and “head butting” another student.
 - c. The complainants’ concern that the student’s sensitivity to loud noises may result in the student having a “behavioral melt down,” engaging in head banging, or becoming aggressive.
 - d. The complainants’ repeated request that the student be provided with a one-to-one aide while riding the school bus.
 - e. The recommendations of the PGCPS behavioral specialist that the bus attendant use strategies with the student, such as a squeeze ball to distract him during the bus ride (Doc. h).
7. Based on the review of the reported information, the team rejected the request for a one-to-one aide; it was recommended that the student be provided with “access to adult supports on the bus,” and that no more than five (5) students would be assigned to the student’s bus. The team further determined that the seating arrangement would be re-arranged in order for the bus attendant to sit directly across from the student on the bus. The team also recommended that the student be provided with a squeeze ball while on the bus and that the student’s progress is reviewed at the next IEP team meeting, in December 2011 (Doc. h).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student is provided with an IEP that addresses all of the needs that arise from the student’s disability. In order to identify those needs, the team must consider information from evaluations conducted, concerns of the parents, and information from the student’s teachers (34 CFR §300.324).

In this case, the complainants allege that the student requires the services of a one-to-one aide in order to be safely transported by bus. Based on the Findings of Facts #1 - #7, the MSDE finds that the IEP team met and considered the complainants’ concerns and reports from school staff; the student’s program was revised based on this information. Further, based on the same Findings of Facts, the MSDE finds that the team continues to meet to review the program and the student’s progress. Therefore, MSDE does not find that a violation occurred with regard to this allegation.

While this office understands that the complainants disagree with the IEP team’s decision regarding the provision of a one-to-one aide, the United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state educational agency must review the procedures used by a school system to reach determinations about the

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Ms. Joan Rothgeb
November 18, 2011
Page 5

program (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

Additionally, the state educational agency must review the evaluative data to determine if decisions made by the IEP team are consistent with the data. The state educational agency may not, however, overturn an IEP team's decisions. Parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000). Because this office did not find that a procedural violation occurred and found that there was data to support the team's decision, the MSDE may not overturn the team's decision.

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 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.

Questions regarding the findings of fact and conclusions contained in this Letter of Findings should be addressed to this office in writing. The complainants 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, in accordance with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

MEF/km

c: William R. Hite
Gail Viens
Dori Wilson
Koliwe Moyo

Bonita Coleman-Potter
LaRhonda Owens
Jodi King

Joan Rothgeb
Kerry Morrison
Anita Mandis