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State Superintendent of Schools

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January 23, 2013

Eric A. Levine, Ed.D.
Eric A. Levine & Associates
6733-C Clifton Road
Frederick, Maryland 21703

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: #13-027

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 November 29, 2012, the MSDE received a complaint from Eric A. Levine, Ed.D., hereafter, "the complainant," on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX. 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 student. The MSDE investigated the allegation that the PGCPS did not ensure that proper procedures were followed in response to a referral for an evaluation under the IDEA, made by the student's mother on September 12, 2012, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.04 and .06.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.

2. On December 3, 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 December 3, 2012, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On December 5, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the PGCPs of the allegation and requested that the PGCPs review the alleged violation.
5. On January 8, 2013, Ms. Hartman and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Mr. XXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXXXXXXXXXX, Assistant Principal; and
 - c. Ms. XXXXXX, Special Education Chairperson.

Ms. Kerry Morrison and Ms. Michele S. McKoy, Special Education Instructional Specialist, PGCPs, attended the site visit as representatives of the PGCPs and to provide information on the PGCPs policies and procedures, as needed.
6. On January 9, 2013, the MSDE requested information and documents from the PGCPs, via electronic mail (email). On the same date, Ms. Hartman conducted a telephone interview with the complainant about the allegation being investigated.
7. On January 14, 2013, the PGCPs provided the MSDE with additional information to be considered during the investigation of the allegation.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. *Prior Written Notice* form documenting the decisions made by the IEP team, dated December 6, 2012;
 - b. Correspondence from the complainant to the PGCPs staff, dated September 12, 2012;
 - c. Correspondence from the complainant to the PGCPs staff, dated November 15, 2012; and

- d. Email correspondence from the student's mother to the PGCPS staff, dated October 26, 2012.

BACKGROUND:

The student is twelve (12) years old and attends XXXXXXXXXXXXXXXXXXXX. An evaluation of the student's eligibility for special education services under the IDEA, which began on December 6, 2012, is currently pending. During the period of time addressed by this investigation, the student's mother was provided with notice of the procedural safeguards (Doc. a).

FINDINGS OF FACTS:

1. On September 12, 2012, the complainant, who is an educational consultant, sent correspondence to the school staff on behalf of the student and the student's mother. In that correspondence, the complainant informed the school staff that the student's mother suspects the student "requires special education services," and requested permission to conduct a classroom observation of the student, interview the school staff, and review the student's educational record (Doc. b).
2. Although arrangements were made for the complainant to observe the student, the PGCPS did not take steps to begin an evaluation of the student or, alternatively, to inform the student's mother that it does not suspect the student has a disability requiring special education services (Doc. c, interviews with the PGCPS staff, and review of the student's educational record).
3. Although the September 12, 2012 correspondence said that the student's mother suspects he "requires special education services," the school staff report that they did not interpret the September 12, 2012 correspondence as referral for an evaluation (Doc. c, interviews with the PGCPS staff, and review of the student's educational record).
4. On October 26, 2012, the complainant conducted a classroom observation of the student. On the same date, the student's mother sent correspondence to the school staff stating that she suspects the student "has a learning disability that is potentially worsening because the school year is continuing but the issues aren't being addressed." In that correspondence, the student's mother also requested that an "IEP [Individualized Education Program] screening be held as soon as possible" (Docs. c and d, and interviews with the complainant and the PGCPS staff).
5. On December 6, 2012, an IEP meeting was convened in response to the mother's October 26, 2012 correspondence. There is documentation that, at that meeting, the student's mother expressed concern that she had been requesting that the student be evaluated since September 2012, and that she had been asking for help for the student for the past two (2) years. There is no documentation that the school system staff disputed

her statements. The IEP team determined that the student is suspected of having a specific learning disability, recommended that assessments be completed, and obtained parental consent for the assessments to be conducted. The evaluation has not yet been completed (Doc. a, interviews with the PGCPs staff, and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

Upon receipt of a written referral for evaluation, the public agency must determine whether it suspects the student of having a disability, and if so, promptly request parental consent to assess the student in all areas related to the suspected disability (COMAR 13A.05.01.04 and .05). The public agency must also ensure that assessment procedures are administered, as needed, and that the IEP team completes the evaluation within sixty (60) days of parental consent for assessments and ninety (90) days of the receipt of the written referral (COMAR 13A.05.01.06).

The public agency must ensure that the parent is provided with proper written notice if it is determined that no assessment data is needed to complete the evaluation. The public agency must also ensure that the parent is provided with proper written notice if it does not suspect the student of being a student with a disability and does not believe that an evaluation is required (COMAR 13A.05.01.04).

Based on the Findings of Facts #1 – #3, the MSDE finds that, upon receipt of the September 12, 2012 written referral for evaluation, the PGCPs did not identify the assessments needed to determine the student's educational needs and obtain consent for those assessments, nor provide the parent with written notice that a disability was not suspected and that an evaluation would not be conducted. Based on the Findings of Facts #1 – #5, the MSDE further finds that the evaluation that began on December 6, 2012 has not been completed within the required timelines. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-based

The MSDE requires the PGCPs to provide documentation by February 1, 2013, that the evaluation has been completed based on the results of the completed recommended assessments. If the student is determined to have a disability requiring special education services, the IEP team must develop an IEP appropriate to meet the student's functional and academic needs. The IEP team must also determine the *compensatory services*¹ necessary to remediate the delay in the provision of those services.

¹ 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).

The PGCPS must provide the student's mother 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 student's mother 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.

School-based

The MSDE requires the PGCPS to provide documentation by May 1, 2013, of the steps it has taken to determine if the violation 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 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 verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the PGCPS.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the PGCPS by 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 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 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.

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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 student's mother 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 this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF/ch

cc: LaNina Vaughn
Alvin Crawley
Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXX
Dori Wilson
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Martha J. Arthur
Christine Hartman