



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

September 14, 2012

XXX
XXX
XXX
XXX

Mrs. Joan Rothgeb
Director of Special Education
Prince George's County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #13-003

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 July 18, 2012, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, "the complainants," on behalf of their son, the above-referenced student. 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. The MSDE investigated the allegations listed below.

1. The PGCPS has not ensured that the student has been consistently provided with the amount of special education instruction required by the Individualized Education Program (IEP) since July 18, 2011, in accordance with 34 CFR §§300.101 and .323; and
2. The PGCPS has not convened an IEP team to consider information the complainants provided in order to ensure that the IEP addresses the student's transportation and social/emotional/behavioral needs since July 18, 2011, in accordance with 34 CFR §300.324.

XXX

Mrs. Joan Rothgeb
September 14, 2012
Page 2

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
 2. On July 23, 2012, 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 the General Counsel, PGCPSS, and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPSS.
 3. On August 3, 2012, Ms. Williams and Ms. Christine Hartman, Education Program Specialist, MSDE, spoke with the student's mother by telephone and clarified the allegations to be investigated.
 4. On August 7, 2012, the MSDE sent correspondence to the complainants 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 August 8 and 17, 2012, the MSDE requested information and documents from the PGCPSS.
 6. On August 9, 2012, Ms. Williams and Ms. Hartman conducted a site visit at XXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Program Director;
 - b. Mr. XXXXXXXX, Education Director;
 - c. Ms. XXXXXXXX, Counselor; and
 - d. Ms. XXXXXXXX, Transition Coordinator.
- Ms. Morrison attended the site visit as a representative of the PGCPSS and to provide information on the PGCPSS policies and procedures, as needed.
7. On August 16, 2012, the complainant provided the MSDE with information to be considered during the investigation, via electronic correspondence (email).
 8. On August 17, 2012, Ms. Williams and Ms. Hartman conducted a telephone interview with the following PGCPSS Central Office staff:
 - a. Ms. Carolyn Ellis-Hollman, Instructional Specialist;
 - b. Ms. Belinda J. Gantt, Nonpublic Supervisor; and
 - c. Ms. Kati Thomas, Central IEP Team Chairperson.

XXX

Mrs. Joan Rothgeb
September 14, 2012
Page 3

9. On August 22, 2012, the PGCPS requested clarification from the MSDE of the information and documents required by the State to complete the investigation.
10. On August 30, 2012, the MSDE provided the PGCPS with an explanation of the purpose of the information and documents being requested, via email.
11. On September 10, 2012, Ms. Williams conducted a telephone interview with the student's mother regarding the investigation.
12. On September 12, 2012, the PGCPS provided the MSDE with documents to be considered during the investigation, via email.
13. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, listed below.
 - a. Correspondence and attachments from the complainants to the MSDE, received on July 18, 2012;
 - b. The PGCPS Route Change Notice, dated March 4, 2011;
 - c. IEP, revised on April 13, 2011;
 - d. XXXXXXXXXXXX Bus Log, dated from July 5, 2011 through August 9, 2012;
 - e. XXXXXXXXXXXX Calendar for the 2011 – 2012 school year;
 - f. IEP, revised on October 25, 2011;
 - g. The PGCPS Notice and Consent for Assessment, dated October 25, 2011;
 - h. Email from the school staff to the PGCPS Nonpublic Office staff, dated November 17, 2011;
 - i. Email from the PGCPS Nonpublic Office staff to the PGCPS Transportation Department staff, dated November 18, 2011;
 - j. Email from the school staff to the PGCPS Nonpublic Office staff, dated November 22, 2011;
 - k. Email from the PGCPS Nonpublic Office staff to the PGCPS Transportation Department staff, dated November 30, 2011;
 - l. Email from the school staff to PGCPS Transportation Department staff, dated November 30, 2011;
 - m. Email from the PGCPS Department of Transportation staff to school staff, dated November 30, 2011;
 - n. The PGCPS Psychological Evaluation Report, dated December 14, 2011;
 - o. IEP, revised January 30, 2012;
 - p. IEP Meeting Notice, dated February 1, 2012;
 - q. The PGCPS Prior Written Notice, dated February 2, 2012;
 - r. The PGCPS Functional Behavior Assessment Report, dated February 21, 2012;
 - s. The PGCPS Behavioral Intervention Plan, dated February 21, 2012;
 - t. IEP, revised February 21, 2012;
 - u. The PGCPS Prior Written Notice, dated February 27, 2012; and
 - v. Email from the PGCPS Nonpublic Office staff to the complainants, dated March 20, 2012.

BACKGROUND:

The student is eighteen (18) years old and is identified as a student with an emotional disability under the IDEA. He receives special education instruction and related services at XXXXXXXXXXXX, a nonpublic separate special education school, where he has been placed by the PGCPS. During the period of time addressed by this investigation, the complainants participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. c, f, o, and t).

FINDINGS OF FACTS:

1. During the time period covered by this investigation, the IEP has required that the student be provided with thirty-two and one-half (32.5) hours of special education services per week, including counseling and special education instruction in all areas of academics. It has also required that he be provided with transportation as a related service (Docs. c, f, o, and t).
2. XXXXXXXXXXXX provides a twelve (12) month program with a six and one-half (6.5) hour school day, totaling thirty-two and one-half (32.5) hours per week (Doc. e).
3. During the 2010 – 2011 school year, the PGCPS began combining the bus routes for the student's school and another school. Subsequently, the student was not consistently transported to school prior to the start of the school day (Docs. a, b, d, h – l, and u).
4. On October 25, 2011, the IEP team met to begin the reevaluation process. At the meeting, the school staff reported that the student's behavior had "deteriorated," as a result of his recognition of "a significant change"¹ and refusing to take his medication. The student's deteriorating behaviors involved his shutting down and avoiding interactions with staff and peers. The complainants requested additional testing to ensure that the cause of the increased behavioral problems was accurately identified, and the team recommended that a psychological assessment be conducted (Docs. f and g).
5. At the October 25, 2011 meeting, the team revised one of the behavioral goals to reflect that the student will participate in instruction without "shutting down," and will alert school staff and access his behavior plan when he feels stressed (Doc. f).
6. On November 7, 2011, the IEP team reconvened to address the complainants' concern that the behavioral goals were "too vague." The complainants also expressed concern that the student was not eating enough, possibly impacting his taking of the medication.

¹ The documentation of this meeting does not indicate what "significant change" had occurred. However, documentation of the subsequent IEP team meeting, held on November 7, 2011, indicates that the reference was to recent school staff changes (Doc. f).

XXX

Mrs. Joan Rothgeb
September 14, 2012
Page 5

- At the meeting, the complainants requested that a functional behavior assessment (FBA) be conducted and the team agreed (Docs. f and o).
7. On November 17, 2011, school staff contacted the PGCPS Nonpublic Office and informed them via email that the student was missing “between half and all of the first period of school” because his bus was arriving to school after the start of the school day. The school staff also notified them that this situation was “impacting [the student’s] ability to make progress.” (Doc. h).
 8. In the November 17, 2011 email to the PGCPS Nonpublic Office staff, school staff reported that another student, who was being transported on the same bus as the student, was being impacted as well (Doc. h).
 9. On November 18, 2011, the PGCPS Nonpublic Office staff informed the PGCPS Department of Transportation staff of the problem with the bus (Doc. i and interview with school staff).
 10. On January 30, 2012, the IEP team reconvened to consider the results of the psychological assessment. The assessment report states that the student “has difficulty with change,” and that he “experiences behavioral difficulty when he does not take his medication.” The team determined that the student continues to meet the criteria for identification as a student with a disability under the IDEA, but did not complete the review of the IEP at this meeting (Docs. n, o, and q).
 11. On February 21, 2012, the IEP team reconvened to review the IEP and the results of the FBA. The report of the FBA indicates that the student “shuts down” and refuses to work or follow directions when he experiences stress due to being challenged academically. The FBA recommends that, in order to address the behavior, the student be provided with a meal in the morning to assist him with taking his medication, which in turn, will assist him with demonstrating appropriate behavior. In addition, the FBA report contains a recommendation that, when the student refuses to work, he be provided with a preferred peer as well as staff support and encouragement. A BIP was developed to require that the student be offered a meal in the morning during the administration of medication, that he be provided with positive staff attention to encourage him to work, and that he be permitted to earn rewards for completing work (Docs. p, r, and s).
 12. Documentation of the February 21, 2012 meeting reflects that the team discussed that the BIP would be reviewed to ensure that it addresses the student’s interfering behaviors. While the team did not document how often the BIP would be reviewed, there is no documentation that it has been reviewed since its development on February 21, 2012 (Docs. t and u).
 13. At the February 21, 2012 IEP team meeting, the team discussed that the student’s bus was continuing to arrive after the start of the school day, and the complainants requested that the student be provided with additional services to make up for the loss of

instruction. The team determined that, despite concerns about the length of the bus ride, the least restrictive environment in which the IEP can be implemented continues to be the nonpublic separate special education school and that the educational placement at XX XXXXXXXX remains appropriate. However, the team did not consider how to address the continuing loss of special education instruction as a result of the transportation arrangements or the complainants' request for additional services. In addition, there is no documentation that transportation problems reported by school staff on November 17, 2011 have been resolved (Docs. t, u, and v).

14. The school staff report that the student was assigned to a social studies class for the first period of the day. Information contained in the school bus logs documents that the student missed nineteen (19) hours of special education instruction in his first period class from July 18, 2011 until June 14, 2012 (Docs. a, d, e, h, and interview with school staff).

DISCUSSION/CONCLUSIONS:

ALLEGATION # 1 PROVISION OF THE AMOUNT OF SPECIAL EDUCATION INSTRUCTION REQUIRED BY THE IEP SINCE JULY 18, 2011

The public agency is required to ensure that the student is provided with the amount of special education instruction and related services required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #1 - #3, #7 - #9, #13, and #14 the MSDE finds that the PGCPS has not ensured that the student has been provided with the transportation services needed in order to access the amount of special education instruction required by the IEP. Therefore, this office finds that a violation has occurred with respect to this allegation.

ALLEGATION # 2 IEP THAT ADDRESSES THE STUDENT'S TRANSPORTATION AND SOCIAL/EMOTIONAL/BEHAVIORAL NEEDS

In order to provide a Free Appropriate Public Education (FAPE) to a student, the public agency must ensure that an IEP team develops an IEP that includes goals and special education instruction and related services designed to address the needs that arise from the disability (34 CFR §300.320). Related services include transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education instruction (34 CFR §300.34).

A student's needs are identified from information about the student's levels of academic and functional performance. When determining the levels of academic achievement and functional performance, the team must consider the evaluation data. This includes assessment results, information from the student's teachers, and the parent's concerns. The team must also consider,

XXX

Mrs. Joan Rothgeb
September 14, 2012
Page 7

in the case of a student whose behavior impedes his learning or that of others, strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §§300.20 and .324).

Transportation Needs

Based on the Findings of Facts #1 - #3, #7- #9, #13, and #14, the MSDE finds that, despite the ongoing loss of special education instruction due to the lack of transportation to school by the start of the school day, the PGCPS has not ensured that the IEP team has considered how to address the student's need to be transported to school in a timely manner. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Social/Emotional/Behavioral Needs

Based on the Findings of Facts #4 - #6, #10, and #11, the MSDE finds that the PGCPS has considered the evaluation data, information from the school staff, and parents concerns, and developed strategies, including positive behavioral interventions and supports, to address the student's identified social/emotional/behavioral needs from July 18, 2011 through February 21, 2012.

However, based on the Finding of Fact #12, the MSDE finds that the PGCPS has not ensured that the IEP team has reviewed the BIP to determine whether it continues to address the student's social/emotional/behavioral needs, as determined by the IEP team on February 21, 2012. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation since February 21, 2012.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by October 4, 2012 that the student is being transported to school in a timely manner in order to ensure that he receives the amount of special education instruction and related services required by the IEP.

The MSDE requires the PGCPS to provide documentation by October 15, 2012 that an IEP team meeting has been convened to review and revise the IEP, as appropriate, to ensure that it addresses the student's transportation and behavior needs and to determine *compensatory services*² to redress the violations identified through this complaint investigation.

The PGCPS must provide the complainants 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 complainants disagree with the IEP

² Compensatory services, for the purposes of this letter, means 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
September 14, 2012
Page 8

team's determinations, they maintain the right to request mediation or file a due process complaint, in accordance with IDEA.

Similarly Situated Students

The MSDE requires the PGCPS to provide documentation by October 15, 2012 of all similarly-situated students XXXXXXXXXXXX placed by the PGCPS and that it has taken steps to make sure that each student identified is provided with the transportation services needed to ensure that the student receives the amount of special education instruction and related services required by the IEP. For each student identified, the PGCPS must also provide documentation that *compensatory services*² will be provided for the loss of special education instruction and related services.

Additionally, by copy of this Letter of Findings, the Nonpublic Schools Approval Branch, Division of Certification and Accreditation, MSDE, which is responsible for conducting monitoring of nonpublic schools for compliance with the IDEA and related State requirements, is being informed of the violations identified through this investigation.

Systemic

The MSDE requires the PGCPS to provide documentation by October 15, 2012, of the steps it has taken to ensure that the combination of bus routes does not result in the loss of special education instruction and related services to the PGCPS students.

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 complainants and the school system 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. 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.

XXX

Mrs. Joan Rothgeb
September 14, 2012
Page 9

Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter 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 FAPE 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 due process.

Sincerely,

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

MEF:tw

cc: Alvin Crawley
A. Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXX
XXXXXXX
Cynthia Armirault
Sarah Spross
Dori Wilson
Anita Mandis
Martha J. Arthur
Tyra Williams