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State Superintendent of Schools

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May 3, 2011

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

RE: XXXXX
Reference: #11-072

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 March 18, 2011, MSDE received correspondence from Ms. XXXXXXXXXXXXXXX, hereafter "the complainant," filed on behalf of her son. 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. This office investigated the following allegations:

1. PGCPS has not ensured that the Individualized Education Program (IEP) addresses the student's social/emotional/behavioral needs since the start of the 2010-2011 school year, in accordance with 34 CFR §300.324.
2. PGCPS has not ensured that the student has been provided with the following since the start of the 2010-2011 school year, as required by the IEP, in accordance with 34 CFR §§300.101 and .323:
 - a. Adult support during transitions between classes;
 - b. Supports to assist with needs in the areas of attention and organization; and
 - c. Positive behavioral interventions specified in the behavioral intervention plan.

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INVESTIGATIVE PROCEDURES:

1. Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, was assigned to investigate the complaint.
2. On March 21, 2011, a copy of the complaint was provided, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPSS; Ms. Gail Viens, Deputy General Counsel, PGCPSS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPSS.
3. On March 24, 2011, Ms. Mandis conducted a telephone interview with the complainant in order to clarify the allegations to be investigated.
4. On March 25, 2011, Ms. Mandis conducted a telephone interview with the complainant and the student's adult sister, Ms. Marsha Wilson, regarding the allegations to be investigated.
5. On March 28, 2011, MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. The MSDE also notified Mrs. Rothgeb of the allegations to be investigated and requested that her office review the alleged violations.
6. On April 27, 2011, Ms. Mandis and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXX to review the student's education record and interview the following school staff:
 - a. Ms. XXXXXXXXXXXX, Academic Resource Teacher;
 - b. Mr. XXXXXXXXXXXX, Assistant Principal; and
 - c. Ms. XXXXXXXXXXXX, Special Education Chairperson.

Ms. Morrison attended the site visit as a representative of the PGCPSS Central Office and to provide information regarding PGCPSS policies and procedures, as needed.

7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Report of a December 17, 2009 PGCPSS psychological assessment;
 - b. Report of an April 20, 2010 PGCPSS educational assessment;
 - c. IEP, dated June 8, 2010;
 - d. Reports of the student's progress toward achieving the annual IEP goals, dated November 23, 2010, February 15, 2011, and April 12, 2011;
 - e. Correspondence from the complainant alleging violations of IDEA, received by MSDE on March 18, 2011;
 - f. IEP, dated March 30, 2011 and invitation to the complainant to attend the meeting;
 - g. Invitation to the complainant to an IEP team meeting scheduled for May 3, 2011;

- h. Student's report card for the 2010-2011 school year;
- i. Student's class schedule for the 2010-2011 school year; and
- j. Student's attendance data for each class for the 2010-2011 school year;

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with an other health impairment related to Attention Deficit Hyperactivity Disorder under IDEA, and receives special education instruction. He attended XXXXXXXXXXXXXXXXXXXX during the 2009-2010 school year and has attended XXXXXXXXX since the start of the 2010-2011 school year.

During the time period covered by this investigation, the complainant participated in the education decision-making process. She has been provided with written notice of IEP team decisions and with notice of the procedural safeguards (Docs. c and f).

FINDINGS OF FACT:

1. On June 8, 2010, the IEP in effect at the start of the 2010-2011 school year was developed at XXXXXXXXXXXXXXXXXXXX. At the IEP team meeting, the team considered the following:
 - a. Report of a December 17, 2009 psychological assessment, which identifies behavioral needs for the student in the areas of attention, organization, and work completion. The report contains recommendations to consider the following supports: seating that will reduce distractions, encouragement to complete tasks, breaks between tasks, use of lists to help the student visualize what he has accomplished and plan for completion of tasks, and rewards for completing work;
 - b. Report of an April 20, 2010 educational assessment, which identifies needs in academics, and recommends that in addition to special education instruction, the student be provided with supports such as extended time to complete work, access to notes and graphic organizers, use of an agenda book to record assignments, use of a calculator, and preferential seating; and
 - c. Information from the complainant, the student's sister, and his teachers that the student's strengths are in the areas of spelling, word identification, and socialization with peers but that the student does not prepare for class or complete all assignments (Docs. a and c).
2. At the June 8, 2010 meeting, the IEP was revised to include goals for the student to improve academic performance and to complete work assignments. The team decided that the student requires special education instruction and accommodations, including the provision of teacher notes, use of a calculator, extended time to complete tasks, monitoring of the use of his agenda book, reduced workload, and preferential seating to assist the student in achieving the goals (Doc. c).

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3. On March 30, 2011, the IEP team at XXXXXXXXXXXX convened to review the student's program and progress. At that meeting, the team considered the following:
 - a. Teacher reports that the student made sufficient progress toward achieving the goals during the first (1st) two (2) quarters of the year, and had shown some improvement in the area of work completion but that he needs to be more consistent in reviewing assignments and documenting in his agenda book; and
 - b. Concerns expressed by the complainant and the student's sister that a behavioral intervention plan had been developed at the middle school, which they believed was not being implemented at the high school, and that the team at the middle school determined that the student requires the support of a dedicated aide throughout the school day, which they believed was not being provided at the high school (Docs. d and f).
4. At the March 30, 2011 meeting, the team reviewed the student's education record, but did not find any indication that the program requires the services of a dedicated aide or that the team at the middle school decided that the student requires a behavioral intervention plan. The IEP Team Chairperson confirmed with the middle school that neither a dedicated aide nor a behavioral intervention plan were included as part of the student's education program. The team discussed that on March 16, 2011, the student was involved in a physical altercation with another student in the hallway and that a proposed disciplinary action was rescinded based on information from the complainant that she believed that the student was not receiving required behavioral supports. Based on the complainant's concern that the student requires additional supports and teacher reports that the student is not consistently completing work assignments, the team recommended that a functional behavioral assessment be conducted to determine whether the student requires additional supports. The team is scheduled to reconvene to review the results of the assessment (Docs. d and g).
5. There is no documentation of peer conflicts or that disciplinary action has been taken with the student during the 2010-2011 school year, other than on March 16, 2011 (Review of the education record).
6. Report card and attendance data document that the student is regularly attending all of his classes, but not achieving passing grades in Math and Science (Docs. h, i and j).
7. A report of the student's progress toward achieving the annual IEP goals, made on April 12, 2011, states that during the third (3rd) quarter of the year, the student has continued to make sufficient progress toward achieving all but the math goal. The report states that the student is not making sufficient progress toward achievement of the math goal because he is not completing assignments (Doc. d).

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DISCUSSION/CONCLUSIONS:

Allegation #1: IEP that Addresses the Student's Social/Emotional/Behavioral Needs Since the Start of the 2010-2011 School Year

The IEP must include annual goals and services designed to address the needs that arise from the disability, which are identified from information about the student's present levels of performance (34 CFR §300.320). In the case of a student whose behavior impedes his learning or that of others, the IEP must include strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §300.324).

When determining the levels of academic achievement and functional performance, the team must consider the evaluative data. This includes, among other things, assessment results, information from the student's teachers, and the parent's concerns (34 CFR §300.324).

The public agency must ensure that the IEP team reviews the program at least annually to determine whether the annual goals are being achieved. Additionally, the public agency must ensure that the team reviews and revises, as appropriate, the IEP to address lack of expected progress toward achievement of the annual goals (34 CFR §300.324).

In this case, the complainant alleges that the student requires intensive supports to address his social/emotional/behavioral needs, including a dedicated aide throughout the school day to ensure that he is able to transition from class to class. The complainant further alleges that the student requires additional supports to address needs related to attention and organization (Doc. e).

Based on Findings of Fact #1 and 3, MSDE finds that the IEP team considered assessment data, information from the student's teachers, and the complainant's concerns when developing the IEP. Based on Findings of Fact #1 and 3 – 6, MSDE finds that there is no documentation that the student has been identified with the need for a dedicated aide. Based on Findings of Fact #1 – 4, MSDE finds that the IEP includes supports to address the student's identified needs in the areas of attention and organization, consistent with the data.

Based on Findings of Fact #3, 4, and 7, MSDE further finds that the IEP team is reviewing the student's progress and is collecting additional data in order to address lack of expected progress related to the student's need to complete assignments and the complainant's concerns about the student's social/emotional/behavioral needs. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2 Provision of Supports to Assist the Student with Attention, Organization, and Social/Emotional/Behavioral Needs Since the Start of the 2010-2011 School Year

The public agency must ensure that special education and related services are available to each student in accordance with the IEP (34 CFR §§300.101 and .323). In this case, the complainant alleges that the student is not being provided with supports through a behavioral intervention

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plan or with the services of a dedicated aide to assist him with transitions between classes. The complainant further alleges that the student is not being provided with assistance to remain focused and organized in order to complete assignments (Doc. e).

Based on Findings of Fact #2 and 4, MSDE finds that there is no documentation that the IEP requires the services of a dedicated aide or that the team determined that the student requires a behavioral intervention plan. Based on Findings of Fact #3, 4, and 7, MSDE finds that there is documentation that supports are being provided to assist the student in completing assignments and that the team is considering whether additional supports are required. Therefore, MSDE does not find that a violation occurred with respect to the allegation.

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings of fact or conclusions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, set forth additional findings and conclusions, or enter new findings and conclusions.

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

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAH/am

c: William R. Hite
Bonita Coleman-Potter
Joan Rothgeb
LaRhonda Owens
Kerry Morrison
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