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Interim State Superintendent of Schools

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March 12, 2012

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401 N. Washington Street, Suite 900
Rockville, Maryland 20850

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: #12-043

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 January 13, 2012, the MSDE received a complaint from Patrick J. Hoover, Esq., hereafter, “the complainant,” on behalf of his client, the student’s mother, and the above-referenced student. 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. The MSDE investigated the following allegations:

1. The PGCPS has not followed proper procedures in the identification and evaluation of the student since August 2011, in accordance with 34 CFR §§300.301-.311 and .323, and COMAR 13A.05.01.06. Specifically, the complainant alleges that the PGCPS did not complete the evaluation of the student within the required timelines and has not ensured that an Individualized Education Program (IEP) was in place within thirty (30) days of the date that the student was determined eligible as a student with a disability;
2. The PGCPS did not follow proper procedures when disciplinarily removing the student from school in September 2011, in accordance with 34 CFR §§300.530-.536, COMAR 13A.05.01.10, and COMAR 13A.08.03.03-.10;

3. The PGCPS has not ensured that the student's mother or her representative has been afforded the opportunity to inspect and review the student's educational record since October 2011, in accordance with 34 CFR §300.613; and
4. The PGCPS has not provided the student's mother with a copy of each assessment, report, data chart, draft IEP, or other documents that the IEP team planned to discuss at IEP team meetings at least five (5) business days before the scheduled meetings since December 2011, in accordance with Md. Code, Ann., Educ. §8-405(d) (2010) and COMAR 13A.05.01.07.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 17, 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 January 18, 2012, Ms. Stump spoke with the complainant by telephone to clarify the allegations to be investigated.
4. On January 20, 2012, the MSDE sent correspondence to the complainant 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 January 27, 2012, the MSDE requested documentation from the student's educational record, via electronic mail (e-mail).
6. On February 1, 2012, the PGCPS provided the MSDE with the documentation requested, via e-mail.
7. On February 8, 2012, Ms. Stump and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXX) to review the student's education record and interviewed the following school staff:
 - a. Mr. XXXXXXXXXXX, Ninth (9th) Grade Administrator;
 - b. Ms. XXXXXXXXXXX, Special Education Chairperson; and
 - c. Ms. XXXXXXXXXXX, Guidance Counselor.

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

8. The 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 January 13, 2012;
 - b. Correspondence from the student's mother to school staff, dated July 22, 2009;
 - c. Correspondence from the PGCPS to the student's mother, dated July 27, 2009;
 - d. E-mail correspondence between the student's mother and school staff, dated August 23, 2011;
 - e. Notification of Request for Expulsion form, dated August 25, 2011;
 - f. Manifestation Determination form, dated September 21, 2011;
 - g. Correspondence from the PGCPS to the student's mother, dated September 26, 2011;
 - h. Correspondence from the complainant to school staff, dated October 4, 2011;
 - i. E-mail correspondence from school staff to the student's mother, dated October 5, 2011;
 - j. PGCPS student registration form, dated October 11, 2011;
 - k. Educational Assessment report, dated October 20, 2011;
 - l. Psychological Assessment report, dated October 26, 2011;
 - m. E-mail correspondence between school staff and the student's mother, dated November 28, 2011;
 - n. Correspondence from the complainant to school staff, dated November 28, 2011;
 - o. Specific Learning Disability Team Report form, dated December 1, 2011;
 - p. IEP team meeting sign-in sheet, dated December 12, 2011;
 - q. Correspondence from the complainant to school staff, dated December 16, 2011;
 - r. Correspondence from the complainant to school staff, dated January 6, 2012;
 - s. Facsimile transmittal reports, dated January 24, 2012;
 - t. E-mail correspondence between school staff and the complainant, dated January 24, 2012; and
 - u. IEP, dated February 22, 2012.

BACKGROUND:

Disability Identification

The student is fifteen (15) years old. In July 2009, the student's mother revoked her consent, in writing, for the student to receive special education services. Prior to that date, the student had been identified as a student with an emotional disability under the IDEA. On August 23, 2011, the student's mother requested that her son be evaluated under the IDEA to determine whether he is a student with a disability in need of special education services. On February 22, 2012, the IEP team determined that the student is a student with an other health impairment, (related to a diagnosis of Attention Deficit Hyperactivity Disorder) and developed an IEP. However, as of the date of this Letter of Findings, the student's mother has not provided written consent for the initial provision of services to the student (Docs. a-d, u, and interview with PGCPS personnel).

School Attendance Information

At the start of the 2011-2012 school year, the student was enrolled in XXXXXX. On August 23, 2011, the second day of the school year, the student was disciplinarily removed from school and did not attend school between August 24, 2011 and October 10, 2011. Since October 11, 2011, the student has attended XXXXXXXXXXXXXXXX, a PGCPs alternative school, as a result of his expulsion from school. While the student's expulsion has been overturned, he continues to attend the alternative school while his mother pursues an administrative transfer (Docs. d-g, j, and interview with PGCPs personnel).

During the period of time addressed by this investigation, the student's mother participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. f, m, o, p, and u).

ALLEGATIONS #1 AND #2: EVALUATION PROCEDURES AND DISCIPLINARY REMOVAL

Findings of Facts:

1. On August 23, 2011 at 10:43 a.m., the student's mother sent an e-mail to XXXXXXXX staff requesting that her son be "tested for special education." At 11:06 a.m., the Principal forwarded the request to the special education chairperson (Doc. d).
2. On the same date, at 1:00 p.m., the student engaged in behavior that was a violation of the school's code of conduct and the complainant was informed, via e-mail from the Principal, that the student should "remain at home." The student did not return to XXXXXXXX after this date (Docs. d and e).
3. On August 25, 2011, the Principal completed a request for the student's expulsion. The form indicates that the student does not have an IEP. The form does not indicate that the student's mother requested that her son be evaluated under the IDEA (Doc. e).
4. On September 14, 2011, the student and his mother appeared before the Superintendent's Designee for a hearing regarding the request for expulsion. School staff report that the Superintendent's Designee was informed of the request of the student's mother that he be evaluated under the IDEA. School staff also report that the Superintendent's Designee informed school staff that they should convene an IEP team to determine if the student's behavior was a manifestation of his disability (Doc. g and interview with school staff).
5. On September 21, 2011, the IEP team convened to determine if the conduct that led to the disciplinary removal was a manifestation of the student's suspected disability. The documentation of the meeting indicates that the team considered the required factors and determined that the student's behavior was not a manifestation of his suspected disability (Doc. f and interview with school staff).

6. At the September 21, 2011 meeting, the team determined that the student would receive a Free Appropriate Public Education (FAPE) at the XXXXXXXXXXXXXXXX pending the outcome of the expulsion hearing, but did not identify the services the student would receive in order to be provided with a FAPE (Doc. f).
7. On September 26, 2011, the Superintendent's Designee sent correspondence to the student's mother indicating that the student was expelled from school and that the student's mother could "apply for enrollment in an alternative program" (Doc. g).
8. On October 5, 2011, XXXXXX staff sent the student's mother email correspondence indicating that the student could start attending "FAPE sessions" at XXXXXXX pending the acceptance of the application to an alternative school. However, the IEP team did not meet to identify the services the student would receive in order to be provided with a FAPE and school staff informed the student's mother that the "FAPE sessions" could not begin until after the assessments to determine the student's eligibility under the IDEA were completed (Doc. i).
9. On October 11, 2011, the student's mother enrolled the student in the XXXXXXXXXXX XXXXXXX (Doc. j).
10. On December 12, 2011, the IEP team convened to determine if the student is a student with a disability in need of special education services. The team reviewed the results of the psychological and educational assessments, which were conducted in October 2011. The team did not reach a "consensus" regarding whether the student is a student with a disability requiring special education and related services and decided to reconvene to "make a final determination of the eligibility" of the student (Docs. o, p, and interview with school staff).
11. In January 2012, correspondence between school staff, the student's mother, and the complainant document several attempts by school staff to continue the meeting on a convenient date, but each meeting date agreed upon was rescheduled at the request of the complainant (Docs. q and r).
12. On February 22, 2012, the IEP team convened and determined that the student is a student with a disability in need of special education services and developed an IEP. However, there is no documentation that the complainant provided consent for the initiation of special education services (Doc. u).

Discussion/Conclusions:

Allegation #1: Evaluation Procedures

As part of an initial evaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of the review and input from the student's parents, the team must identify what additional

data, if any, are needed to determine whether the student is a student with a disability and the educational needs of the student, the present levels of academic achievement and related developmental needs of the student, and whether the student needs special education and related services (34 CFR §300.305 and COMAR 13A.05.01.06).

The IEP team must complete an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral (34 CFR § 300.301 and COMAR 13A.05.01.06(A)).

Based on the Findings of Facts #1 and #10 - #12, the MSDE finds that school staff received a written referral for an initial evaluation on August 23, 2011 but did not complete the evaluation process until February 22, 2012. Therefore, the MSDE finds a violation regarding this allegation.

Allegation #2: Disciplinary Removal Procedures

Manifestation Determination

The IDEA offers protections to a student who is suspected of having a disability who is disciplinarily removed from school for more than ten (10) school days in a school year. Within ten (10) school days of any decision to change the placement¹ of a student with a disability because of a violation of a code of student conduct, the IEP team is required to review all relevant information in the student's file including the IEP, any teacher observations, and any relevant information provided by the parents. Based upon this review, the IEP team must determine if the conduct in question was caused by or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the school's failure to implement the IEP (34 CFR § 300.530).

A student who has not been determined to be eligible for special education and related services under the IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in the IDEA if the public agency had knowledge that the student may be a student with a disability before the behavior that precipitated the disciplinary action occurred. A public agency is deemed to have knowledge that a student may be a student with a disability under the IDEA if the student's parent requests an evaluation *before* the behavior that precipitated the disciplinary action occurred (34 CFR §300.534).

Based on the Finding of Fact #1, the MSDE finds that on August 23, 2011, school staff had knowledge that the student may be a student with a disability under the IDEA. Therefore, the protections of the IDEA were required to be provided to the student on that date.

Based on the Findings of Facts #2 and #3, the MSDE finds that the date on which the decision was made to change the student's placement was August 25, 2011. Therefore, the IEP team should have convened by September 9, 2011 to determine if the conduct in question was caused

¹ A change in placement occurs if the removal is for more than ten (10) consecutive school days (34 CFR §§300.530 and .536).

by or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the school's failure to implement the IEP. However, based on the Findings of Facts #4 - #6, the MSDE finds that the IEP did not convene to consider whether the student's behavior was a manifestation of the suspected disability until September 21, 2011. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

Provision of Services

If the IEP team determines that the behavior is a manifestation of the student's disability, the student must be returned to school. If the IEP team determines that the behavior is not a manifestation of the student's disability, the public agency must ensure that the student continues to receive services, as determined by the IEP team, to enable the student to continue to participate in the general education curriculum, although in another setting (34 CFR §300.530).

Based on the Findings of Facts #1 - #4, the MSDE finds that there is no documentation that the student continued to receive services to enable him to continue to participate in the general education curriculum between August 24, 2011, when the student was disciplinarily removed from school, and September 21, 2011, when the IEP team determined that a FAPE would be provided to the student at the XXXXXXXXXXXXXXXX pending the outcome of the expulsion hearing. Therefore, the MSDE finds a violation occurred during this time period.

Based on the Finding of Fact #6, the MSDE finds that the IEP team determined that the student would receive "FAPE services" at the XXXXXXXXXXXXXXXX from September 21, 2011 until the Superintendent's Designee made a determination regarding the student's expulsion. However, based on that same Finding of Fact, the MSDE finds that the IEP team did not determine *what* services would be provided in order to constitute a FAPE during this period. Therefore, the MSDE finds a violation occurred during this time period.

Based on the Findings of Facts #4 and #7, the MSDE finds that on September 26, 2011 the Superintendent's Designee determined that the student was expelled from school and informed the student's mother that she could apply to enroll the student in an alternative school. Based on the Finding of Fact #9, the MSDE finds that the student enrolled in the alternative school on October 11, 2011. Based on the Finding of Fact #8, the MSDE finds that while XXXXXXXXXX staff offered the student "FAPE sessions" beginning on October 5, 201, the IEP team did not determine what services would be provided in order to constitute a FAPE and would not allow the student to receive those services until the assessments determined necessary as part of the evaluation were completed. Therefore, the MSDE finds a violation occurred during this time period.

Based on the Finding of Fact #9, the MSDE finds that the student began attending XXXXXXXX XXXXXXXXXXXX on October 11, 2011. However, based on the Findings of Facts #6 and #8, the MSDE finds that the IEP team did not determine what services would be provided to the student in order to constitute a FAPE while he was expelled at the XXXXXXXXXXXXXXXX. Therefore, the MSDE finds that a violation has occurred.

ALLEGATIONS #3 AND #4:

**ACCESS TO THE STUDENT'S EDUCATIONAL
RECORD AND PROVISION OF ACCESSIBLE
COPIES PRIOR TO IEP TEAM MEETINGS SINCE
DECEMBER 2011**

Findings of Facts:

13. On October 4, 2011 the complainant, on behalf of the student's mother, sent a written request, via facsimile, to school staff for *copies* of the student's educational record. The request asked for the student's "entire educational record," but did not indicate that failure to provide copies would prevent the parent from exercising the right to inspect and review the records (Doc. h).
14. There is documentation that copies of reports of the psychological assessment and the educational assessment, that were considered at the December 12, 2011 IEP team meeting, were provided to the student's mother on November 28, 2011, via e-mail directly from the PGCPS evaluators. However, since the December 12, 2011 meeting was to determine the student's eligibility under the IDEA, there was no draft IEP to consider at that meeting (Docs. k-m).
15. On January 24, 2012, the complainant received approximately ninety-three (93) pages of information from the student's educational record via facsimile (Docs. s and t).

Discussion/Conclusions:

Allegation #3: Access to a student's educational record

The parents of a student with a disability must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a FAPE (34 CFR §300.501). The right to inspect and review educational records includes the right to request that the agency provide copies of the records containing the information *if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records* (emphasis added) (34 CFR §300.613). The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP and in no case more than forty-five (45) days after the request has been made (34 CFR §300.613).

Based on the Finding of Fact #13, the MSDE finds that the request for copies of the educational record made by the complainant on behalf of the student's mother was a request to inspect and review the educational record. Based on that same Finding of Fact, the MSDE finds that there is no documentation that the student's mother or the complainant were unable to inspect the educational record without receiving copies of those records. Therefore, the MSDE finds that there was no right to receive copies of the educational record under the IDEA.

However, because the MSDE finds that the request for copies was a request to inspect and review the educational record, the MSDE further finds that the PGCPS was required to provide

the complainant with the opportunity to inspect the record within forty-five (45) days of the request and prior to the December 12, 2011 IEP team meeting. Based on the Finding of Fact #15, the MSDE finds that the PGCPS did not provide the complainant with the opportunity to inspect the record within this timeframe. Therefore, the MSDE finds a violation regarding this allegation.

Allegation #4: Provision of copies prior to IEP team meetings

At least five (5) business days before a scheduled IEP team meeting, the student's parent must receive an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at the meeting (Md. Code Ann., Educ., §8-405 (2010) and COMAR 13A.05.01.07).

Based on the Finding of Fact #14, the MSDE finds that the student's mother was provided with copies of assessment reports at least five (5) business days before the December 12, 2011 IEP team meeting where they were considered by the IEP team. Therefore, the MSDE finds no violation regarding this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The MSDE requires the PGCPS to provide documentation by April 30, 2012, 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 a FAPE to the student since the start of the 2011-2012 school year.

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 31, 2012, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at the XXXXXXXX.

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

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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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 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 the MSDE Office of Quality Assurance and Monitoring (QAM) for its consideration during present or future monitoring of the PGCPs.

Systemic

The QAM staff has conducted on-site focused monitoring through the Monitoring for Continuous Improvement and Results process to review and analyze the PGCPs data regarding its lack of compliance with the disciplinary procedures. The MSDE is continuing to work with the PGCPs to ensure compliance with the disciplinary removal regulations. This Letter of Findings is being shared with the QAM staff for their use with this activity.

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 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

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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 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:ks

cc : William R. Hite
Bonita Coleman-Potter
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXXX
XXXXXXXXXXXX
Martha J. Arthur
Kathy Stump