



Bernard J. Sadusky, Ed.D.
Interim State Superintendent of Schools

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

April 12, 2012

XXX
XXX
XXX

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: #12-052

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 February 13, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter “the complainant,” on behalf of her son, 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) and the Code of Maryland Regulations (COMAR) with respect to the student. The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the student participated in the Algebra/Data Analysis High School Assessment (HSA) since May 2011, in accordance with 34 CFR §300.160 and COMAR 13A.05.01.09;
2. The PGCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his transportation needs during the 2011-2012 school year, in accordance with 34 CFR §§300.320 and .324; and
3. The PGCPS has not ensured that the student has been provided with the amount of counseling services required by the IEP during the 2011-2012 school year, in accordance with 34 CFR §300.101.

Maryland Public Schools: ***#1 in the Nation Four Years in a Row***

XXX

Mrs. Joan Rothgeb

April 12, 2012

Page 2

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 15, 2012, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Ms. LaRhonda Owens, Supervisor of Compliance, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On February 16, 2012, Ms. Hartman conducted a telephone interview with the complainant in order to clarify the allegations to be investigated.
4. On February 23, 2012, Ms. Hartman conducted an interview with Ms. Betsy Johnson, Program Manager, Planning and Assessment Branch, Division of Accountability, Assessment and Data Systems, MSDE, regarding the requirements for HSAs. On that same date, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. Also on the same date, the MSDE notified Mrs. Rothgeb of the allegations and requested that her office review the alleged violations.
5. On March 8, 19 and 21, 2012, Ms. Hartman conducted telephone interviews with the complainant to obtain additional information regarding the allegations being investigated.
6. On March 9 and 19, 2012, Ms. Johnson provided Ms. Hartman with documentation of the HSA requirements.
7. On March 16, 2012, Ms. Hartman and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record and interviewed the PGCPS staff listed below.
 - a. Mr. XXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXX, Special Education Chairperson;
 - c. Ms. XXXXXXXX, Special Education Teacher and IEP Case Manager; and
 - d. Mr. XXXXXXXXXXX, School Guidance Counselor.

Ms. Morrison and Ms. Cora Bose, Special Education Instructional Specialist, PGCPS, attended the visit as representatives of the PGCPS and to provide information on the PGCPS policies and procedures, as needed.
8. On March 21, 22, 23 and 28, 2012, the complainant provided the MSDE with additional documentation related to the allegations, via electronic mail (email).
9. On March 26, 2012, the PGCPS provided the MSDE with documentation to be considered as part of the investigation, via email.

XXX

Mrs. Joan Rothgeb

April 12, 2012

Page 3

10. On March 29, 2012, Ms. Hartman conducted a telephone interview with Ms. Mary Gable, Assistant State Superintendent, Division of Academic Policy, MSDE, to discuss MSDE policies regarding the schedule for administrations of the HSAs.
11. On March 30, 2012 and April 2, 2012, Ms. Hartman conducted telephone interviews with Ms. Donna Bradshaw-Pelote, Test Administration Specialist, PGCPs, regarding the May 2012 administration of the Algebra/Data Analysis HSA.
12. On April 2, 2012, Ms. Hartman conducted a telephone interview with Ms. XXXXXXXX, Academic Dean, XXXXXXXXXXXXXXXXXXXXXXXX, PGCPs, regarding the allegations being investigated.
13. The MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings. The documents cited in this Letter of Findings are listed below.
 - a. IEP, dated December 2, 2010;
 - b. IEP, dated November 4, 2011;
 - c. Student's Report Card for the 2010-2011 school year;
 - d. The PGCPs school calendar for the 2010-2011 school year;
 - e. Email correspondence from the PGCPs staff to the complainant, dated November 4, 2011;
 - f. Correspondence from the complainant to the MSDE, dated February 10, 2012;
 - g. Email correspondences between the complainant and the PGCPs staff, dated October 5, 2011;
 - h. Printout of the scheduled pick-up and drop-off time for the student's bus from the PGCPs Transportation Office website, dated October 5, 2011;
 - i. Email correspondence from the PGCPs staff to the MSDE staff, dated April 4, 2012;
 - j. Email correspondence from the PGCPs staff to the complainant, dated September 23, 2011;
 - k. Email correspondences between the complainant and the PGCPs staff, dated October 4 and 17, 2011;
 - l. Student's attendance data for the 2011-2012 school year through March 15, 2011;
 - m. Correspondence from the complainant's private transportation provider addressed to "To Whom It May Concern," dated March 22, 2012;
 - n. Counseling service provider logs, dated September 6, 2011 through March 12, 2012; and
 - o. Report of the student's progress toward achieving the annual on IEP goals as of January 6, 2012.

BACKGROUND:

The student is fifteen (15) years old. He is identified as a student with autism under the IDEA and receives special education instruction and related services at XXXXXXXXXXXXXXXXXXXXXXXX. During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. a and b).

ALLEGATION #1: PARTICIPATION IN THE ALGEBRA/DATA ANALYSIS HIGH SCHOOL ASSESSMENT (HSA) SINCE MAY 2011

Findings of Facts:

HSA Requirements

1. The Maryland High School Assessment (HSA) program includes State-based standardized assessments given in the areas of English, Biology, and Algebra/Data Analysis. They are based on the Core Learning Goals, which outlines the course content and learning objectives of high-school level courses. In order to receive a Maryland High School Diploma, students must take and pass the HSAs.¹ The HSAs are regularly administered several times each year for high school students (Interviews with the PGCPS staff and *About the HSAs*, an MSDE publication located at www.hsaexam.org).
2. Each local school system determines whether it will permit middle school students to receive high school credit for high school level courses. If a middle school student receives high school credit for one of the high school level courses associated with an HSA, that student must be permitted to participate in the next regular administration of that assessment.²
3. The PGCPS permits middle school students to take high school courses for high school credit. The regular administration of the HSA for middle school students in the PGCPS is May of each year. The PGCPS has a general practice of allowing middle school students to participate in HSAs during the May administration of the year in which they are taking the course prior to their completion of the course (Interviews with the PGCPS staff).

The Student's HSA Participation

4. During the 2010-2011 school year, the student was in the 7th grade in middle school and was enrolled in Algebra I, the course associated with the Algebra/Data Analysis HSA (Docs. a and c).
5. The PGCPS school year ended on June 13, 2011, several weeks after the May 2011 administration of the HSA. While the student passed the course with a "D," there is no documentation that he received high school credit for the course prior to the May 2011 administration of the HSA (Docs. c and d, and review of record).
6. The student was scheduled to participate in the May 2011 administration of the Algebra/Data Analysis HSA because the PGCPS automatically enrolls all students taking Algebra I in the Algebra/Data Analysis HSA. While the parties agree that the student did not participate in the May 2011 assessment, the PGCPS could not provide an explanation for

¹ Students must either pass the HSAs or meet this requirement through one of the approved alternatives (*Maryland High School Graduation Requirements*, an MSDE publication located at www.hsaexam.org).

² See, COMAR 13A.03.02.05.

XXX

Mrs. Joan Rothgeb

April 12, 2012

Page 5

why the student did not participate, and there is no documentation of the reason he did not participate (Doc. e, interviews with the complainant and the PGCPs staff, and review of record).

7. On November 11, 2011, the IEP team convened to review the student's program. At that meeting, the complainant requested to be informed of the date, time and location of the next administration of the Algebra/Data Analysis HSA. The student is scheduled to take the Algebra/Data Analysis HSA in May 2012 (Doc. b and interviews with the complainant and the PGCPs staff).

Discussion/Conclusions:

Each public agency must ensure that all students with disabilities are included in general State and district-wide assessments with appropriate accommodations and alternate assessments. Local school systems determine whether middle school students may receive high school credit for completing one of the HSA-associated courses. Middle school students who receive high school credit for a course associated with an HSA must take the assessment during its next regularly scheduled administration (34 CFR §300.160 and COMAR 13A.03.02.04, .05, .07, and .09).

In this case, the complainant alleges that, because the PGCPs permits middle school students to take the HSA prior to the completion of the course associated with the HSA, provided they are enrolled in the course, the student was required to take the Algebra/Data Analysis HSA during its May 2011 administration (Doc. f).

Based on the Findings of Facts #2 - #5, the MSDE finds that there is no documentation that the student had completed the course and received high school credit for Algebra I at the time of the May 2011 administration of the assessment. Based on the Findings of Facts #2 - #5 and #7, the MSDE further finds that the first regular administration of this assessment following the student's completion of the Algebra I course will take place in May 2012. While the PGCPs permits students to take the HSA prior to completing the course, that does not constitute a legal requirement to ensure that the student takes the HSA before receiving credit for the course associated with the assessment. Therefore, the MSDE does not find a violation with regard to this allegation.

ALLEGATION #2: DEVELOPMENT OF AN IEP THAT ADDRESSES THE STUDENT'S TRANSPORTATION NEEDS DURING THE 2011-2012 SCHOOL YEAR

Findings of Facts:

8. The student's IEP in effect at the start of the 2011-2012 school year was developed on December 2, 2010. The IEP documents that the IEP team decided that the student would attend the school he would attend if not disabled, and there is no documentation that the student required transportation as a related service at that time (Doc. a).
9. At the start of the 2011-2012 school year, the student was transported to school by the regular school bus. In early September 2011, the PGCPs Transportation Office revised the routing schedule for the school bus to which the student was assigned. This resulted in a

XXX

Mrs. Joan Rothgeb

April 12, 2012

Page 6

change to the time the school bus arrived at the bus stop where the student boarded in the morning, from 8:39 AM to 8:23 AM (Docs. g-i, and interviews with the complainant and the PGCPs staff).

10. Because the school system did not inform parents of the change in the bus schedule, the student was not arriving to the bus stop within sufficient time to board the bus and he was returning home instead of going to school. The complainant left the house for work by the time the student returned home from the bus stop in the morning, and the student typically arrived home before the complainant at the end of the day. Because the student did not inform the complainant of the situation, she was not aware of the problem with the bus and not aware that the student was not attending school (Doc. g and interviews with the complainant and the PCPS staff).
11. On September 23, 2011, the student's teacher contacted the complainant and informed her of the student's lack of attending school. As a result of making inquiries with school staff, the complainant discovered the change in the bus schedule, which had been in effect for at least two weeks, and she instructed the student to arrive at the bus stop at the appropriate time. However, the student refused to go to the bus stop in the morning and, as a result, continued to be absent from school (Docs. g and j, and interviews with the complainant and the PGCPs staff).
12. On October 4, 2011, the complainant requested that the IEP team be convened in order to consider door-to-door transportation to ensure his school attendance (Doc. k and interviews with the complainant and the PGCPs staff).
13. The IEP team convened on November 4, 2011 in response to the complainant's request, but there is no documentation that, at that meeting, the team considered interventions to address the student's interfering behaviors or how to ensure that he is transported to school (Doc. b and interviews with the complainant and the PGCPs staff).
14. The student's attendance data documents that, since November 16, 2011, the student has been attending school regularly (Doc. l).
15. Since November 22, 2011, the complainant has obtained transportation for the student at her own expense (Doc. m and interviews with the complainant and the PGCPs staff).

Discussion/Conclusions:

It is the responsibility of the local school system to offer a Free Appropriate Public Education (FAPE) to all students with disabilities. In order to offer a FAPE, the public agency is required to develop an IEP that includes special education instruction and related services needed to address the needs that arise from the disability. Related services means 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, .101, .320, .323 and .324).

To appropriately identify the needs that arise from the disability, the IEP team must consider the strengths of the student, concerns of the parents, and the results of the most recent evaluations. In

XXX

Mrs. Joan Rothgeb

April 12, 2012

Page 7

the case of a student whose behavior impedes the student's learning or that of others, the team must also consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based on the Findings of Facts #8 - #15, the MSDE finds that the PGCPS did not ensure that the IEP team addressed the student's behaviors related to accessing transportation at the November 4, 2011 meeting. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

ALLEGATION #3: PROVISION OF COUNSELING SERVICES IN ACCORDANCE WITH THE IEP SINCE THE START OF THE 2011-2012 SCHOOL YEAR

Findings of Facts:

16. The IEP in effect since the start of the 2011-2012 school year requires that the student be provided with counseling services in a separate special education classroom in one (1) thirty (30) minute session each week (Docs. a and b, and interviews with the PGCPS staff).
17. Counseling service provider logs document that the student has not been provided with weekly counseling services in the amount and frequency required by the IEP, and that during some weeks, no services have been provided (Docs. a, b and n).
18. Reports of the student's progress toward achieving the goals addressed by the counseling services document that, since January 6, 2012, the student has not made sufficient progress to achieve all of the goals. The reports indicate that the IEP team needed to meet to address the lack of expected progress (Doc. o).
19. There is no documentation that the IEP team has convened to address the student's lack of expected progress toward achieving the annual IEP goals (Review of Maryland On-Line IEP documents).

Discussion/Conclusions:

The public agency is required to ensure that students are provided with the special education instruction and related services required by the IEP (34 CFR §§300.101 and .323). Based on the Findings of Facts #16 - #18, the MSDE finds that the PGCPS did not ensure that the student has been provided with the counseling services required by the IEP during the 2011-2012 school year.

Additionally, based on the Findings of Facts #18 and #19, the MSDE finds that the student has not made sufficient progress toward achieving the goals addressed by the counseling services since January 6, 2012 and that the IEP team has not convened to address the lack of expected progress. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by May 15, 2012 that the IEP team has reviewed and revised, as appropriate, the IEP to ensure that it addresses the student's behavioral and transportation needs. At the IEP team meeting, the team must also determine the remedy to address the student's loss of counseling services. In addition, the team must decide whether the violation related to ensuring that the IEP addresses the student's behavioral and transportation needs at the November 4, 2011 IEP team meeting had a negative impact on the student's ability to benefit from his education program and, if so, determine the amount and nature of *compensatory services*³ or other remedy necessary to redress the violation.

The PGCPS must provide the complainant with proper written notice of the IEP team's determinations, including a written explanation of the basis for the determinations, in accordance with 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, the complainant maintains the right to request mediation or to file a due process complaint, in accordance with the IDEA.

School-Based

The MSDE requires the PGCPS to provide documentation by September 1, 2012 of the steps that have been taken to determine if the violations found in this Letter of Findings are unique to this case or if they represent a pattern at XXXXXXXXXXXXXXXXXXXX. 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, Complaint Investigation and Due Process Branch 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 Office of Special Education Programs.

Documentation of all corrective action taken is to be submitted to this office to the attention of the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

³ 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).

XXX

Mrs. Joan Rothgeb

April 12, 2012

Page 9

TECHNICAL ASSISTANCE:

Technical assistance is available to both the complainant and the PGCPs 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 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.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant 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 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/ch

c: William R. Hite
Bonita Coleman-Potter
Gail Viens
LaRhonda Owens
Kerry K. Morrison
XXXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Christine R. Hartman