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State Superintendent of Schools

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March 29, 2013

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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: #13-043

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.

ALLEGATION:

On January 30, 2013, the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his 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) with respect to the student.

The MSDE investigated the allegation that the PGCPS did not ensure that the complainant was provided with the opportunity to participate in the November 12, 2012 Individualized Education Program (IEP) team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07(D). Specifically, the complainant alleged that the PGCPS did not provide him with written notice of who would be in attendance at the meeting at least ten (10) days before the meeting.

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INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 1, 2013, 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 February 7, 2013, Ms. Moyo conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On February 11, 2013, 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 February 14, 2013, the MSDE requested information and documents from the PGCPS, via electronic mail (e-mail).
6. On February 20, 2013, the PGCPS staff provided Ms. Moyo with documentation related to the allegations being investigated.
7. On March 4, 2013, the complainant contacted Ms. Moyo via e-mail correspondence requesting an update on the status of the complainant investigation.
8. On March 5, 2013, Ms. Moyo sent e-mail correspondence to the complainant providing him with an update on the status of the State complaint investigation.
9. On March 19, 2013, Ms. Moyo conducted a telephone interview with the complainant.
10. On March 21, 2013, Ms. Moyo received e-mail correspondence from the complainant including additional information and documentation related to the allegation being investigated.
11. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP team meeting notice, dated October 26, 2012;
 - b. IEP team meeting notice, dated November 9, 2012;
 - c. IEP, dated November 12, 2012;
 - d. Summary of IEP team's educational placement determination, dated January 15, 2013;

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- e. Correspondence and attachments from the complainant to the MSDE, received on January 30, 2013; and
- f. E-mail correspondence from school staff to PGCPS central office staff, dated February 19, 2013.

BACKGROUND:

The student is seven (7) years old. He is identified as a student with Autism under the IDEA, and receives special education instruction and related services.

From the start of the 2012-2013 school year until Friday, March 8, 2013, the student attended XXXXXXXXXXXXX, a PGCPS public school. Since Monday, March 11, 2013, the student has attended the XXXXXXXXXXXXXXXXXXXX, a nonpublic separate special education school, where he was placed by the PGCPS (Docs. c and d, and interview with the complainant).

FINDINGS OF FACTS:

1. On October 26, 2012, the complainant was sent written notice of the IEP team meeting scheduled for November 7, 2012. The notice of the meeting included information about the purpose, time, date, and location of the meeting, as well as the name and titles of the school system staff that were expected to participate (Doc. a).
2. On November 7, 2012, the IEP team, including the complainant, convened to complete the three (3) year reevaluation of the student and to review and revise the IEP, as appropriate. The IEP team considered the results of assessments and began to revise the IEP based upon the data. However, because the team was unable to complete their review of the IEP during the meeting, they decided to continue the meeting on November 12, 2012 (Docs. b and c).
3. On November 9, 2012, the school staff sent the complainant written notice confirming that the IEP meeting would be continued on November 12, 2012. The meeting notice did not indicate who was expected to participate (Docs. b and f).
4. On November 12, 2012, the IEP team, including the complainant, reconvened and made revisions to the education program (Doc. c).

DISCUSSION/CONCLUSIONS:

The public agency is required to take steps to ensure the parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. To ensure parent participation, the school system must provide parents with written notice at least ten (10) days in advance of the meeting unless an expedited meeting is being conducted to ensure the provision

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of a Free Appropriate Public Education (FAPE). The notice must state the purpose, time, date, and location of the meeting, and who is expected to participate (34 CFR §300.322 and COMAR 13A.05.01.07(D)).

The IEP team must include the parents, a representative of the school system, individuals who can interpret instructional implication of the evaluation results, at least one (1) regular education teacher of the student if the student is, or may be, participating in the regular education environment, and at least one (1) special education teacher of the student. Additionally, at the discretion of either the parent or the public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, may be included, as appropriate (34 CFR §300.321).

The determination of who should be invited to participate in the IEP meeting, based upon their knowledge or special expertise of the student, must be made by the party who invited the specific individual to be a member of the team. However, the decision regarding which teachers and other school system staff are required members of the IEP team is left to the public agency. Therefore, while the parent has the right to invite such individuals to the meeting, there is no legal right to require school system staff to attend the meeting (34 CFR §300.321 and *Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, pp. 46670 and 46674-5, August 14, 2006).

In this case, the complainant alleges that the school psychologist, who participated in the IEP team meeting on November 7, 2012 to interpret the assessment results, should have provided input into the revision of the IEP, but did not return to the meeting on November 12, 2012. He asserts that, had he known that the school system was not going to require the school psychologist's participation in the November 12, 2012 meeting, he could have invited this individual to participate on that date (Doc. e and interviews with the complainant).

Based on the Finding of Fact #1, the MSDE finds that written notice was provided to the parent which included all of the information about who was expected to participate and the IEP team convened on November 7, 2012. Based on the Findings of Facts #2 and #3, the MSDE finds that there was no requirement to provide the complainant with written notice ten (10) days in advance of the date on which the team decided that it would complete the meeting. However, based upon these same Findings of Facts, the MSDE finds that the notice that was provided was required to include information about who was expected to participate. Based on the Finding of Fact #3, the MSDE finds that the notice did not include this information, and that a violation occurred.

Notwithstanding this violation, based on the Findings of Fact #2 and #4, the MSDE finds that the complainant participated in the entire meeting. Based on the Findings of Facts #1 - #4, the MSDE finds that there was no requirement for the school psychologist to participate in the review and revision of the IEP, and the team was able to make decisions about the program without his involvement.

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Therefore, the MSDE finds that the violation did not have a negative impact on the team's ability to complete the IEP review or on the complainant's ability to participate in the IEP team meeting. As a result, the MSDE does not require a corrective action to redress the violation identified in this letter.

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.

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.

Questions regarding the findings and conclusions 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 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/km

cc:

Alvin Crawley
Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXXXXXX
Dori Wilson
Anita Mandis
Koliwe Moyo