



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

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

April 8, 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: XXXX
Reference: #13-051

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 February 7, 2013, the MSDE received a complaint from Mr. XXXXXXXXXX, 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 has not ensured that the student has been provided with a Free Appropriate Public Education since the start of the 2012-2013 school year, in accordance with 34 CFR §§300.101, .111, and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.

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2. On February 8, 2013, 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, PGCPSS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPSS.
3. On February 12, 2013, Ms. Moyo conducted a telephone interview with the student's mother.
4. On February 14, 2013, the Ms. Moyo contacted PGCPSS staff via electronic mail (email) correspondence to request information related to the complaint. On the same date, the PGCPSS staff responded and provided Ms. Moyo with information via email correspondence.
5. On February 19, 2013, Ms. Moyo and Ms. Tyra Williams, Education Program Specialist, MSDE conducted a telephone interview with the complainant and the student's mother and clarified the allegation to be investigated. On the same date, the MSDE sent email correspondence to the PGCPSS staff requesting documentation from the student's educational record related to the allegation and the PGCPSS provided the information requested.
6. On February 21, 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 PGCPSS of the allegation and requested that the PGCPSS review the alleged violation.
7. On March 12 and 28, 2013, the PGCPSS staff sent the MSDE staff additional information related to the allegation being investigate via email correspondence.
8. On April 1, 2013, Ms. Williams conducted a follow-up interview with the complainant and the student's mother.
9. On April 8, 2013, Ms. Moyo conducted a telephone interview with PGCPSS staff.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Email correspondence from the MSDE to the PGCPSS, dated February 6, 2013;
 - b. Correspondence from the complainant to the PGCPSS staff, dated February 7, 2013;
 - c. PGCPSS Child Find Referral Form, dated February 7, 2013;
 - d. Individualized Education Program (IEP) team meeting notice, dated February 8, 2013;

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- e. Email correspondence between the PGCPS central office staff and the MSDE, dated February 14 and 19, 2013;
- f. Prior Written Notice, dated February 24, 2013;
- g. Draft IEP, dated February 24, 2013;
- h. IEP team meeting notice, dated March 1, 2013;
- i. Email correspondence from the PGCPS to the MSDE, dated March 12, 2013;
- j. Email correspondence from the PGCPS to the MSDE, dated March 22, 2013;
- k. Email correspondence from the PGCPS to the MSDE, dated March 28, 2013; and
- l. Email correspondence from the PGCPS to the MSDE, dated April 8, 2013.

BACKGROUND:

The student is twelve (12) years old is identified as a student with a Specific Learning Disability under the IDEA and has an Individualized Education Program (IEP) that requires special education instruction and related services. At the start of the 2012-2013 school year, the student was enrolled at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX), after the family relocated to Prince George's County, Maryland from XXXXXXX.

During the time period addressed by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. b - d and f - h).

FINDINGS OF FACTS:

1. The PGCPS acknowledges that when the student's mother enrolled the student in the school system prior to the start of the 2012-2013 school year, she informed the school staff that the student was transferring from XXXXXXX with an IEP. However, due to an administrative error on behalf of the school staff, the Special Education Department Chairperson was not informed of the IEP and as a result, the IEP was not implemented (Docs. b, e, and j).
2. After being contacted by the MSDE Family Support Office¹ about the complainant's concerns about implementation of the IEP, on February 7, 2013, the Special Education Department Chairperson obtained a copy of the XXXXXXX IEP (Docs. a, b, e, and k).
3. After the Special Education Department Chairperson received the XXXXXXX IEP, on February 14, 2013, the IEP team convened and reviewed the IEP. The team decided that the IEP would be revised, as appropriate, and determined the comparable services to be provided until the process was completed². The IEP team determined that the student

¹ The MSDE Family Support Office offers assistance to families in attempting to informally resolve disputes with local school system staff (www.marylandpublicschools.org).

² The IEP team was scheduled to reconvene on April 8, 2012, but is being rescheduled at the complainant's request (Doc. l).

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would receive special education instruction in both the general and special education classroom with supports and speech/language therapy, as a related service. The team also decided that when it reconvenes, it will determine the services needed to remediate the delay in implementation of the IEP (Docs. c, d, f – 1, and Interview with PGCPs staff).

4. The PGCPs staff report that steps are being taken to ensure compliance at the school with the requirements of the IDEA and determine a remedy for any similarly-situated students (Doc. i).

DISCUSSION/CONCLUSIONS:

The public agency is required to identify all students with disabilities residing in the State and ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .111). If a student with an IEP from one state transfers to a new public agency in another state, the new public agency, in consultation with the parents, must provide the student with a FAPE. The provision of a FAPE includes service comparable to those described in the student's IEP from the previous State, until the new public agency:

- a. conducts an evaluation, if determined to be necessary; and
- b. develops, adopts, and implements a new IEP, if appropriate (34 CFR §300.323).

“Comparable services” is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, as determined by the IEP team in the new public agency [emphasis added] (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

In order to ensure that the student is provided with a FAPE in the new school system, the new public agency must take reasonable steps to promptly obtain the student's educational records, including the IEP, supporting documents, and any other records related to the provision of special education or related services to the child, from the previous public agency in which the student was enrolled. Once the new public agency obtains the IEP, it must be made accessible to each teacher and service provider responsible for implementation in order to ensure that the student is provided with the special education instruction and related services required by the IEP (34 CFR §300.323).

Based on the Findings of Facts #1-#4, the MSDE finds that, due to an administrative error, the PGCPs did not ensure that the student was provided with the special education instruction required by the IEP from the beginning of the 2012-2013 school year until February 14, 2013. Therefore, the MSDE finds that a violation has occurred.

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CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation, by the end of the 2012-2013 school year, that the IEP team has determined the amount and nature of *compensatory services*¹ required to redress the loss of special education services from the beginning of the 2012-2013 school year through February 14, 2013.

The PGCPS must provide the complainant 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 complainant disagrees with the IEP team's determinations, he maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

Similarly-Situated Students/School-Based

The MSDE requires the PGCPS to provide documentation by the end of the 2012-2013 school year of the steps it has taken at XXXXXXXXXXXXXXXX to ensure that a FAPE is provided to similarly-situated transferring students.

Specifically, the PGCPS must document that it has identified every similarly-situated student and that, for each student identified, the IEP team has determined whether the violation had a negative impact on the student's ability to benefit from the education program. If the IEP team determines that there was a negative impact, the MSDE requires that the PGCPS also submit documentation that the IEP team has determined the nature and amount of *compensatory services*¹ necessary to redress the violation identified.

Further, the PGCPS must provide documentation of the steps it has taken to determine if the violation identified in this Letter of Findings is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXX. 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.

Documentation of all corrective action taken must be submitted to this office no later than the end of the 2012-2013 school year, to the attention of the Chief, Family Support and Dispute Resolution 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 the complainant 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

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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 parents 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/km

cc: Alvin Crawley
A. Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Koliwe Moyo