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State Superintendent of Schools

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April 19, 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: #13-063

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 February 20, 2013, the MSDE received a complaint from Ms. 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. This office investigated the allegations listed below.

1. The PGCPS should have suspected since February 20, 2012¹ that the student is a student with a disability and conducted an evaluation under the IDEA, in accordance with 34 CFR §300.111 and COMAR 13A.08.04; and

¹ The complaint included allegations of violations that occurred more than a year before the date it was received. The complainant was advised, in writing, on March 12, 2013, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

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2. The PGCPS did not ensure that proper procedures were followed in response to the complainant's requests for an evaluation made since February 20, 2012¹, in accordance with 34 CFR §§300.300 - .302, .304 - .311, .503, and COMAR 13A.05.01.04 - .06.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 20, 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 March 7, 2013, Ms. Moyo, MSDE, contacted the complainant and clarified the allegations to be investigated.
4. On March 12, 2013, 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 Ms. Moyo requested documentation from the PGCPS staff related to the allegations being investigated.
5. On March 26, 2013, Ms. Moyo and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed XXXXXXXXXXXXXXXX, Principal. Ms. Morrison attended the site visit as a representative of the PGCPS and to provide information on the PGCPS policies and procedures, as needed. On the same date, the PGCPS provide Ms. Moyo with documentation related to the allegations being investigated.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. *PGCPS Proactive Student Services Intervention Administrative Procedures*, dated November 1, 2009;
 - b. Correspondence from school staff to the complainant, dated February 14, 2012;
 - c. Student Performance Report, dated February 14, 2012;
 - d. Report card for the 2011-2012 school year;
 - e. Teacher note, dated October 2012;
 - f. Parent meeting sign in sheet, dated October 4, 2012;
 - g. Written referral, dated November 14, 2012;
 - h. School Intervention Team (SIT) meeting sign-in sheet, dated November 20, 2012;
 - i. Receipt of procedural safeguards, dated November 20, 2012;

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- j. Contact log between school staff, the complainant, and the student's father from November 15, 2012 to March 11, 2013;
- k. Sample of the student's work, dated December 4, 2012;
- l. Correspondence from school staff to the complainant, dated December 4, 2012;
- m. Electronic mail (email) correspondence between school staff and the complainant, dated December 4, 6, 7, and 17, 2012;
- n. Email correspondence between school staff and the complainant, dated January 9, 2013;
- o. Email correspondence between school staff and the complainant, dated February 4, 5, and 12, 2013;
- p. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on February 20, 2013;
- q. Individualized Education Program (IEP) team meeting notice, dated March 1, 2013;
- r. Prior written notice, dated March 12, 2013;
- s. Child find referral, dated March 12, 2103;
- t. Consent for assessment, dated March 12, 2013;
- u. IEP team meeting sign-in sheet, dated March 12, 2013;
- v. Notice of procedural safeguards, dated March 12, 2013;
- w. Student performance report, dated March 22, 2013;
- x. Report card for the 2012-2013 school year;
- y. Student work samples from the 2012-2013 school year; and
- z. Signed note from the complainant to school staff, undated.

BACKGROUND:

The student is ten (10) years old and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX. He is not identified as a student with a disability under the IDEA.

On March 12, 2013, the PGCPS began an evaluation under the IDEA, which is currently pending. There is documentation that the complainant has been provided with the procedural safeguards, as required (Docs. d, g, i, p, and q - x).

FINDINGS OF FACTS:

2011-2012 School Year

- 1. On February 14, 2012, school staff sent correspondence to the complainant indicating that the student was in "jeopardy of repeating the grade" and requested that the complainant meet with school staff to discuss the student's grades and classroom performance (Doc. b).

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2. School staff report that the School Instructional Team (SIT)² met with the complainant to discuss concerns regarding the student's temper and difficulty maintaining focus in class. However, there is no documentation that the team met nor is there documentation that the team determined strategies to be used with the student in the general education classroom to address concerns about his school work and behavior (Docs. b, c, and review of the educational record, and interview with school staff).
3. There is no documentation that the complainant requested an evaluation under the IDEA, during the 2011-2012 school year (review of the educational record).
4. At the end of the 2011-2012 school year, the school staff decided to retain the student in the third (3rd) grade for the upcoming school year because he did not obtain passing grades (Docs. c, g, o, w, and interviews with the complainant and school staff).

2012-2013 School Year

5. During the 2012-2013 school year, the student's teacher reported to the school principal that he requires "lots of prompting to get any written response" and that his behavior is "inappropriate" in class. There is documentation that the student has been provided with interventions in the general education program, such as assistance from a reading specialist, the use of a behavior chart, modified assignments, and instruction provided in a small group setting with other students who require additional support (Docs. e, f, h, j, l - o, z, and interview with school staff).
6. On November 14, 2012, the complainant sent a written request for evaluation under the IDEA to the school principal due to her concerns that the student "continues to struggle academically and socially." However, there is no documentation that an evaluation was conducted or that, alternatively, the complainant was provided with written notice that the student was not suspected of being a student with a disability. Instead, on November 20, 2012, the SIT² reconvened, but there is no documentation that the team determined strategies and interventions to be used with the student in the general education program (Doc. g - j, and review of the education record and interview with school staff).
7. On March 12, 2013, the Individualized Educational Program (IEP) team met to consider the concerns of the student's teacher about his academic and behavioral issues. The IEP team determined that the student is suspected of being a student with a disability under the IDEA due to his lack of sufficient response to the provision of supports in the general education program. The team determined that the student would be assessed in the areas of academic performance, cognitive/intellectual, and social/emotional/behavioral. On the

² The SIT brings together school staff and resources to support general education students and teachers with developing intervention plans related to academics, behavior and other issues. When a student does not respond to standard teaching and behavior management techniques, different approaches are identified by the SIT (Doc. a).

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same date the complainant provided consent for assessments to be conducted. The team also determined that the student would continue to receive additional assistance from the reading specialist while the evaluation was pending (Docs. q - x).

DISCUSSION/CONCLUSIONS:

Allegation #1: Child Find Requirements

The “child find” requirements of the IDEA impose an affirmative obligation on the school system to identify, locate and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services, or are suspected of having disabilities and being in need of special education and related services (34 CFR §300.111). It is, however, the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services.

To meet this expectation, school staff may review a student’s academic and behavioral performance and determine teaching strategies, modifications to instruction and behavior management techniques that will appropriately assist the student. The PGCPS procedures require that the students be provided with intensive supports and, if necessary, with additional interventions for approximately nine (9) to twelve (12) weeks, at which time the student’s progress is measured.

Based on the student’s response to the interventions being provided, the services may be continued, discontinued if sufficient progress is made, or increased in frequency and duration. However, the public agency must ensure that implementation of such interventions do not delay or deny a student’s access to special education services under the IDEA (34 CFR §300.111).

In this case, the complainant alleges that, due to the student’s lack of response to supports provided in the general education program, an IDEA evaluation should have begun prior to March 12, 2013. Based on the Findings of Facts #1, #2, and #4 - #7, the MSDE finds that since February 2012, the student required assistance in the areas of behavior and academic performance.

However, based on the same Findings of Facts, the MSDE further finds that there is no documentation that supports were provided in the general education program and progress monitored, consistent with the school system’s procedures, prior to the complainant’s request for an evaluation under the IDEA. Therefore, the MSDE finds that the PGCPS did not ensure that the provision of interventions in the general education program were provided as required and, as a result, a violation occurred.

Allegation #2: Response to a Referral for Evaluation

School staff are required to promptly respond to a parent's written request for an IDEA evaluation. If school staff suspect that the student has a disability under the IDEA, the public agency must promptly request parental consent for an evaluation and ensure that the evaluation is completed within sixty (60) days of parental consent and within ninety (90) days of the receipt of the referral.

If the public agency does not suspect that the student has a disability under the IDEA, it must provide the student's parent with written notice that the student is not suspected of being a student with a disability and that an evaluation will not be conducted. This notice includes a statement of the decision, the basis for the decision, the options considered and reasons for rejection of options, a description of any other factors relevant to the determination, and notice of the procedural safeguards (34 CFR §§300.111 and .503 and COMAR 13A.05.01.04 and .06).

In this case, the complainant alleges that, upon being informed that the student would be retained during the 2011-2012 school year, she requested an evaluation under the IDEA. However, based on the Finding of Fact #3, the MSDE finds that there is no documentation that the complainant made a written referral for an evaluation prior to November 14, 2013.

However, based on the Findings of Facts #6 and #7, the MSDE further finds that once the complainant requested, in writing, on November 14, 2012 that an IDEA evaluation be conducted, the PGCPS did not follow proper procedures to that referral. Therefore, the MSDE finds that a violation occurred from February 20, 2012 until March 12, 2013, when an evaluation was initiated by school system staff.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by July 1, 2013, that the evaluation process has been completed and an IEP has been developed, if the student is identified as a student with a disability under the IDEA. In addition, if the student has been identified as a student with a disability under the IDEA, the PGCPS must also provide documentation that the IEP team has determined the nature and amount of *compensatory services*³ or other remedy necessary to redress the delay in the identification of the student.

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,

³ For the purpose of this letter, these are services, as determined by the IEP team, needed to remediate the denial of appropriate services to the student (34 CFR §300.151).

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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 July 1, 2013, of the steps it has taken to determine if the violation identified in the Letter of Findings is unique to this case or if it represents a pattern of noncompliance 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 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's Policy and Accountability Branch for its consideration during present or future monitoring of the PGCPS.

Documentation of all corrective action taken is to be submitted to this office to: Attention: 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 both parties have the right to submit additional written documentation to this office 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

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request for reconsideration, the school system must implement the corrective actions consistent with the timelines requirement, 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 Free Appropriate Public Education 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

c: Alvin Crawley
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