



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

May 13, 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: #13-067

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 March 14, 2013, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of 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 allegations listed below.

1. The PGCPS has not provided the student with the services of a “dedicated aide,” as required by the Individualized Education Program (IEP), on a consistent basis since February 11, 2013, in accordance with 34 CFR §§300.101 and .323.
2. The PGCPS has not ensured that the IEP has been reviewed at least annually, in accordance with 34 CFR §300.324.

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3. The PGCPS did not provide the complainant with prior written notice of the decisions made at the IEP team meeting convened on December 13, 2012, in accordance with 34 CFR §300.503.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 18, 2013, 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; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
3. On April 8, 2013, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On April 15, 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, the MSDE notified the PGCPS of the allegations and requested that PGCPS review the alleged violations.
5. On April 26, 2013, Ms. Hartman and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXX to review the student's educational record, and interviewed the following staff:
 - a. Ms. XXXXXXXXXXXX, Special Education Department Chairperson, XXXXXXXX XXXXXXXX, PGCPS;
 - b. Ms. XXXXXXXXXXXX, Special Education Instructional Specialist, PGCPS; and
 - c. Ms. XXXXXXXXXXXX, Autism Specialist, PGCPS.

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

6. On April 29 and 30, 2013, and May 1, 2013, the MSDE requested information and documents from the PGCPS, via email.
7. On April 30, 2013, and May 1, 2, and 7, 2013, the PGCPS provided the MSDE with additional information and documentation related to the allegations in the complaint.
8. On May 1 and 7, 2013, Ms. Hartman conducted telephone interviews with the complainant to obtain additional information regarding the allegations being investigated.

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9. 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 the MSDE, received on March 14, 2013;
 - b. IEP, dated December 21, 2011;
 - c. IEP, dated May 9, 2012;
 - d. IEP, dated October 3, 2012, Notice of IEP Team Meeting, dated September 6, 2012, and Prior Written Notice document, dated October 3, 2012;
 - e. IEP, dated December 13, 2012, Notice of IEP Team Meeting, dated November 28, 2012, and Prior Written Notice document, dated December 20, 2012;
 - f. IEP, dated March 20, 2013, and Prior Written Notice document, dated March 27, 2013;
 - g. IEP, dated April 18, 2013, Notice of IEP Team Meeting, dated March 20, 2013; and Prior Written Notice document, dated April 23, 2013;
 - h. Correspondence from the complainant's attorney to the Office of Administrative Hearings, dated October 11, 2012;
 - i. Email correspondences from the PGCPS to the MSDE, dated May 1, 2013;
 - j. Email correspondence from the PGCPS to the complainant, dated December 21, 2012;
 - k. Email correspondence from the complainant to the PGCPS, dated December 21, 2012;
 - l. Email correspondence from the PGCPS to the complainant, dated January 4, 2013;
 - m. Email correspondence from the complainant to the PGCPS, dated January 8, 2013;
 - n. Consent for Assessment form, dated January 9, 2013; and
 - o. Email correspondence and attachment from the complainant to the PGCPS, dated March 21, 2013.

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with Autism under the IDEA. During the 2011-2012 school year, she attended XXXXXXXXXXXXXXXX, where she received special education instruction and related services. Since the start of the 2012-2013 school year, the student has been attending XXXXXXXXXXXXXXXX,¹ where she continues to receive special education instruction and related services (Docs. a-g).

¹ On August 17, 2012, the complainant and the PGCPS entered into a Settlement Agreement that resolved a dispute which was the subject of a due process hearing complaint. As a result of that Settlement Agreement, the student began attending XXXXXXXXXXXXXXXX at the start of the 2012-2013 school year (Docs. h and i, and interview with the complainant).

**ALLEGATION #1: CONSISTENT PROVISION OF A “DEDICATED AIDE” SINCE
FEBRUARY 11, 2013**

FINDINGS OF FACTS:

1. The IEP in effect on February 11, 2013² required that the student receive the services of a “dedicated aide” on a daily basis to provide assistance with organizational strategies and interpreting social cues (Doc. e).
2. The complainant asserts that the student did not receive the services of a “dedicated aide” for portions of the day on February 11, 20, and 25, 2013, and March 7, 11, and 14, 2013, when the “dedicated aide” was unavailable (Doc. a and interview with the complainant).
3. A review of the assigned staff person’s attendance information indicates that, on the dates identified by the complainant, the “dedicated aide” was unavailable for portions of the day. The PGCPs staff indicate that another staff person was assigned to be the student’s “dedicated aide” during those times. However, they acknowledge that school staff did not document the assignment of another staff member to perform the duties of the student’s “dedicated aide” (Interviews with the PGCPs staff, on-site review of the assigned “dedicated aide’s” attendance information, and review of the student’s educational record).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education instruction, including supplementary aids and services, required by the IEP (34 CFR §§300.101 and .323). Based on the Finding of Fact #1, the MSDE finds that the IEP required that the student be provided with the services of a “dedicated aide” on a daily basis. Based on the Findings of Facts #2 and #3, the MSDE finds that there is no documentation that the student was provided with the services of a “dedicated aide” during the times the assigned staff person was unavailable on the six (6) dates identified by the complainant. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

ALLEGATION #2: REVIEW OF THE IEP AT LEAST ANNUALLY

FINDINGS OF FACTS:

4. The IEP in effect at the start of the 2012-2013 school year was developed on December 21, 2011 and reviewed on May 9, 2012 to consider Extended School Year services. The IEP required that the student receive specialized instruction in both the general and special education classrooms to assist her in achieving goals related to

² On April 18, 2013, the IEP team determined that the student no longer requires the services of a “dedicated aide,” and removed this supplementary service from the student’s IEP (Doc. g).

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reading fluency, social interaction skills, and self-management skills, as well as counseling as a related service (Docs. b and c).

5. At the start of the 2012-2013 school year, the student began attending XXXXXXXX XXXXX.¹ On September 27, 2012, the IEP team convened to review the student's IEP following her transfer to the new school. At this meeting, the IEP team considered information from the complainant and teacher reports of the student's classroom performance and progress toward achieving the annual IEP goals. There is documentation that the IEP team considered the student's communication needs, including whether the student required speech/language therapy as a related service, and reviewed the student's progress in counseling and in social interactions. Based on this review, the team determined that the IEP remained appropriate, and began planning for the student's upcoming three-year reevaluation (Docs. d).
6. On December 13, 2012, the IEP team convened to review the student's IEP and develop a plan for the student's reevaluation. At that time, the IEP team considered teacher reports of the student's classroom performance and progress toward achieving the annual IEP goals, as well as information provided by both the complainant and the student. Based on this information, the IEP team revised the annual IEP goals, and reduced the amount of counseling the student was to receive from weekly to twice monthly. The IEP team also recommended assessments be conducted related to the student's social awareness skills (Docs. e).
7. The IEP team convened to further review the IEP and results of completed assessments on March 20, 2013 and April 18, 2013, and based on these reviews, reduced both the number of annual goals and, as stated above, determined that the student no longer required the services of a "dedicated aide" (Docs. f and g).

DISCUSSION/CONCLUSIONS:

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324).

There is no requirement in the IDEA that an IEP be reviewed on the same date every year, or at a particular time during the school year. Rather, the regulation requires that every student's IEP be reviewed *at least* once every twelve (12) months, and more frequently should the situation warrant, so that each student's education program remains appropriate to meet the student's needs (Notice of Interpretation, Appendix A to 34 CFR Part 300, Question 20, 1999).³

³ In the 2004 reauthorization of the IDEA, no changes were made to the language of this regulation (Federal Register, Vol. 71, No. 156, August 2006, p. 46547).

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In this case, the complainant alleges that the IEP was not reviewed within timelines because the review of the student's IEP which began on December 13, 2012 was not completed prior to December 21, 2012, the date the prior IEP had been developed (Doc. a). However, based on the Findings of Facts #4 – #7, the MSDE finds that, during the time period addressed by this investigation, the IEP team met on September 27, 2012 and December 13, 2012 to consider the student's progress, and determine whether additional data was needed, considered the complainant's concerns, and revised the IEP consistent with the data. Therefore, the MSDE does not find a violation with regard to this allegation.

ALLEGATION #3: PRIOR WRITTEN NOTICE OF THE DECISIONS MADE AT THE DECEMBER 13, 2012 IEP TEAM MEETING

FINDINGS OF FACTS:

8. On December 21, 2012, school staff sent an email to the complainant that included three (3) attachments for her review. The attached documents were the IEP, Prior Written Notice, and Consent for Assessment form. On the same date, the complainant responded to the email, indicating she was unable to open the Consent for Assessment form, and requested it be provided to her in another format (Docs. j and k).
9. There is documentation that, on January 8, 2013, the complainant again informed school staff that she had not yet received an accessible copy of the Consent for Assessment form.⁴ However, the documentation reflects that it was not until March 21, 2013 that the complainant informed school staff that she was unable to access the Prior Written Notice document (Docs. m and o, and review of the student's educational record).
10. The complainant acknowledges that school staff provided her a copy of the Prior Written Notice document related to the December 21, 2012 during the most recent IEP team meeting on April 18, 2013 (Interview with the complainant).

DISCUSSION/CONCLUSIONS:

The public agency is required to provide the parent with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student (34 CFR §300.503).

In this case, the complainant alleges that the PGCPS did not provide her with written notice of the IEP team decisions made on December 13, 2012 because the school system emailed it to her

⁴ The PGCPS was closed from the end of the school day on December 21, 2012 until January 2, 2013 for Winter Break, and school staff responded to the complainant's email on January 4, 2013. On January 8, 2013, the complainant renewed her request for a copy of the Consent for Assessment form, and received it on January 9, 2013 (Docs. l-n and review of the PGCPS 2012-2013 school calendar).

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in an inaccessible format, and did not remedy the situation when she informed them that she was unable to access the document (Doc. a).

Based on the Finding of Fact #8, the MSDE finds that the PGCPS provided the complainant with a copy of the Prior Written Notice document on December 21, 2012. However, based on the Findings of Facts #8 and #9, the MSDE finds that there is no documentation that the complainant informed the PGCPS that she was unable to access the Prior Written Notice document prior to March 21, 2013.

Based on the Finding of Fact #10, the MSDE finds that, once the PGCPS was made aware that the complainant had been unable to access the Prior Written Notice document, there was nearly a month delay until they provided her with one on April 18, 2013. Therefore, the MSDE finds that a violation occurred with regard to this allegation. However, because the complainant has since been provided with an accessible copy of the Prior Written Notice document, no corrective action is required.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the PGCPS to provide documentation by September 1, 2013, that an IEP team meeting has been convened to determine whether the violation related to the inconsistent provision of the services of a “dedicated aide” resulted in a negative impact on the student’s ability to benefit from her education program, and, if so, the amount and nature of *compensatory services*⁵ needed to redress the violations identified in this investigation.

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, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the PGCPA by Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

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

⁵ 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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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 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/ch

cc: Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Christine Hartman