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State Superintendent of Schools

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May 17, 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: #13-069

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 19, 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 allegations listed below.

1. The PGCPS did not ensure that a classroom observation of the student was conducted by the school psychologist, as required by the Individualized Education Program (IEP) team on March 27, 2012, in accordance with 34 CFR §§300.101 and .323 and COMAR 13A.05.01.09(D).

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2. The PGCPS has not ensured that the student's assistive technology needs have been identified and addressed since March 27, 2012, in accordance with 34 CFR §300.324 and COMAR 13A.05.01.08.
3. The PGCPS did not provide the complainant with prior written notice of the decisions made by the IEP team at the March 27, 2012 IEP team meeting, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 20, 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 1, 2013, Ms. Williams conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On April 8, 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 the PGCPS review the alleged violations.
5. On April 11, 2013, the MSDE received electronic correspondence (email) from the complainant regarding the allegations identified for investigation.
6. On April 11, 2013, Ms. Williams conducted another telephone interview with the complainant to clarify the allegations to be investigated.
7. On April 11, 18, 22, 24, 29, and 30, 2013, the MSDE received documentation from the complainant to be considered during the investigation of the complaint, via email.
8. On April 12, 2013, the MSDE sent correspondence to the complainant that reflects revisions to the allegations identified for investigation, which were requested by the complainant. On the same date, the MSDE notified the PGCPS of the revised allegations and requested that the PGCPS review the alleged violations.
9. On April 16 and 26, 2013, the MSDE requested documents from the PGCPS, via email.
10. On April 17, 2013, the PGCPS provided the MSDE with documentation to be considered during the investigation of the allegations, via email.

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11. On April 29, 2013 and May 2, 2013, Ms. Williams conducted telephone interviews with the complainant regarding the allegations being investigated.
12. On April 30, 2013, Ms. Williams and Mrs. Martha J. Arthur, Education Program Specialist, Family Support and Dispute Resolution Branch, MSDE, reviewed the student's educational record at the PGCPs Central Office, Department of Special Education.
13. On April 30, 2013, Ms. Williams and Mrs. Arthur conducted a site visit at XXXXX XXXXX and interviewed the school staff listed below.
 - a. Ms. XXXXXXXX, Autism Teacher;
 - b. Ms. XXXXXXXX, IEP Chairperson;
 - c. Ms. XXXXXXXXX, Principal;
 - d. Ms. XXXXXXXX, Autism Department Chairperson;
 - e. Ms. XXXXXXXX, Speech-Language Pathologist; and
 - f. Mr. XXXXXXXX, Autism Teacher.

Ms. Morrison attended the site visit to provide information on the PGCPs policies and procedures, as needed.

14. On May 1 and 2, 2013, the PGCPs provided the MSDE with information to be considered during the investigation of the allegations, via email.
15. Documentation provided by the parties was reviewed. The documents relevant to the findings and conclusions referenced in this Letter of Findings are listed below.
 - a. Correspondence and attachments from the complainant to the MSDE, received on March 19, 2013;
 - b. Enrollment History for the Student, dated December 9, 2008 through March 13, 2013;
 - c. IEP, dated January 26, 2012;
 - d. Notice of the IEP team decisions, dated January 26, 2012;
 - e. IEP team meeting invitation, dated March 15, 2012;
 - f. Email correspondence from the complainant to the PGCPs, dated March 20, 2012;
 - g. Functional behavior assessment report, dated March 27, 2012;
 - h. Behavioral intervention plan, dated March 27, 2012;
 - i. Notice of the IEP team decisions, dated March 29, 2012;
 - j. Assistive technology referral form, dated March 29, 2012;
 - k. Consent for assessments, dated April 10, 2012;
 - l. Speech-Language related services logs, dated August 20, 2012 through February 18, 2013;

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- m. IEP team meeting invitation, dated August 27, 2012;
- n. Functional behavior assessment report, dated September 10, 2012;
- o. Behavioral intervention plan, dated September 10, 2012;
- p. Consent for assessments, dated September 10, 2012;
- q. Notice of the IEP team decisions, dated September 19, 2012;
- r. IEP team meeting invitation, dated September 19, 2012;
- s. Notice of the IEP team decisions, dated October 16, 2012;
- t. IEP team meeting invitation, dated October 26, 2012;
- u. Speech-Language assessment report, dated October 30, 2012;
- v. Notice of the IEP team decisions, dated November 7, 2012;
- w. Psychological assessment report, dated November 7, 2012;
- x. IEP team meeting invitation, dated November 9, 2012;
- y. IEP, dated November 12, 2012;
- z. Notice of the IEP team decisions, dated November 12, 2012; and
- aa. Email among PGCPS staff, dated April 17, 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. The student attended XXXXX XXXXX, a PGCPS public school, until Friday, March 8, 2013. Since Monday, March 11, 2013, the student has attended the XXXXXXXXXXXXX, a nonpublic separate special education school, where he was placed by the PGCPS (Docs. b, c, and y).

FINDINGS OF FACTS:

2011-2012 School Year

1. On March 20, 2012, the complainant expressed concern to school staff about the student's progress and indicated that he believed that the student required additional assistance to address his behavior and communication needs in order to make progress. The complainant inquired about the status of the development of a Behavioral Intervention Plan (BIP), which was recommended by the IEP team on January 26, 2012, in order to address his "aggressive behavior and task refusal." The complainant also requested an assistive technology (AT) assessment to determine whether AT can be used to assist the student with communication (Doc. d and f).
2. On March 27, 2012, the IEP team convened to consider the complainant's requests. The IEP team considered the data about the student's interfering behaviors that were collected by the student's teachers and service providers since January 2012, indicating that the student exhibited these behaviors when he was required to engage in non-preferred tasks and during transitions. The data reflects that the behaviors were less frequently exhibited when the student is engaged in preferred activities, such as working on computers and

- reading when using the PowerPoint on the Smart Board¹ . It also indicated that no interventions had been attempted to address the behavior, and contained recommendations for increasing the student's educational activities on the computer and working on his communication skills (Docs. e, g, h, and i).
3. Based on the data, at the meeting, the IEP team recommended that a school psychologist conduct a classroom observation of the student to obtain additional information for the IEP team to consider about the student's interfering behaviors (Docs. c and i).
 4. A BIP was also developed on March 27, 2012 that includes strategies such as the use of computers for more classroom-based activities, use of visual cues, use of power point, "find [ing] educational websites with relevant skill," and "learning through singing. However, the IEP revised on March 27, 2012 states that the student does not require the use of an AT device in order to access instruction (Docs. i, j, and k).
 5. In response to the complainant's request at the team meeting to consider the use of an AT device as a communication tool, the team recommended that a school system AT specialist consult with school-based members of the IEP team in order to obtain additional information for the team's consideration (Doc. i).
 6. While school staff report that written notice of the decisions made by the IEP team on March 27, 2012 were sent home to the complainant in the student's book bag, the complainant reports that he did not receive the document. There is no documentation to support that the written notice was provided to the complainant and the school staff report that they were unaware of the requirement to maintain this documentation (Review of the educational record and Interview with school staff).
 7. There is no documentation that a school psychologist conducted a classroom observation, as recommended by the IEP team, during the 2011-2012 school year (Review of the educational record).
 8. While the IEP team made a referral for consultation with an AT specialist on March 29, 2012, there is no documentation that the consultation occurred (Doc. j and Review of the educational record).

2012-2013 School Year

9. On September 10, 2012 and October 3, 2012, the IEP team began to conduct a three (3) year reevaluation of the student. At the meetings, the team considered information from the student's teachers and service providers that the student's interfering behaviors had increased and that the behavioral interventions being provided were not successful. The

¹ The Smart Board provides touch-control technology for computer applications, allowing teachers to provide interactive instruction designed to engage students and enhance the learning experience.

- teachers and service providers also reported that they were unable to identify a "trigger" for the increased interfering behaviors, but that the behaviors continued to be less likely to occur when the student is completing a preferred activity. They reported that the student "is extremely interested in puzzles," and enjoys completing them "both manually and electronically." They recommended that the student be provided with sensory and movement breaks throughout the day, as well as preemptive verbal cues and reminders, and that an incentive program be used with the provision of immediate rewards. They further recommended that picture symbols be used to assist the student with communicating his needs (Docs. m, n, p, q, r, and s).
10. As a result of the IEP team meetings held on September 10, 2012 and October 3, 2012, the BIP was revised to require the provision of incentives for completing work, adult attention, and the use of oral motor sensory objects. The IEP team also recommended that educational, cognitive, social/emotional/behavioral and speech/language assessments be conducted (Docs. m, n, p, r, and s).
 11. On November 7 and 12, 2012, the IEP team reconvened to consider the assessment results. The documentation of the meeting reflects that the team considered the report of the psychological assessment, which included the results of a classroom observation of the student conducted by a school psychologist on September 26, 2012. The assessment report indicates that the student was observed to be distracted and off-task and that he required a significant amount of re-direction and encouragement to engage in his class work. It further indicates that the student would "continue to benefit from a small, structured educational setting that can provide the decreased distractions and high level of individualized attention required in order for him to be successful." The report contains the recommendation that the student's program "further include direct instruction in social and play skills." Based on this data, the IEP team revised the program to include the provision of social skills training (Docs. t, u, v, w, x, y, and z).
 12. At the meeting that began on November 7, 2012, the IEP team considered the results of the speech/language assessment, which was conducted by the student's speech/language service provider. The assessment report indicates that the student is not demonstrating the communicative intent needed in order to benefit from the use of an AT device as a means of communication. Based on this information, the team decided that the consultation with an AT specialist was not needed. However, another referral for a consultation with an AT specialist was made on April 8, 2013 (Docs. t, u, v, w, x, y, z, and aa).
 13. The service logs maintained by the student's speech/language therapist document that when she worked with the student using an iPad as an AT communication device, the student "quickly became uninterested" in the device (Doc. 1).

DISCUSSION/CONCLUSIONS:

Allegation #1 Classroom Observation by the School Psychologist

The public agency must ensure that each student with a disability is provided with a Free Appropriate Public Education (FAPE) through an IEP that includes annual goals and special education and related services designed to address the student's identified needs. The student needs are identified by determining the levels of academic achievement and functional performance, based on the evaluation data. In the case of a student whose behavior impedes his learning or that of others, the IEP team must consider strategies to address that behavior (34 CFR §§300.101, .320, and .324).

The public agency must ensure that each student is provided with the special education and related services in accordance with the IEP team's decisions as soon as possible following the IEP team meeting, and must ensure that there is no delay in implementing the team's decisions (34 CFR §§300.101 and .323).

Based on the Findings of Facts #1 and #3, #7, and #10, the MSDE finds that the PGCPS did not ensure that the March 27, 2012 IEP team recommendation for a classroom observation by a school psychologist was implemented until the following school year. Therefore, this office finds that there was a delay in the implementation of the IEP team's decision and that a violation occurred.

Based on the Finding of Fact #10, the MSDE finds that on November 12, 2012, the IEP team determined that the student requires additional special education services to address his behavioral needs based on the information from the classroom observation that was eventually conducted. Therefore, this office finds that the delay in obtaining the data determined necessary by the IEP team resulted in a loss of services to the student.

Allegation #2 Assistive Technology Needs

As stated above, a student's needs are identified by determining the levels of academic achievement and functional performance, based on the evaluation data. When determining the needs to be addressed through the IEP, the IEP team must consider the communication needs of the student and whether the student requires AT devices or services (34 CFR §300.324).

Further, as indicated above, the public agency must also ensure that a student is provided with the special education and related services in accordance with the IEP team's decisions as soon as possible following the IEP team meeting, and must ensure that there is no delay in implementing the team's decisions (34 CFR §§300.101 and .323).

AT as a Communication Device

Based on the Findings of Facts # 1, #5, and #8, the MSDE finds that the March 27, 2012 IEP team recommendation for an AT consultation in response to the complainant's request for the student to be provided with an AT communication device was not implemented. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #11, #12, and #13, the MSDE finds that the IEP team obtained data from another source and subsequently determined that the student would not benefit from the use of an AT communication device, consistent with the data. Therefore, this office finds that the violation related to the AT consultation did not negatively impact the student's ability to benefit from his education program.

Other AT Devices

However, based on the Findings of Facts #2, #4, and #9, the MSDE finds that the IEP team's decision that the student does not require AT devices is not consistent with the evaluation data containing recommendations that the student be provided with the use of computers for classroom-based activities. Therefore, this office finds that a violation has occurred since March 27, 2012.

Allegation #3: Prior Written Notice of March 27, 2012 Decisions

The public agency must ensure that parents are provided with written notice within a reasonable time before proposing or refusing to initiate or change the identification, evaluation, or educational placement of a student or the provision of a FAPE to the student (34 CFR §300.503). Parents are provided with written notice of IEP team decisions in order to ensure that they understand the decisions and can exercise the procedural safeguards to dispute those decisions with which they disagree (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46706, August 14, 2006).

The prior written notice requirements of the IDEA do not specifically indicate that the public agency must document compliance with the requirements. However, the public agency must ensure that documentation of compliance with all of the requirements of the IDEA is maintained for three (3) years (34 CFR §§76.1, 76.731, and 80.42).

In this case, the complainant alleges that he did not receive written notice of the decisions made by the IEP team on March 27, 2012 until he requested access to his son's educational record in March 2013 (Interview with the complainant). Based on the Finding of Fact #6, the MSDE finds that there is no documentation that the PGCPs provided the complainant with written notice of the decisions made on March 27, 2012 prior to the implementation of those decisions. Therefore, this office finds that a violation occurred.

However, the MSDE finds that the complainant has accessed the dispute resolution procedures to resolve his disagreement with the decisions made on March 27, 2012 through this State complaint investigation. Therefore, no student-specific corrective action is required to remediate the violation.

CORRECTIVE ACTIONS/TIMELINE:

Student Specific:

The MSDE requires the PGCPS to provide documentation by the start of the 2013-2014 school year that the IEP team has completed the actions listed below.

- 1) Review and revise the IEP, as appropriate, to ensure that it addresses the student's need for AT devices, consistent with the evaluation data.
- 2) Clarify whether the student can benefit from the use of AT as a communication device or whether an AT consultation is required in order to make that determination. If the IEP team determines that an AT consultation is required, the PGCPS must ensure that it is obtained and that the team makes a determination consistent with the data.
- 3) Determine the compensatory services or other remedy for the violations related to the IEP development.

The PGCPS must provide the complainant with proper written notice of the determinations made by the IEP team, 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.

School Based/Systemic:

The MSDE requires the PGCPS to provide documentation by the start of the 2013-2014 school year of the steps it has taken to determine if the violations identified in this State complaint investigation are unique to this case or if they represent a pattern at XXXXXXXX.

The MSDE also requires the PGCPS to provide documentation by the start of the 2013-2014 school year of the steps it has taken to determine if the violation related to the provision of the assistive technology consultation is unique to this case or if it represents a pattern within the school system.

² 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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With respect to both the school based and systemic corrective actions, 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 connection within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of the report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements. Additionally, this 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 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 PGCPS through Mrs. Martha J. Arthur, Education Program Specialist. 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 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. 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

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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
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

M EP/tw

cc: Duane Arbogast
Gail Viens
LaRhonda Owens
Kerry Morrison
XXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Tyra Williams