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August 26, 2016

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Ms. Trinell Bowman
Director of Special Education
Prince George's County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #16-119

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 April 29, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX hereafter, "the complainant," on behalf of her 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 above-referenced student.

The MSDE identified the following allegations for investigation:

1. The PGCPS did not ensure that the Individualized Education Program (IEP) addressed the student's social, emotional and behavioral needs from September 21, 2015 to October 5, 2015, in accordance with 34 CFR §300.324.
2. The PGCPS has not provided prior written notices of IEP team decisions made since March 31, 2016, in accordance with 34 CFR §300.503.

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3. The PGCPS has not ensured that services for “Autism Support,” were provided to the student during a “resource mod,” as required by the IEP since April 29, 2015,¹ in accordance with 34 CFR §§300.322.
4. The PGCPS did not ensure that the student was provided with the special education instruction in the educational placement required by the IEP since April 29, 2015,¹ in accordance with 34 CFR §§300.101 and .323.
5. The PGCPS did not ensure that the student was consistently been provided with accommodations, counseling services, and adult support as required by the IEP, during the 2015–2016 school year, in accordance with 34 CFR §§300.101 and .323.
6. With respect to the January 12, 2016 IEP team meeting, the PGCPS did not ensure that:
 - a. The IEP included services to assist the student with achieving an annual goal to improve his communication skills, in accordance with 34 CFR §300.324;
 - b. An IEP was provided within five (5) business days after the IEP team meeting held on January 12, 2016, in accordance with COMAR 13A.05.01.07; and
 - c. The right to audio record the IEP team meeting was provided in a manner that is consistent with the *MSDE Memorandum, Audio Recording of Individualized Education Program (IEP) Team Meetings* (February 7, 2006), 34 CFR §300.322 and the *PGCPS’ Notice of the Use of Audiotape or Recording Devices During IEP Team Meetings*.

INVESTIGATIVE PROCEDURES:

1. On April 29, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, former Director of Special Education, PGCPS.
2. On May 16, 2016, Ms. Sharon Floyd, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and her advocate, Ms. XXXXXXXX, and identified the allegations for investigation.
3. On May 17, 2016, 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 school system review the alleged violations.

¹ While the complainant alleged that the violation occurred beyond this period of time, she was informed, in writing, that only those allegations of violations that occurred within one year can be addressed through a State complaint (34 CFR §3009.153).

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4. On May 17, 2016, Mr. Gerald Loiacono, Education Program Specialist, MSDE, contacted Ms. Jodi Kaseff, Special Education Instructional Specialist, PGCPs, to arrange a document review and site visit.
5. On June 7, 2016, Mr. Loiacono and Ms. Floyd conducted a site visit at XXXXXXXX XXXXX to review the student's educational record and interviewed the following school staff:
 - a. Ms. XXXXXXXX, IEP Chairperson;
 - b. Ms. XXXXXXXX, Speech Pathologist;
 - c. Ms. XXXXXXXX, Case Manager;
 - d. Ms. XXXXXXXX, Schol Psychologist;
 - e. Ms. XXXXXXXX, Assistant Principal;
 - c. Ms. XXXXXXXXXXXX, School Counselor; and
 - d. Ms. XXXXXXXX, Autism Coordinator.

Ms. Kaseff attended the site visit as a representative of the PGCPs and to provide information on the school system's policies and procedures, as needed.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated March 31, 2015;
 - b. Written summaries of IEP team meetings, dated October 8 and 22, 2015;
 - c. Notice and Consent for Assessment form, dated October 23, 2015;
 - d. Anecdotal Note Forms from math and science for November, 2015 and December, 2015;
 - e. IEP, dated January 12, 2016 and written summary of the meeting;
 - f. Electronic mail message from the school staff to the complainant, dated January 19, 2016;
 - g. Progress reports for March, 2016;
 - hi. Written invitation to a March 16, 2016 IEP team meeting and written summary of the meeting;
 - i. IEP, dated April 27, 2016 and written summary of the meeting;
 - j. Parent Contact Log from 2012 through 2016;
 - k. The student's transcript;
 - l. Reports of the student's progress in the Academic Resource Room from August, 2015 through May, 2016; and
 - m. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on April 29, 2016.

BACKGROUND:

The student is sixteen years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services (Docs. a – c, e, h, and i).

There is documentation that the complainant was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a – c, e, h, and i).

PRELIMINARY DISCUSSION:

During the course of the investigation, it was discovered that, on October 6, 2015, the complainant filed a due process complaint with the Maryland Office of Administrative Hearings (OAH). The due process complaint covered the same issue addressed in Allegation #1 of the State complaint for the same time period identified in the State complaint. It also covered the issues addressed in Allegations #3, #4, and #5 for a portion of the time period identified for the State complaint investigation.

On October 23, 2015, the parties resolved the due process complaint at a resolution session. Therefore, this office did not conduct a State complaint investigation into Allegation #1, and conducted an investigation into Allegations #3, #4, #5 from the time period of October 23, 2015 to present.

FINDINGS OF FACTS:

1. The IEP identifies needs for the student to improve social interactions, indicating that he is resistant to accepting assistance and participating within group tasks. It includes goals for the student to increase the completion of assignments by complying with direction, responding to adults and peers, and requesting assistance when needed. It requires that he be provided with special education instruction inside the general education classroom by general and special education teachers for English, math, science, and history, and in a separate special education classroom (Autism specific classroom) in order to provide him with reinforcement of the classroom instruction and instruction on disability awareness and social skills in a small group setting (Docs. a, e, and i).
2. The IEP also requires the student be provided with the following instructional and testing accommodations and supplementary aids and services “to support receptive language weaknesses” in order for him to understand and follow directions:
 - Recording his response on the test booklet;
 - Monitoring of his test responses by the teacher;
 - Use of graphic organizers and highlighters;
 - Extended time;
 - Multiple or frequent breaks;
 - Outlines and teacher notes;

- Reduced distractions;
 - Reduced length of written assignments and homework assignments;
 - Vocabulary word banks;
 - Adult assistance with organization in order to keep track of important documents;
 - Textbooks for use at home;
 - Use of an agenda book that is monitored by teachers; and
 - Consultation with a speech/language pathologist to monitor his progress in utilizing compensatory comprehension strategies to facilitate improved performance on language-based tasks (Docs. a, e, and i).
3. A re-evaluation was completed on January 12, 2016. The IEP states that the results of the comprehensive language assessment that was conducted during the re-evaluation indicates that the student's "overall language skills appear to be adequate for academic success and communicative functioning within his current instructional setting." It further states that his "current speech and language weaknesses can be addressed within the instructional environment of his academic subject areas, given modifications and accommodations." The IEP was revised to include a goal for the student to utilize compensatory comprehension strategies to facilitate improvement performance on oral language-based tasks and to require the provision of thirty minutes of counseling from the guidance counselor per week and monthly consultation between the speech/language pathologist and the student's teachers in implementation of the annual IEP goals (Doc. c and e).
 4. The school staff denied that the complainant requested to audio record the January 12, 2016 IEP team meeting prior to the meeting and there is no documentation that she made such a request (Review of the educational record and interview with the school staff).
 5. There is an electronic mail (email) message from the school staff to the complainant, dated January 19, 2016, that documents that the IEP was sent to the complainant electronically on that date (Doc. f).
 6. Following the January 12, 2016 IEP team meeting, there were IEP team meetings held on March 16, 2016 and April 27, 2016. On May 6, 2016, a written summary was developed of the decisions made by the team on April 27, 2016. The written summary states that the document, along with the IEP, would be sent to the complainant in the mail. While the school's communication log contains notations of documents that were mailed to the complainant, it does not contain a notation that these documents were mailed (Docs. h, i, and j).
 7. The student's transcript and reports of his classroom performance document that he was provided with special education instruction in a separate special education classroom where he was provided with reinforcement of the classroom instruction and on social skills (Docs. k and l).

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8. The written summaries of the IEP team meetings held during the 2015-2016 school year document that the student was participating in the Autism Program at XXXXXXXXXXXX XXXX, but that the complainant did not feel that it was sufficiently meeting the student's academic needs and requested a transfer to the Autism Program at another high school (Docs. b, e, and i).
9. The student's transcript reflects that he was provided with special education instruction in English, math, science, and social studies in the general education classroom. However, the only course in which he was provided with instruction from both general and special education teachers in the general education classroom was biology class (Doc. k).
10. There is documentation that some, but not all, of the accommodations that were required by the IEP were provided in the student's English, math, and history classes, and no documentation that he was provided with the accommodations in his science classes (Docs. d and g).
11. There is no documentation of the provision of counseling services that was developed contemporaneous with the provision of those services (Review of the educational record).

DISCUSSION/CONCLUSIONS:

Allegation #2 Prior Written Notice of the IEP Team's Decisions Since March 31, 2016

The public agency must provide parents with written notice prior to any proposal or refusal to initiate or change the identification, evaluation, or educational placement or the provision of a Free Appropriate Public Education (FAPE) to a student with a disability. This notice must include a description of the action, and explanation of why the public agency is taking or refusing to take the action, a description of the data used as a basis for the decision, and a description of other options that were considered (34 CFR §300.503).

Based on the Finding of Fact #6, the MSDE finds that, while there is documentation that written notice of the IEP team's decisions made at the IEP team held on April 27, 2016 meeting was created, there is no documentation that it was provided to the complainant prior to implementation of the IEP team's decisions.

Allegation #3 Provision of Autism Supports Since October 23, 2015

The public agency must ensure that each student is provided with the special education instruction and related services required by the student's IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the IEP requires the provision of special education instruction in a classroom that uses research-based supports and strategies designed to address the needs of students with Autism, but that these services were not provided (Doc. m).

Based on the Findings of Facts #1 and #7, the MSDE finds that there is documentation that the student was provided with special education instruction in a separate special education classroom

designed to address the needs of students with Autism, as required by the IEP. Therefore, no violation is found with respect to the allegation.

Allegation #4 Provision of Special Education Instruction in the Required Educational Placement Since October 23, 2015

The public agency must ensure that each student is provided with the special education instruction and related services in the educational placement required by the student's IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #1, #8, and #9, the MSDE finds that there is documentation that the student was provided with special education in the educational placement required by the IEP. However, based on the Finding of Fact #9, the MSDE finds that the student was not provided with special education instruction in the general education classroom by both general and special education teachers except for in biology class. Therefore, this office finds that a violation occurred.

Allegation #5 Provision of Accommodations, Supplementary Aids and Services, and Counseling Since October 23, 2016

As stated above, the public agency must ensure that each student is provided with the special education instruction and related services required by the student's IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the student has not been provided with the following supports that were required by the IEP:

1. An English text book for use at home;
2. Frequent and multiple breaks during instruction and assessment;
3. Small group setting for instruction and assessment;
4. Reduced length of writing assignments;
5. Monitoring of an agenda book to ensure that it contains all assignments and tests;
6. Copies of teacher notes;
7. Modified assignments;
8. Daily reminders to keep track of important documents; and
9. Social skills training in a small group setting.

The complainant also alleges that the student was not provided with adult support for maintaining organization and that he was not provided with the required amount of counseling services that were required by the IEP (Doc. m).

Based on the Findings of Facts #2, 7, 8, #10, and #11, the MSDE finds that, while there is documentation that the student was provided with social skills training, there is no documentation that he was provided with the required counseling services or that he was consistently provided with the accommodations required by the IEP in all of his classes. Therefore, this office finds that a violation occurred.

Allegation #6 January 12, 2016 IEP Team Meeting

Speech Services

As stated above, in order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified consistent with the evaluation data (34 CFR §§300.101 and .324).

The public agency must ensure that the IEP includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

The IEP team's determination of how the student's disability affects the student's involvement and progress in the general education curriculum is a primary consideration in the development of the annual IEP goals. While the goals should align with the grade level general education curriculum standards, they are used to estimate the outcomes that can be expected in an academic year based on the student's present levels of performance. Therefore, the IEP team must determine how instruction will be modified based on the student's levels of performance in order to enable the student to achieve the goals and participate and progress in the general curriculum (34 CFR §§300.101 and .320, Analysis of Comments and Changes to the IDEA regulations, *Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006 and *Maryland Statewide Individualized Education Program Process Guide*).

In this case, the complainant alleges that, while the IEP identifies needs for the student in the area of speech and language, and the IEP includes a goal for the student to improve these skills, the IEP does not require the provision of special education services to assist the student with achieving the goal (Doc. m).

Based on the Finding of Fact #3, the MSDE finds that the IEP team decided that the goal could be addressed through special education instruction. Therefore, the documentation does not support the allegation and no violation is found with respect to this aspect of the allegation.

Provision of the IEP

The public agency must ensure that parents are provided with a copy of the IEP within five (5) business days after the date of an IEP team meeting. If the IEP has not been finalized, a draft IEP must be provided. However, a violation of this requirement does not constitute a denial of a FAPE (COMAR 13A.05.01.07 and Md. Code Ann., Educ., §8-405).

Based on the Findings of Facts #3 and #5, the MSDE finds that there is documentation that the IEP was sent to the complainant within the required timelines. Therefore, no violation is found with respect to this aspect of the allegation.

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Permission to Audio Record the IEP Team Meeting

The IDEA does not address the use of audio or video recording devices at IEP team meetings, and no other federal statute either authorizes or prohibits the recording of an IEP team meeting by either a parent or a school official. Therefore, the State Education Agency (SEA) or local public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings (Appendix A to Part 300 – Notice of Interpretation, Federal Register, Special Edition, p. 111, July 1, 2006).

The MSDE does not have a policy that limits or prohibits the use of audio recording devices at IEP team meetings, but requires that local policies be consistent with the intent of IDEA. The PGCPS has developed a policy requiring two business days' notice prior to the meeting date if a parent intends to create an audio recording of an IEP team meeting.

In this case, the complainant alleges that she was denied the right to participate in the January 12, 2016 IEP team meeting through representation by her advocate and audio recording of the meeting, despite the fact that she informed the school staff that she would be audio recording the meeting when she returned the meeting invitation (Doc. m).

Based on the Findings of Facts #3 and #4, the MSDE finds that there is no documentation to support the allegation that the complainant informed the school system of the intent to audio record the IEP team meeting consistent with the PGCPS procedures. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The PGCPS is required to provide the MSDE with documentation by October 1, 2016 that the student is being provided with all of the accommodations and supplementary aids and services required by the IEP and that special education instruction is being provided by both general and special education teachers. The PGCPS is also required to provide documentation that the IEP team has determined the compensatory services or other remedy for the lack of provision of supports and by the providers required by the IEP.

School-Based

The PGCPS is required to provide the MSDE with documentation by November 1, 2016 of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXX staff comply with the requirements to implement the IEP as written and to provide proper prior written notice of IEP team decisions.

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.

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TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Consultant, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the PGCPS and the complainant 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 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 within the timelines 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:gl

c: Kevin Maxwell
LaRhonda Owens
Gwendolyn Mason
Jodi Kaseff
Kerry Morrison
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Dori Wilson
Anita Mandis
Sharon Floyd
Bonnie Preis