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July 22, 2016

Ms. Jessica Williams
Education Due Process Solutions, LLC
711 Bain Drive Apartment #205
Hyattsville, Maryland 20725

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

RE: XXXXX
Reference: #16-135

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 June 7, 2016, the MSDE received a complaint from Ms. Jessica Williams, hereafter, “the complainant,” on behalf of the above-referenced student, and his mother, Ms. XXXXXX, hereafter, “the parent.” 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 following allegations:

1. The PGCPS did not ensure that proper procedures were followed in response to a request for Independent Educational Evaluations, in accordance with 34 CFR §300.502.
2. The PGCPS did not ensure that the Functional Behavior Assessment has been conducted and the results considered by the Individualized Education Program team, in accordance with COMAR 13A.05.01.06E.

INVESTIGATIVE PROCEDURES:

1. On June 1, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Mrs. Joan Rothgeb, former Director of Special Education, PGCPS; Dr. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.
2. On June 7, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, was unsuccessful in her attempts to contact the complainant and the parent, by telephone, to discuss the allegations.
3. On June 8, 2016, the MSDE sent correspondence to the complainant that 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.
4. On July 7, 2016, Ms. Austin received an electronic mail (email) communication from the PGCPS staff acknowledging that violations occurred with respect to the allegations.
5. On July 7, 12, 13, and 15, 2016 and June 3, 2016, the MSDE received documentation from the PGCPS.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Prior Written Notices, dated April 27, 2016 and May 25, 2016;
 - b. IEP, dated May 25, 2016;
 - c. Notice and Consent for a Functional Behavior Assessment, dated May 25, 2016;
 - d. Correspondence from the school system to the parent acknowledging the request for an Independent Educational Evaluation, dated May 3, 2016;
 - e. Request for Due Process Hearing, filed by the PGCPS on June 7, 2016;
 - f. Correspondence from the school system staff to the parent authorizing an Independent Educational Evaluation, dated June 27, 2016;
 - g. Withdrawal of the PGCPS Due Process Hearing Request, dated July 8, 2016;
 - h. Electronic mail (email) message from the school staff to Ms. Austin, acknowledging the allegations in the State complaint, dated July 7, 2016;
 - i. Notice of the June 14, 2016 IEP team meeting, and Prior Written Notice, dated June 14, 2016;
 - j. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on June 1 2016; and
 - k. Correspondence from the school system staff to the parent authorizing and denying an Independent Educational Evaluation, dated June 6, 2016.

BACKGROUND:

The student is eleven (11) years old and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. He is identified under the IDEA as a student with an Other Health Impairment related to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education and related services (Doc. a).

During the period of time addressed by this investigation, the parent participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. a).

ALLEGATION #1: REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

FINDINGS OF FACTS:

1. On April 28, 2016, the complainant requested Independent Educational Evaluations (IEEs) on behalf of the parent, because the parent disagreed with the results of the school system’s educational and psychological assessments (Doc. a).
2. On May 3, 2016, the school system sent correspondence to the parent that “acknowledged” her request for “an” IEE. However, the correspondence does not indicate the school system’s agreement with, or denial of, the parent’s request for “an” IEE (Doc. d).
3. On June 6, 2016, the school system sent correspondence to the parent authorizing an IEE for an educational assessment. The correspondence also documents the school system’s agreement not to authorize an IEE for a psychological assessment, and its intention to file a due process complaint to defend the appropriateness of the school system’s psychological assessment (Doc. k).
4. On June 7, 2016, following their receipt of the State complaint, the school system filed a due process complaint to request a hearing to demonstrate the appropriateness of its psychological assessment (Doc. e).
5. On July 7, 2016, the school system staff sent an electronic mail (email) message to MSDE personnel to inform the MSDE of the PGCPs’s acknowledgement that a violation occurred with respect to this allegation. The email included documentation that, on June 27, 2016, the PGCPs agreed to fund an IEE for a psychological assessment.¹ The school system staff also reported that the PGCPs Central Office staff will work with the school staff to ensure that the IEEs are reviewed upon completion (Docs. f and h).

¹ On July 8, the PGCPs withdrew its due process complaint (Doc. g).

CONCLUSION:

Based on the Findings of Facts #1 - #5, the MSDE finds that the PGCPS has acknowledged that a violation of State or federal law or regulation occurred with respect to this allegation.

The MSDE concurs with the PGCPS's conclusion and appreciates the school system's response to the investigation.

Notwithstanding the violation, based on the Findings of Facts #3 and #5, the MSDE finds that the PGCPS has agreed to fund the IEEs requested by the complainant on behalf of the student's parent. Therefore, the MSDE does not require any student-specific corrective action for the violation.

ALLEGATION #2: PROVISION OF A FUNCTIONAL BEHAVIOR ASSESSMENT

FINDINGS OF FACTS:

6. On May 25, 2016, the IEP team determined that additional information was needed in order to identify the student's behavioral needs. On the same date, the parent provided consent for a Functional Behavior Assessment to be conducted (FBA) (Docs. a and c).
7. On June 14, 2016, the IEP team convened for the documented purpose of reviewing the results of the FBA. However, there is no documentation that the school staff conducted a FBA (Doc. i and interview with the school system staff).
8. The written summary of the June 14, 2016 IEP team meeting documents the parent's agreement with the IEP team's determination that the student does not require a Behavior Intervention Plan (BIP).² The parent also agreed that the student's behavior had improved following the use of an agenda book to record and monitor his behaviors (Doc. i).
9. On July 7, 2016, the school system staff sent an electronic mail (email) message to MSDE personnel informing the MSDE of the PGCPS's acknowledgement that a violation occurred with respect to this allegation. The school system staff reported that the PGCPS Central Office staff will work with the school staff to ensure that the FBA is conducted and reviewed (Doc. h).

² The IEP team reviewed reports from the school staff about the student's behavior and a behavior checklist, and discussed that the student was not demonstrating "significant interfering behaviors and that [he] is capable of starting and staying on tasks and following directions to complete assignments" (Doc. i).

Ms. Jessica Williams
Ms. Trinell Bowman
July 22, 2016
Page 5

CONCLUSION:

Based on the Findings of Facts #6 - #9, the MSDE finds that the PGCPS has acknowledged that a violation of State or federal law or regulation occurred with respect to this allegation.

The MSDE concurs with the PGCPS's conclusion and appreciates the school system's response to the investigation.

Notwithstanding the violation, based on the Findings of Facts #7 and #8, the MSDE finds that the IEP team determined that the student is not demonstrating "significant" interfering behaviors, and that the parent agreed with the IEP team's determination that the student's behaviors have improved and that he does not require a Behavior Intervention Plan. Therefore, the MSDE does not require any student-specific corrective action for the violation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the PGCPS to provide documentation by October 1, 2016, of the steps it has taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXXX staff comply with the IDEA and related State requirements for conducting a Functional Behavior Assessment, in accordance with 34 CFR §§300.304 - .305 and COMAR 13A.05.01.06E, as well as the IDEA and related State requirements for responding to a parent's request for an IEE, in accordance with 34 CFR §300.502.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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 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 requirement as reported in this Letter of Findings.

Ms. Jessica Williams
Ms. Trinell Bowman
July 22, 2016
Page 6

Questions regarding the findings and conclusions 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 Free Appropriate Public Education (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

c: XXXXXXXX
 Kevin Maxwell
 Gwendolyn Mason
 LaRhonda Owens
 Kerry Morrison
 Jodi Kaseff
 XXXXXXXXXX
 Dori Wilson
 Anita Mandis
 K. Sabrina Austin