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December 21, 2016

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

RE: XXXXX
Reference: #17-044

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 October 26, 2016, the MSDE received a complaint from Ms. XXXXXXXX, hereafter, “the complainant,” on behalf of her son. 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 investigated the following allegations:

1. The PGCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s need for math interventions since October, 2015, in accordance with 34 CFR §300.324.
2. The PGCPS has not ensured that the student has been provided with the amount of special education instruction required in reading and with reading interventions required by the IEP since December 31, 2015,¹ in accordance with 34 CFR §§300.101 and .323.

¹ This date was previously inadvertently identified as December 1, 201.

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INVESTIGATIVE PROCEDURES:

1. On October 27, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Executive Director, Department of Special Education, PGCPS. On the same date, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the allegations.
2. On October 28, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Bowman of the allegations to be investigated and requested that her office review the alleged violations.
3. On November 4, 2016, Ms. Mandis conducted a telephone interview with the complainant about the allegations.
4. On November 10, 2016 and December 2 and 8, 2016, the MSDE requested documents from the PGCPS.
5. On November 22, 2016 and December 8, 2016, the PGCPS provided the MSDE with documentation to be considered.
6. On November 30, 2016, Ms. Janet Zimmerman and Ms. Bonnie Pries, Compliance Specialists, MSDE, conducted a site visit to the XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed Ms. Lynn Romanek, Special Education Chairperson. Ms. Monica Wheeler, Compliance Specialist, PGCPS, attended the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed. At the site visit, the PGCPS provided the MSDE with additional documents to be considered.
7. On December 9, 13, 14, and 16, 2016, the MSDE requested information from the PGCPS.
8. On December 12, 2016, the PGCPS provided the MSDE with additional information.
9. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated April 15, 2015, invitation to the meeting, and written summary of the meeting;
 - b. IEP, dated November 17, 2015, invitation to the meeting, and written summary of the meeting;
 - c. Letter of Findings in State complaint #16-047, dated December 31, 2015;
 - d. Morning Attendance Log for the provision of a reading intervention, dated between February 19, 2016 and June 3, 2016;
 - e. IEP, amended on February 23, 2016;
 - f. Invitation to, and written summary of, a June 15, 2016 IEP team meeting;

- g. IEP, amended on September 30, 2016;
- h. Report of classroom-based assessment results from October, 2015 to October, 2016;
- i. Data on the student's response to the reading intervention for the 2015-2016 school year;
- j. Invitation to, and written summary of, an October 27, 2016 IEP team meeting;
- k. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on October 26, 2016;
- l. Student Response to Instruction Report for the period of November 4 to 16, 2016; and
- m. IEP, dated November 16, 2016, and written summary of the IEP team meeting.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with a Specific Learning Disability under the IDEA. He attends the XXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Doc. m).

There is documentation that, during the time period covered by this investigation, the complainant was provided with notice of the procedural safeguards (Docs. a, b, e-g, j, and m).

ALLEGATION #1 IEP THAT ADDRESSES THE NEED FOR MATH INTERVENTIONS SINCE OCTOBER, 2015

FINDINGS OF FACTS:

1. The IEP, in effect in October, 2015 states that the student's instructional grade level performance was at the fifth grade in math calculation and problem solving and that his broad math scores are in the "low average range." The IEP includes goals for the student to improve his math calculation and problem solving skills to be achieved by July 29, 2015. The IEP requires the provision of special education instruction to assist the student with achieving the goals (Doc. a).
2. A report of the student's progress towards achievement of the math goals, made on June 16, 2015, states that the goal to improve math calculation skills had not yet been introduced and that the student was making sufficient progress to achieve the goal to improve math problem solving skills by July 29, 2015 (Doc. a).
3. On November 17, 2015, the IEP team reviewed the IEP. The math goals to be achieved by July 29, 2015 were continued without explanation (Doc. b).
4. The reports of the student's progress towards achievement of the math goals, made on November 9, 2015, February 3, 2016, April 5, 2016, and June 7, 2016 all indicate that the student continued to make sufficient progress to achieve the goals by July 29, 2015 (Docs. a, b, e, g, and m).

5. On October 27, 2016, the IEP team convened and considered the complainant's concerns about the student's progress. The team decided that the student would participate in the math intervention starting on November 1, 2016 in the morning prior to the start of his classes (Doc. j).
6. On November 16, 2016, the IEP team reconvened and recommended that assessments be conducted, including psychological and educational assessments. At that time, the IEP team discussed that the student had been receiving the math intervention and was reported to be "well above the basic score." However, documentation of the student's performance with the intervention demonstrates that the student had failed all of the lessons and the IEP in effect from October, 2015 to October, 2016 reflects that the student has consistently scored at "below basic" level on classroom-based assessments. At the November 16, 2016 meeting, the IEP team revised the math goals based on data from classroom-based assessments conducted in October, 2016 and the results of a Statewide assessment in which the student participated (Docs. h, l, and m).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (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 in the evaluation data. In developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101 and .320).

The public agency must ensure that the IEP team reviews and revises, as appropriate, the IEP at least annually to determine whether the annual goals are being achieved. In addition, the public agency must ensure that the IEP team reviews and revises, the IEP, as appropriate, to address any lack of expected progress towards achievement of the goals (34 CFR §300.324).

In this case, the complainant alleged that the student continued to work on the same skills but that his levels of performance in math had not increased in the past couple of years, and thus, his needs in this area had not been addressed (Doc. k).

Based on the Findings of Facts #1 - #6, the MSDE finds that the IEP team's determinations that the student had been making sufficient progress towards achievement of the annual IEP goals to address math skills between October, 2015 and November 16, 2016 is inconsistent with the data. Based on those Findings of Facts, the MSDE finds that the IEP was not reviewed and revised to address the lack of expected progress from October, 2015 until November 16, 2016. Therefore, this office finds that a violation occurred and that the student was not provided with a FAPE during this time period.

Based on the Finding of Fact #6, the MSDE finds that, although the math goals were revised on November 16, 2016, the IEP team's decision about the student's response to the math intervention is inconsistent with the data.

ALLEGATION #2

**PROVISION OF THE AMOUNT OF SPECIAL
EDUCATION INSTRUCTION REQUIRED IN READING
AND OF READING INTERVENTIONS REQUIRED BY
THE IEP SINCE DECEMBER 31, 2015**

FINDINGS OF FACTS:

7. The IEP includes a goal for the student to increase his reading comprehension and requires that he be provided with special education instruction to assist him with achieving this goal and goals to improve his written language, math, and communication skills. On November 17, 2015, the IEP team also decided that the student requires an intervention to address his reading comprehension needs (Docs. a and b).
8. On December 31, 2015, the MSDE issued a Letter of Findings as a result of an investigation that was conducted into a previous State complaint filed by the complainant that alleging that the student was not being provided with reading intervention services, as required by the IEP. As reported in the Letter of Findings, a violation was identified because the student was pulled from his reading class for the provision of the reading intervention services and because the reading intervention was not being provided with the frequency required by the intervention program. As a result, the school system was required to ensure that the IEP was reviewed and revised to ensure that a sufficient amount of time was allotted for the provision of the reading intervention services consistent with the directions that accompany the interventions used. The school system was also required to ensure the provision of compensatory services to be provided within 3 months of date of the Letter of Findings (Doc. c).
9. On February 23, 2016, the IEP was amended to reflect that the agreement between the complainant and the school system staff that the student would be provided with a research-based reading intervention one day per week for 45 minutes on Wednesday mornings from 8:30 a.m. to 9:15 a.m. from February 24, 2016 until the annual IEP review in April 2016 (Doc. e).
10. The Morning Attendance Log of the provision of the reading intervention documents that the services began on February 25, 2016 and ended on June 3, 2016. The log also reflects that services were not provided every week and were not provided in 45 minute sessions as required. The log states that, in addition to the reading intervention provided on Wednesday mornings, the student was to be provided with the reading intervention for 1 hour per week after school on Wednesdays, beginning the week of February 22, 2016. However, there is no documentation that this has occurred (Docs. d and i).
11. On June 15, 2016, the IEP team convened and decided that the student will use the reading intervention program “at home as compensatory services because he had to take [physical education] for the fourth quarter in order to continue onto the 8th grade.” The team decided that the student would continue to participate in the reading intervention program during the summer of 2016 and “for at least one quarter in 8th grade, frequency and time to be determined at a later date” (Doc. f).

12. On October 27, 2016, the IEP team decided to continue to provide the student with the reading intervention. However, there is no documentation that the IEP team has determined the amount and frequency with which the intervention will be provided or documentation of how the intervention will be fit into his school schedule (Doc. j).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students are provided with the special education services required by the IEP. In order to do so, the public agency must ensure that the IEP is written in a manner that is clear with respect to the amount of services to be provided (34 CFR §§300.101 and .323).

Using a tiered instructional approach to support student achievement, also known as response to scientific, research-based intervention, is one way to work towards continuous improvement for all students. The MSDE has issued guidance that indicates that a response to intervention process serves as an instructional framework that guides instruction for all students in general and special education through the use of supports and scientific, research-based interventions. It allows instructors to identify specific learner needs, provide appropriate instruction aligned with identified needs, and closely monitor student progress to determine the need for any instructional adjustments. This framework was designed to improve the quality of instruction and interventions for all learners, especially those who struggle meeting the same standards as their peers (*A Tiered Instructional Approach to Support Achievement for All Students – Maryland’s Response to Intervention Framework*, MSDE, June 2008).

Success in achieving high quality instructional experiences with better outcomes for students depends upon the implementation of an intervention with fidelity, which is the consistent delivery of research-based/evidence-based instruction and interventions in the way in which it was designed to be delivered, and at the needed level of intensity to address the student’s individual difficulties (*A Tiered Instructional Approach to Support Achievement for All Students – Maryland’s Response to Intervention Framework*, MSDE, June 2008).

Most validated Tier 2 interventions involve group sizes of 2 to 5 students, and are provided 3 days per week for 30 to 45 minutes per session. Most validated Tier 3 interventions involve group sizes of 1 to 2 students, and are provided 5 days per week for at least 45 minutes per session (<http://www.rtinetwork.org>).

In this case, the complainant alleges that, while compensatory services were provided for the loss of reading intervention services during the previous school year, the student was not provided with the required reading intervention services during the period of time that he was being provided with the compensatory services (Doc. k and interview with the complainant).

Based on the Findings of Facts #7 - #10, the MSDE finds that there is no documentation that the student has been provided with the required reading intervention services since December 31, 2015. In addition, based on the Findings of Facts #11 and #12, the MSDE finds that the IEP is not written clearly with respect to the amount of reading intervention services that are to be provided since June 15, 2016. Therefore, this office finds that a violation occurred because the student has not been provided with reading intervention services as required, and that this has resulted in the loss of a FAPE since December 31, 2015.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by February 1, 2017 of the following:

- a. That the IEP team has determined the amount and frequency of the reading intervention services that are required. The PGCPS must provide documentation of the IEP team's determination of how the services are designed to accelerate the student's growth in reading skills and how they are to be provided to the student consistent with the manner in which the intervention was designed to be delivered; and
- b. That the IEP team has determined the growth in reading and math skills to be expected by the end of the 2016-2017 school year with the provision of interventions in these areas.

The PGCPS must provide the MSDE with documentation by March 1, 2017 that the reading and math interventions are being provided as required.

By June 1, 2017, the PGCPS must provide the MSDE with documentation of the student's response to the reading and math interventions. If the student has not demonstrated the expected growth by that date, the PGCPS must also provide documentation that the IEP team has determined the services that will be provided to the student during the summer of 2017 that are designed to accelerate the student's growth in reading and math skills.

By October 1, 2017, the PGCPS must provide the MSDE with documentation of the provision of any services that were required during the summer of 2017 and the growth in skills obtained by the student as a result of the provision of those services. If the student has not experienced the growth in skills that were expected to be achieved during the 2016-2017 school year, the PGCPS must also provide documentation that the IEP team has developed a plan for the provision of services during the 2017-2018 school year to achieve expected growth. The plan must include information about how the team will monitor the student's progress.

School-Based

By February 1, 2017, the PGCPS must provide the MSDE with documentation of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXXX staff comply with the requirements to:

- a. Ensure that IEPs are written clearly with respect to the services to be provided;
- b. Ensure that IEP team decisions are based on the data;
- c. Ensure that the IEP team reviews and revises, as appropriate, the IEP to address lack of expected progress towards achievement of annual goals.

The PGCPS must also provide documentation of the action that will be taken at XXXXXXXX XXXXXXXXX to ensure that there is sufficient time in students' school schedules to provide needed reading and math interventions.

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 by contacting Ms. Preis 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 within the timelines reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties 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.

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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:am

c: Kevin Maxwell
LaRhonda Owens
Deborah Anzelone
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XXXXXXXXXX
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