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February 9, 2017

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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: #17-068

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 December 13, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, "the complainant," on behalf of her daughter, the above-referenced. 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 did not ensure that the Individualized Education Program (IEP) was reviewed at least annually, in accordance with 34 CFR §300.324.
2. The PGCPS has not ensured that the IEP has been implemented, as required, in accordance with 34 CFR §§300.101 and .323. Specifically:
 - a. The PGCPS has not ensured that the student has provided with additional adult support, since February 2016;

- b. The PGCPS did not ensure that the progress reports were provided on a quarterly basis since December 2015¹;
- c. The PGCPS did not ensure that the student was provided with special education instruction by a special education teacher, from February 2016 to June 2016;
- d. The PGCPS has not ensured that occupational therapy consultations were conducted, since February 2016; and
- e. The PGCPS has not ensured that the student was provided with modified classwork and homework, since February 2016.

INVESTIGATIVE PROCEDURES:

- 1. On December 13, 2016, the MSDE received the State complaint and documentation to be considered.
- 2. On December 14, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS.
- 3. On December 22, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
- 4. On December 23, 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.
- 5. On January 31, 2017, Mr. Chichester and Mr. Gerald Lioacono, Complaint Investigator, MSDE, conducted a site visit to the XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed Ms. Tynetta Dempsey, Special Education Coordinator, PGCPS. Ms. Monica Wheeler, Compliance Specialist, PGCPS, attended the site visit as a representative and to provide information on the school system's policies and procedures, as needed.
- 6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated January 4, 2016;
 - b. IEP, dated December 7, 2016;
 - c. IEP, dated January 2, 2017;
 - d. IEP meeting invitation, dated November 15, 2016;
 - e. IEP meeting invitation, dated December 5, 2016;
 - f. IEP meeting invitation, dated December 15, 2016;
 - g. IEP meeting summary, dated December 7, 2016;

¹ While the complainant alleged that the violations 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 §300.153).

- h. IEP meeting summary, dated January 2, 2017, for the IEP meeting held on December 15, 2016;
- i. IEP meeting sign-in sheet, dated December 7, 2016;
- j. IEP meeting sign-in sheet, dated December 15, 2016;
- k. XXXXXXXXXXXX Elementary school staff daily attendance log, dated March 14, 2016 to April 4, 2016 and from April 14, 2016 to June 15, 2016;
- l. Occupational therapy consultation logs, dated between February 16, 2016 and January 19, 2017;
- m. Modified assignments completed by the student during the 2016 - 2017 school year;
- n. Electronic mail (email), dated December 1, 2016, between the complainant and the school staff; and
- o. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on December 13, 2016.

BACKGROUND:

The student is 10 years old and is identified as a student with a Other Health Impairment under the IDEA, related to Attention Deficit Hyperactivity Disorder (ADHD). She attends the XXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. a - c).

During the time period covered by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a - c).

ALLEGATION #1: ANNUAL REVIEW OF THE IEP

FINDINGS OF FACTS:

1. The student's IEP, dated January 4, 2016, documents a projected annual IEP review date of December 7, 2016 (Doc. a).
2. The IEP meeting invitation, dated November 15, 2016, reflects that the annual IEP team meeting was to be held on November 29, 2016. However, the school staff report that the IEP team meeting was canceled because the school-based members of the IEP team were not made aware that the complainant intended to have her advocate attend the meeting. Therefore, the school-based members of the IEP team decided not to conduct the IEP meeting in the absence of a PGCPs compliance specialist (Docs. d, o, and an interview with the school staff).
3. On November 29, 2016, the complainant was invited to another IEP meeting scheduled for December 5, 2016. The complainant informed the school staff by electronic mail on December 1, 2016, that she was unable to attend the meeting on that date, and further indicated that she would be available to meet on December 15, 2016 (Docs. e and n).
4. In response, the school-based members of the IEP team decided to hold the IEP team meeting on December 7, 2016 rather than December 5, 2016, and did not invite the complainant. The IEP summary states that the complainant "was not able to attend the

meeting” but that the team would schedule another IEP meeting at a later date if the complainant had concerns (Doc. e, g, i, and o).

5. The IEP team reconvened on December 15, 2016, with the complainant in attendance, to discuss the revisions made to the IEP and to address any concerns that may be raised by the complainant (Docs. h and j).

DISCUSSION/CONCLUSIONS:

Each public agency must ensure that the IEP team reviews the student’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved (34 CFR §300.324).

Each public agency must take steps to ensure that parents are afforded the opportunity to participate in IEP team meetings, including notifying parents in writing at least 10 days in advance of the meeting, to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place (34 CFR §300.322 and COMAR 13A.05.01.07).

If the parent cannot attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may only be conducted without a parent in attendance if the public agency is unable to convince the parents that she should attend (34 CFR §§300.322 and .324).

In this case, the complainant alleges that she was not invited and therefore not aware that the IEP team convened on December 7, 2016 without her participation.

Based on the Findings of Facts #1 - #3, the MSDE finds that because the IEP was reviewed by the team on December 7, 2016, it was reviewed at least annually. Therefore, this office does not find that a violation occurred with respect to the allegation.

However, based on the Findings of Facts #3 - #5, the MSDE finds that the PGCPS did not follow proper procedures when convening the IEP team meeting on December 7, 2016 without inviting the complainant. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #5, the MSDE finds that the violation was remediated by the IEP team’s reconvening with the complainant on December 15, 2016. Therefore, no student-specific corrective action is required.

ALLEGATION #2: IEP IMPLEMENTATION

FINDINGS OF FACTS:

Additional Adult Support

6. The IEP, dated January 4, 2016, December 7, 2016, and January 2, 2017, does not require that the student be provided with additional adult support (Docs. a - c, and m).

7. The complainant reports that during “a previous IEP meeting,” she raised concern about the student’s need for additional adult support in the classroom and that the IEP team neglected to add additional adult support to the IEP. However, there is no documentation that the complainant raised concern during a previous IEP meeting (Interview with the complainant and review of the educational record).

Provision of Progress Reports

8. The IEP requires that the complainant be provided with progress reports on a quarterly basis during the 2015 - 2016 school year (Docs. a and o).
9. There is no documentation that the complainant was provided with progress reports on a quarterly basis since December 2015 (Doc. o and an interview with the school staff).

Special Education Instruction by a Special Education Teacher

10. The IEP in effect in February 2016 requires that the student be provided with special education instruction by a special education teacher, in a separate special education classroom (Doc. a).
11. There is documentation that there was a special education teacher in the classroom from February 2016 to March 14, 2016 and documentation that the special education teacher was on leave from March 14, 2016 to April 4, 2016 and from April 14, 2016 to June 15, 2016. During her absence there was a long-term substitute in the classroom that did not have certification in special education. The school staff report that the lesson plans were developed by the paraprofessional with the assistance of the second (2) grade general education teacher and the special education coordinator. However, there is no documentation of this or that the special education coordinator worked with the substitute to evaluate the effectiveness of the instruction (Docs. k, o, and an interview with the school staff).

Occupational Therapy Consultations

12. The IEP, dated January 4, 2016, December 7, 2016, and January 2, 2017, requires that occupational therapy consultations occur between the occupational therapist and the teacher, as needed, to assist with strategies and modifications to support the student’s writing tasks (Docs. a - c).
13. There is documentation that since February 2016, occupational therapy consultations occurred between the occupational therapist and the teacher (Docs. l and o).

Modified Student Assignments

14. The IEP, dated January 4, 2016, December 7, 2016, and January 2, 2017, requires that the student be provided with altered or modified assignments to allow the student to access grade level curriculum (Docs. a - c).

15. There is documentation of modified assignments completed by the student since September 2016. However, there is no documentation of modified assignments completed by the student from February 2016 to the end of the 2015 - 2016 school year (Docs. m, o, and an interview with the school staff).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students are provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

Additional Adult Support

Based on the Findings of Facts #6 and #7, the MSDE finds that the IEP does not require the provision of additional adult support. Therefore, the MSDE does not find that a violation has occurred with respect to this aspect of the allegation.

Provision of Progress Reports

Based on the Findings of Facts #8 and #9, the MSDE finds that progress reports were not provided to the complainant on a quarterly basis since December 2015. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Special Education Instruction by a Special Education Teacher

Based on the Findings of Facts #10 and #11, the MSDE finds that the student was not provided with special education instruction by a special education teacher, from March 14, 2016 to April 4, 2016 and from April 14, 2016 to June 15, 2016, as required by the IEP. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Occupational Therapy Consultations

Based on the Findings of Facts #12 and #13, the MSDE finds that there is documentation that occupational therapy consultations occurred between the occupational therapist and the teacher. Therefore, this office does not find that a violation occurred during that time period with respect to this aspect of the allegation.

Modified Student Assignments

Based on the Findings of Facts #14 and #15, the MSDE finds that, although there is documentation that the student has been provided with modified assignments since September 2016, there is no documentation that the student was provided with modified assignments from February 2016 to the end of the 2015 - 2016 school year. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by April 1, 2017, that the IEP team has determined the compensatory services or other remedy to redress the violations identified through this investigation, and developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

When determining the compensatory services or other remedy, the IEP team must document that it has taken the following action:

- a. Determined the student's present levels of functioning and performance;
- b. Determined the levels of functioning and performance that were expected to have been demonstrated by the time the IEP team convenes; and
- c. Determined the services needed to accelerate the student's performance in order to bring it to the levels that were expected.

The PGCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the PGCPS to provide documentation by June 1, 2017, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Similarly-Situated Students

The MSDE requires the PGCPS to provide documentation by June 1, 2017 that it has identified all students with disabilities in the student's class with an IEP that requires the provision of special education instruction by a special education teacher. For those students identified, the PGCPS must ensure that an IEP team convenes and determines the amount and nature of compensatory services or other remedy to be provided to the student for the loss of services, and

XXX
Ms. Trinell Bowman
February 9, 2017
Page8

develops a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, 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 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.

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:ac

c:	Kevin Maxwell	Monica Wheeler	Anita Mandis
	Gwendolyn Mason	XXXXXXXXXX	Albert Chichester
	Deborah Anzelone	Dori Wilson	Bonnie Preis