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State Superintendent of Schools

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September 11, 2017

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

RE: XXXXX
Reference: #18-006

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 July 19, 2017, the MSDE received a complaint from Ms. XXXXXXXX, 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 student.

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that an IDEA evaluation that began in October 2016 was completed within the required timelines, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06.

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2. The PGCPS did not ensure that prior written notice of decisions made by the Individualized Education Program (IEP) team on October 28, 2016 and December 22, 2016 was provided in the complainant's native language, in accordance with 34 CFR §300.503.
3. The PGCPS has not provided a copy of the IEP in the complainant's native language, in accordance with 34 CFR §300.322 and Md. Code Ann., Education Article, §8-405.
4. The PGCPS has not ensured that the IEP has addressed the student's social, emotional, and behavioral needs, in accordance with 34 CFR §300.324.
5. The PGCPS has not ensured that the student has been provided with the special education services required by the IEP, in in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleges the following:
 - a. The student was not provided with specialized instruction, modified assignments, and alternative ways of learning while placed at XXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXX);
 - b. The student was not permitted to reenroll in the PGCPS in a timely manner following a placement by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXX (XXX), and was not provided with transportation services in a timely manner when he was assigned to XXXXXXXXXXXXXXXX;
 - c. The student has not been provided with special education instruction by a special education teacher at XXXXXXXXXXXXXXXX; and
 - d. The student has not been consistently provided with transportation services at XXXXXXXXXXXXXXXX.
6. The PGCPS has not ensured that the student's educational records were maintained at XXXXXXXXXXXX HS and transferred upon his enrollment at the XXX and XXXXXXXX XXXXXXXX, in accordance with 34 CFR §§300.610 - .627, COMAR 13A.08.02 and the *Maryland Student Records System Manual*.
7. The PGCPS did not ensure that access was provided to the educational record in a timely manner in response to requests made on February 22, 2017 and March 29, 2017, in accordance with 34 CFR §300.613.
8. The PGCPS did not ensure that a manifestation determination was made with required timelines following a February 9, 2017 disciplinary removal from school, in accordance with 34 CFR §300.530.

BACKGROUND:

The student is seventeen (17) years old, is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education and related services. During the time period covered by this investigation, the student had the following educational placements:

From September 8, 2016 to February 10, 2017, the student attended XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX), the school he would attend if not disabled.

From February 10, 2017 to February 21, 2017, the student was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXXXXXX (XXX), where the education program is provided by the Maryland State Department of Education, Juvenile Services Education System (JSES).

From February 21, 2017 to March 16, 2017, the student did not attend school.

Since March 16, 2017, the student has attended XXXXXXXXXXXXXXXXXXXX as an alternative educational setting while expelled from school.

The student has been placed by the PGCPS at XXXXXXXXXXXXXXXXXXXX, a nonpublic separate special education school for the 2017-2018 school year.

ALLEGATION #1: EVALUATION TIMELINE

FINDINGS OF FACTS:

1. On October 27, 2016, the IEP team recommended that educational, speech/language, and psychological assessments be conducted as part of a reevaluation and the complainant provided consent for them to be conducted.
2. On December 22, 2016, the IEP team reviewed the results of the educational and psychological assessments and revised the IEP. Although the speech/language pathologist made several attempts in November and December 2016 to conduct the speech/language assessment, it was not completed until April 2017.
3. On May 17, 2017, the IEP team convened to review the results of the speech/language assessment, and determined that the student did not require the provision of speech/language therapy as a related service.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 and #2, the MSDE finds that the reevaluation was not completed within the required timeline. Therefore, this office finds that a violation of COMAR 13A.05.01.06 occurred with respect to Allegation #1.

Notwithstanding the violation, based on the Finding of Fact #3, the MSDE finds that the IEP team reviewed the speech/language assessment and determined that the services were not required. Therefore, no student-specific corrective action is required with regard to Allegation #1.

**ALLEGATIONS #2 AND #3: PROVISION OF DOCUMENTS IN
NATIVE LANGUAGE**

FINDINGS OF FACTS:

Prior Written Notice

4. On October 28, 2016 and December 22, 2016, IEP team meetings were conducted. The written notice of the decisions made by the IEP team were not provided to the complainant in her native language of Spanish.

IEP

5. There is no documentation that the complainant requested that a copy of the IEP be provided to her in her native language of Spanish prior to May 17, 2017.
6. Spanish is spoken by more than 1% of PGCPs student population.
7. There is documentation that the IEP was provided to the complainant in her native language of Spanish within thirty (30) days of her May 17, 2017 request.

DISCUSSION/CONCLUSIONS:

Allegation #2: Prior Written Notice

Based on the Finding of Fact #4, the MSDE finds that prior written notice of IEP team meetings was not provided to the complainant in her native language. Therefore, this office finds that a violation of 34 CFR §§300.503 occurred with respect to Allegation #2.

Allegation #3: IEP Document

Based on the Findings of Facts #5 - #7, the MSDE finds that there is documentation that the complainant was provided with a copy of the IEP in her native language, which is spoken by more than 1% of the PGCPS student population, within the required timelines, and in response to her request. Therefore, this office does not find that a violation of Md. Code Ann., Education Article, §8-405 occurred with respect to Allegation #3.

ALLEGATION #4: IEP THAT ADDRESSES SOCIAL, EMOTIONAL AND BEHAVIORAL NEEDS

FINDINGS OF FACTS:

8. There is documentation that the student did not attend school on a regular basis when enrolled at XXXXXXXXXXXX. However, there is no documentation that the IEP team considered positive behavioral interventions to address that interfering behavior.
9. The student's attendance record reflects that he attended school regularly when he was placed at XXXXXXXXXXXXXXXXXXXX.
10. In August 2017, the IEP team reviewed the results of a Functional Behavioral Assessment (FBA) and developed a Behavioral Intervention Plan (BIP) to address the behaviors identified in the FBA.

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the PGCPS did not address the student's refusal to attend school.

Based on the Finding of Fact #8, the MSDE finds that the IEP team did not consider positive behavioral interventions to address the student's interfering behavior of school refusal while he was enrolled at XXXXXXXXXXXX. Therefore, this office finds that a violation of 34 CFR §300.324 occurred during that period of time.

However, based on the Finding of Fact #9, the MSDE finds that the documentation does not support the assertion that the student exhibited school refusal behavior while attending XXXXXXXXXXXXXXXXXXXX. Therefore, no violation is found with respect to the time period that the student attended XXXXXXXXXXXXXXXXXXXX. In addition, based on the Finding of Fact #10, the MSDE finds that a BIP has been developed to address the student's behavioral needs.

**ALLEGATIONS #5 - #8: IEP IMPLEMENTATION, MAINTENANCE,
ACCESS, AND TRANSFER OF STUDENT
RECORDS, AND MANIFESTATION
DETERMINATION**

FINDINGS OF FACTS:

11. The reports of the student's progress towards achievement of the annual IEP goals and the student's schedule demonstrate that the IEP was implemented at XXXXXXXXXX when the student attended school.
12. On February 7, 2017, the student and the complainant were informed that the student was being disciplinarily removed from school on February 8, 2017, for behavior that occurred on February 2, 2017. The PGCPS was closed on February 10, 2017 and February 20, 2017.
13. On February 10, 2017, the student was placed by the DJS at the XXX, where instruction is provided by the MSDE Juvenile Services Education System (JSES).
14. On February 13, 2017, the JSE requested the student's educational record from XXXXXXXXXX HS. On February 15, 2017, the JSE received the educational record.
15. On February 21, 2017, the student was released back into the community after being placed by the DJS at the XXX.
16. There is no documentation that the complainant requested access to the student's educational record on February 22, 2017 or March 29, 2017.
17. On February 23, 2017, the IEP team convened and determined that the behavior that resulted in the student's disciplinary removal was not a manifestation of his disability.
18. On March 9, 2017, the PGCPS informed the complainant in writing, that the student should be re-enrolled at the XXXXXXXXXXXXXXXX, upon his release back into the community. The XXXXXXXXXXXXXXXX was the alternative educational setting to which the student was assigned during his disciplinary removal from school for an incident that resulted in his placement by DJS at the XXX
19. There is no documentation that the complainant attempted to enroll the student at the XXXXXXXXXXXXXXXX until March 16, 2017.

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20. On April 13, 2017, the student's educational record was transferred from XXXXXXXXXX to XXXXXXXXXXXXXXXX. There is no documentation of when XXXXXXXXXXXXXXXX requested the student's educational record from XXXXXXXXX or that the PGCPS requested the educational record from JSES.
21. Transportation services were made available to the student within five school days of his being enrolled at XXXXXXXXXXXXXXXX.
22. There is documentation that the student was assigned to be provided with special education instruction from two special education teachers at XXXXXXXXXXXXXXXX. A review of the student's classwork reflects that he was provided with special education instruction from a special education teacher at XXXXXXXXXXXXXXXX.
23. There is no documentation that, on April 25 and 26, 2017, the student was provided with transportation to attend school at XXXXXXXXXXXXXXXX.
24. On April 13, 2017, the complainant requested access to the student educational record.
25. On May 17, 2017, the complainant was permitted to inspect the educational record at the school. There were no IEP team meetings held on April 13, 2017 and May 17, 2017. However, the hard copy of the educational record that was maintained by the school staff did not include the IEP document from the October 28, 2017 IEP team meeting, which is maintained electronically. In addition, the school staff have not maintained documentation of a December 22, 2017 IEP team meeting, either electronically or in the educational record.

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges the following:

- a. The student was not provided with specialized instruction, modified assignments, and alternative ways of learning while placed at XXXXXXXXXX and that the school staff reported that they did not have the resources to do so.
- b. Following the student's release back into the community by the DJS, the PGCPS refused to allow the student to reenroll at XXXXXXXXXX, which is the school to which she was assigned prior to being placed at the XXX from the DJS.
- c. The student has been assigned to XXXXXXXXXXXXXXXX and there is no special education teacher available to provide special education instruction as required by the IEP.

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- d. XXXXXX did not ensure that the student's educational record was transferred to the JSES when he was placed at the XXX and to XXXXXXXXXXXXXXXX when he was transferred to that school, resulting in a lack of implementation of the IEP.
- e. There was a delay in the provision of transportation to XXXXXXXXXXXX, and transportation services are not consistently provided.
- f. The complainant was not provided with access to the educational record in a timely manner following a request made to review the record on February 22, 2017 and March 29, 2017.
- g. In response to a second request for access to the record made on May 17, 2017, the complainant was given limited access and was not provided with IEP documents for review, including documents from October 28, 2016, December 22, 2016.
- h. The manifestation determination was not made within the required timelines.

Allegation #5: IEP Implementation

Based on the Finding of Fact #12, the MSDE finds that there is documentation that the student was provided with the specialized instruction and supports while placed at XXXXXXXX. Therefore, this office does not find that a violation of 34 CFR §§300.101 and .323 occurred with respect to this aspect of Allegation #5.

Based on the Findings of Facts #13 - #19, the MSDE finds that there was a two (2) week delay in making a placement available to the student following the February 23, 2017 manifestation determination. Therefore, this office find that a violation of COMAR 13A.08.03.05 occurred with respect to this aspect of Allegation #5.

Based on the Findings of Facts #19 and #21, the MSDE finds that there is documentation that the student was provided with transportation services in a timely manner upon his enrollment at XXXXXXXXXXXX. Therefore, this office does not that a violation of 34 CFR §§300.101 and .323 occurred with respect to this aspect of Allegation #5.

However, based on the Finding of Fact #23, the MSDE finds that there is no documentation that the student was provided with transportation to and from XXXXXXXXXXXX on April 25 and 26, 2017. Therefore, this office finds that a violation of 34 CFR §§300.101 and .323 occurred with respect to this aspect of Allegation #5.

Based on the Finding of Fact #22, the MSDE finds that there is documentation that the student was provided with special education instruction by a special education teacher, as required by the IEP, at XXXXXXXXXXXX. Therefore, this office does not find that a violation of 34 CFR §§300.101 and .323 occurred with respect to this aspect of Allegation #5.

Allegation #6: Maintenance and Transfer of the Educational Record

Based on the Finding of Fact #25, the MSDE finds that there is no documentation that IEP documents from the December 22, 2017 IEP team meeting have been maintained in the student's educational record. Therefore, this office finds that a violation of 34 CFR §§300.610 - .627, COMAR 13A.08.02 and the *Maryland Student Records Manual* occurred with respect to this aspect of Allegation #6.

Based on the Finding of Fact #14, the MSDE finds that there is documentation that the student's educational record was requested and transferred in a timely manner upon the student's enrollment at XX. However, based on the Findings of Facts #15, #19, and #20, the MSDE finds that there is no documentation that the student's educational record was requested in a timely manner upon the student's enrollment at XXXXXXXXXXXXXXXX. Therefore, this office finds that a violation of 34 CFR §§300.610 - .627, COMAR 13A.08.02 and the *Maryland Student Records Manual* occurred with respect to Allegation #6.

Allegation #7: Access to the Educational Record

Based on the Finding of Fact #16, the MSDE finds that there is no evidence that the complainant requested access to the educational record on February 22, 2017 and March 29, 2017. Therefore, this office finds no violation with respect to the allegation.

However, based on the Finding of Fact #25, the MSDE finds that the complainant was not provided with access to the entire educational record when she requested access on April 13, 2017. Therefore, this office finds that a violation of 34 CFR §99.10 and 34 CFR §300.613 occurred with respect Allegation #7.

Allegation #8: Manifestation Determination

Based on the Findings of Facts #12 and #15, the MSDE finds that the manifestation determination was made within the required timelines. Therefore, this office does not find that a violation of 34 CFR §300.530 occurred with respect to Allegation #8.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires PGCPS to provide documentation by November 30, 2017, that the IEP team has determined the compensatory services to remediate the violation of the lack of positive behavioral interventions and supports to address the interfering behavior of school refusal while attending XXXXXXXXXXXX, and to provide documentation within one year of the date of this Letter of Findings that the compensatory services have been provided.

The MSDE requires PGCPS to provide documentation by November 30, 2017, that the IEP team has determined the compensatory services to remediate the violation of the lack of the provision of transportation to and from school on April 25 and 26, 2017, while attending the XXXXXXXXX XXXXXXX, and to provide documentation within one year of the date of this Letter of Findings that the compensatory services have been provided.

The MSDE requires PGCPS to provide documentation by November 30, 2017, that the IEP team has determined the compensatory services to remediate the violation of the two (2) week delay in offering the student an alternative educational setting (AES), and to provide documentation within one year of the date of this Letter of Findings that the compensatory services have been provided.

The MSDE requires PGCPS to provide documentation by November 30, 2017, that the complainant has been provided with a copy of the meeting summary from the IEP team meeting held on October 28, 2016 IEP, in her native language.

School-Based

XXXXXXXXXXXXXXXX

The MSDE requires PGCPS to provide documentation by December 31, 2017, of the steps it has taken to ensure that IEP meeting summaries are provided to complainants in their native language when it is spoken by more than 1% of the PGCPS student population.

The MSDE requires PGCPS to provide documentation by December 31, 2017, of the steps it has taken to ensure that IEP teams consider positive behavior interventions and supports to address interfering behaviors when determining if there is an education impact on the student.

XXXXXXXXXXXXXXXX

The MSDE requires PGCPS to provide documentation by December 31, 2017, of the steps it has taken to ensure that students are provided with transportation as required by the IEP.

System-Based

The MSDE requires PGCPS to provide documentation by January 31, 2018, of the steps it has taken to ensure that reevaluation procedures are completed within the required timeline.

The MSDE requires PGCPS to provide documentation by January 31, 2018, of the steps it has taken to ensure that parents have access to all IEP meeting documentation, whether maintained electronically or in the physical educational record.

The MSDE requires PGCPs to provide documentation by January 31, 2018, of the steps it has taken to ensure that student educational records are transferred between PGCPs in a timely manner.

The MSDE requires PGCPs to provide documentation by January 31, 2018, of the steps it has taken to ensure that educational services are provided to students on the eleventh (11th) day of their disciplinary removal from school.

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. 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 and conclusions 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 Free Appropriate Public Education (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/ac

c: Kevin W. Maxwell
Gwendolyn Mason
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