



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

June 3, 2016

XXX  
XXX  
XXX

Mrs. Joan Rothgeb  
Director of Special Education  
Prince George's County Public Schools  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: XXXXX  
Reference: #16-099

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 April 6, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter, "the complainant," on behalf of 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 investigated the following allegations:

1. The PGCPS did not ensure that the student's Individualized Education Program (IEP) was implemented from September 2015 through November 2015. Specifically, it was alleged that the student was not provided with speech therapy and a dedicated assistant, as required by the IEP, in accordance with 34 CFR §§300.101 and .323.
2. The PGCPS has not ensured that the student has been provided with an IEP that addresses the student's behavioral needs. Specifically, it was alleged that the Behavior Intervention Plan (BIP) has not been reviewed and revised based on current data, since February 2016, in accordance with 34 CFR §300.324.

XXX

Mrs. Joan Rothgeb

June 3, 2016

Page 2

3. The PGCPS has not ensured that the IEP team reconvened with the PGCPS Central Office staff as recommended by the IEP team on January 6, 2016, in accordance with 34 CFR §300.116 and COMAR 13A.05.01.10.

### **INVESTIGATIVE PROCEDURES:**

1. On April 6, 2016, the complainant provided the MSDE with documentation to be considered.
2. On April 7, 2016 the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS.
3. On April 19, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
4. On April 26, 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 Mrs. Rothgeb of the allegations to be investigated and requested that her office review the alleged violations.
5. On April 28, 2016, Mr. Chichester and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a site visit to the XXXXXXXX Elementary School to review the student's educational record, and interviewed Ms. XXXXXXXX, Comprehensive Special Education Program (CSEP) Coordinator. Ms. Kerry Morrison, Special Education Instruction 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.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. IEP, dated June 22, 2015;
  - b. IEP, dated February 22, 2016;
  - c. Daily support logs kept by the dedicated assistant, dated between August 27, 2015 through November 30, 2015;
  - d. Meeting summary, dated February 22, 2016;
  - e. Functional Behavioral Assessment (FBA), dated January 15, 2014;
  - f. Behavioral Intervention Plan (BIP), dated February 22, 2016;
  - g. IEP team meeting sign-in sheet, dated February 22, 2016; and
  - h. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on April 6, 2016.

### **BACKGROUND:**

The student is eleven (11) years old and is identified as a student with Multiple Disabilities under the IDEA, including Autism and an Intellectual Disability, and has an IEP that requires the

XXX

Mrs. Joan Rothgeb

June 3, 2016

Page 3

provision of special education instruction and related services. At the start of the time period addressed by this investigation, the student was placed at the XXXXXX Elementary School. Since April 9, 2016, she has been placed at the XXXX, a public separate special education school (Docs. a and b).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a and b).

**ALLEGATION # 1 PROVISION OF SPEECH THERAPY SERVICES  
AND A DEDICATED ASSISTANT FROM  
SEPTEMBER 2015 THROUGH NOVEMBER 2015**

**FINDINGS OF FACTS:**

1. The IEP in effect at the start of the 2015-2016 school year states that the student is to be provided with speech therapy services, three (3) times each month, for thirty (30) minutes each session. The IEP also indicates that the student is to be provided with a dedicated assistant (DA) on a daily basis to provide the behavioral support in the student's BIP (Doc. a).
2. The school staff acknowledge that the speech therapist was on leave from September 2015 through November 2015, and during that time, speech therapy services were not provided to the student. While the school staff further report that the student was to be provided with make-up services once the speech therapist returned from leave, there is no documentation that make-up services have been provided to the student (Docs. a, h, and an interview with the school staff).
3. At the start of the 2015-2016 school year, the student was assigned an adult assistant who served as the DA. However, this staff member was subsequently promoted to another position in the school system. Thereafter, an Itinerant Special Education Assistant (ISEA) was placed in the classroom to provide the DA services for the student. The daily logs kept by the DA document the student's behaviors, the time such behaviors occurred, the settings, the antecedents, the function of the behaviors, and the consequences related to the behaviors. The DA also kept daily summaries which indicate the activities in which the student was engaged in when the behaviors occurred (Docs. a, c, h, and an interview with the school staff).

**DISCUSSION/CONCLUSIONS:**

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

## **Speech Therapy**

Based on the Findings of Facts #1 and #2, the MSDE finds that there is no documentation to support that the student was provided with speech therapy services as required by the IEP, from September 2015 through November 2015. Therefore, this office finds that a violation has occurred with respect to this allegation.

## **Dedicated Aide**

Based on the Finding of Fact #3, the MSDE finds that there is documentation that the student was provided with the services of a dedicated aide, as required by the IEP. Therefore, this office does not find that a violation has occurred with respect to this allegation.

## **ALLEGATION #2 REVIEW AND REVISION OF THE BIP**

### **FINDINGS OF FACTS:**

4. On February 22, 2016, the IEP team reviewed the student's BIP that had been discontinued at her previous school based upon the determination that it was no longer required. The BIP addressed the target behavior of elopement and required a "3-Step Guided Compliance"<sup>1</sup> intervention to address the behavior (Docs. b, d – f, and an interview with the school staff).
5. At the February 22, 2016 IEP team meeting, the team considered information from current school staff indicating that the student was displaying behaviors of elopement, hitting, grabbing, and property destruction, in order to gain adult attention or access preferred activities. The school staff reported that the student had been provided with a communication book for requesting breaks, additional adult support, and a picture schedule, which were used as intervention strategies to address the behaviors. The IEP team decided to reinstitute and revise the BIP to reflect additional information from the teachers. They further determined that conducting another Functional Behavioral Assessment (FBA) was not needed to identify the targeted behaviors and the interventions to be provided to the student (Docs. b, d – f, and h).

### **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 public agency must ensure that the IEP team considers 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. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must also

---

<sup>1</sup> 3-Step Guided Compliance is a prompting strategy that teaches the individual by providing a model and physical guidance ([www.autismspeaks.org](http://www.autismspeaks.org)).

XXX

Mrs. Joan Rothgeb

June 3, 2016

Page 5

consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §§300.301, .320, and .324).

In this case, the complainant alleges that, because another FBA was not conducted, the IEP team did not have sufficient data to develop an appropriate BIP. Based on the Findings of Facts #4 and #5, the MSDE finds that the IEP team had sufficient data to decide to reinstitute and revise the previous BIP, and as a result, determined that another FBA was not required. Therefore, this office does not find that a violation occurred.

**ALLEGATION #3 PARTICIPATION BY CENTRAL OFFICE STAFF AT THE  
FEBRUARY 22, 2016 IEP TEAM MEETING**

**FINDINGS OF FACTS:**

6. On January 6, 2016, the IEP team convened to discuss the student's educational placement. The team reviewed reports from the student's teachers, speech pathologist, occupational therapist, and parental input, and decided that additional data was needed in the areas of academics, adaptive physical education, social emotional, and motor skills, to ensure all of the student's needs were being identified and addressed in the IEP. The IEP team also decided that the IEP team should include PGCPS Central Office staff who are knowledgeable about the school system's resources when making the placement decision (Docs. b and d).
7. On February 22, 2016, the IEP team, including a staff member from the Central Office, reconvened to review additional data, revise the IEP, and determined the student's educational placement to be a public separate special education school (Docs. b, d, and g).

**DISCUSSION/CONCLUSIONS:**

The public agency must ensure that the IEP team's decisions are implemented (34 CFR §§300.101 and .324). In this case, the complainant alleged that the IEP team did not reconvene with the input of the PGCPS Central Office staff when making the educational placement decision, as determined necessary by the IEP team on January 6, 2016. The complainant appears to be under the impression that, in order for this to have occurred, the IEP team needed to convene at the PGCPS Central Office.

Based on the Findings of Facts #6 and #7, the MSDE finds that the PGCPS Central Office staff participated as a member of the IEP team held at the school, and that this was consistent with the IEP team's January 6, 2016 decision. Therefore, this office does not find that a violation occurred with respect to the allegation.

## **CORRECTIVE ACTIONS/TIMELINES:**

### **Student-Specific**

The MSDE requires the PGCPS to provide documentation by July 31, 2016, that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the violation of the lack of the provision of speech therapy services. The PGCPS must develop a plan for the provision of those services within one year of the date of this Letter of Findings.

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.

### **Similarly-Situated Students**

The MSDE requires the PGCPS to provide documentation by September 30, 2016 that it has identified the similarly-situated students at the XXXXXXXXXX Elementary School and that it has held or scheduled IEP meetings to determine the amount and nature of compensatory services or other remedy to redress the violation of the lack of the provision of speech therapy services. The PGCPS must also provide documentation of the development of a plan for the provision of those services within one year of the date of this Letter of Findings.

### **School-Based**

The MSDE requires the PGCPS to provide documentation by August 31, 2016 of the steps it has taken to ensure that the violation identified through this investigation does not recur.

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 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.

XXX

Mrs. Joan Rothgeb

June 3, 2016

Page 7

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  
Gwendolyn Mason  
LaRhonda Owens  
Kerry Morrison  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Albert Chichester  
Nancy Birenbaum