



Karen B. Salmon, Ph.D.
State Superintendent of Schools

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June 28, 2016

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

RE: XXXXX
Reference: #16-118

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 April 28, 2016, 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 above-referenced student.

The MSDE investigated the following allegations:

1. The PGCPS denied the right to audio record the September 30, 2015 Individualized Education Program (IEP) team meeting in a manner that is inconsistent with 34 CFR 300.324, MSDE Memorandum, *Audio Recording of Individualized Education Program (IEP) Team Meetings* (February 7, 2006) and PGCPS policy;
2. The PGCPS has not ensured that proper written notice was provided of the decisions made by the IEP team following the November 16, 2015 IEP team meeting, in accordance with 34 CFR §300.503;

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3. The PGCPS has not ensured that the student was provided with a dedicated adult assistant, as required by his IEP, in accordance with 34 CFR §§300.101 and 323, from the beginning of the 2015-2016 school year to September 30, 2015;
4. The PGCPS has not ensured that the student was provided with supplementary aids and services, as required by his IEP, since the beginning of the 2015-2016 school year, in accordance with 34 CFR §§300.101 and 323;
5. The PGCPS did not follow proper procedures when revising the student's IEP to remove the provision of a dedicated adult assistant on September 30, 2015, in accordance with 34 CFR §300.324; and
6. The PGCPS has not ensured that the IEP team reviewed the student's IEP at least annually, in accordance with 34 CFR §300.324 and COMAR 13A.05.01.08B.

INVESTIGATIVE PROCEDURES:

1. On April 29, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS.
2. On May 16, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and her advocate, Ms. XXXXXXXXX, and identified the allegations for investigation.
3. On May 17, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the school system review the alleged violations.
4. On May 17, 2016, Mr. Loiacono contacted Ms. Jodi Kaseff, Special Education Instructional Specialist, PGCPS, to arrange a document review and site visit.
5. On June 7, 2016, Mr. Loiacono and Ms. Sharon Floyd, Complaint Investigator, MSDE, conducted a site visit at XXXXXXXXXXXXXXX to review the student's educational record and interviewed the following school staff:
 - a. Ms. XXXXXXXXX, IEP Chairperson;
 - b. Ms. XXXXXXXXX, Speech Pathologist;
 - c. Ms. XXXXXXXXX, School Counselor; and
 - d. Ms. XXXXXXXXX, Case Manager.

Ms. Kaseff attended the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.

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6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated September 9, 2014;
 - b. IEP, dated September 30, 2015;
 - c. IEP, amended November 16, 2015;
 - d. Prior Written Notice, dated September 11, 2014;
 - e. Prior Written Notice, dated October 3, 2015;
 - f. Prior Written Notice, dated November 16, 2015;
 - g. Student work samples, undated;
 - h. Electronic Mail (Email) from the student's case manager to the school staff, dated September 2015, to November 2015;
 - i. Student "ABC Data Forms", completed in anticipation of the November 16, 2015 IEP team meeting;
 - j. Student "agenda book", dated October 2015 to May 2016;
 - k. PGCPS "Notice of the Use of Audiotape or Recording Devices During IEP Team Meetings," undated; and
 - l. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on December 21, 2015.

BACKGROUND:

The student is fifteen years old and attends XXXXXXXXXXXXXXXX. Prior to the 2015-2016 school year, the student attended XXXXXXXXXXXX. He is identified as a student with an Other Health Impairment related to Attention Deficit/Hyperactivity Disorder (ADHD) under the IDEA and has an IEP that requires the provision of special education instruction and related services (Docs. a and b).

There is documentation that the parent participated in the education decision-making process and were provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-f).

FINDINGS OF FACTS:

1. The student's IEP in effect during the start of the 2015-2016 school year was developed at an IEP meeting on September 9, 2014 at XXXXXXXXXXXX. To assist the student in achieving his goals, the IEP required supplemental aids and services, to be provided daily, including:
 - "Chunking" of text;
 - Modified assignments;
 - Home-school communication system;
 - Checks for understanding;
 - Encourage student to ask for assistance;
 - Preferential seating; and

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- A dedicated assistant to help the student “define expectations within the school setting” (Doc. a).
2. There is no documentation that the student was provided with the supplementary aids and services, including the dedicated adult assistant, required by his IEP prior to September 30, 2015 (Review of student’s record).
 3. On September 30, 2015, the IEP team met to review and revise the student’s IEP. At the start of the meeting, the complainant’s advocate requested to audio record the meeting. The PGCPS staff denied the request because the school system requires notice of intent to record at least two business days in advance of the meeting (Docs. b and k).
 4. At the September 30, 2015 IEP team meeting, the IEP team determined that the student no longer requires an assistant who is dedicated to work exclusively with him, and that his needs could be met by including additional adult support in the classroom. The IEP team documented that it based its decision on input from the student’s teachers, testing data, and student performance on classroom assignments which indicated that the student was making progress on his academic goals and organizational skills. The IEP team also added that the student would be provided with weekly assistance with organizing his school materials and a daily behavioral contract. The IEP team agreed to reconvene in November 2015 to review the student’s progress (Docs. b and e).
 5. On November 16, 2015, the IEP team met to review the student’s progress with the provision of additional adult support. The IEP team considered the student’s grades and classroom performance and because the student was making sufficient progress, they confirmed their previous decision that he did not require the use of a dedicated adult assistant (Docs. c and f).
 6. While there is documentation that written notice of the IEP team’s decisions made at the November 16, 2015 meeting was created, there is no documentation that it was provided to the complainant prior to implementation of the IEP team’s decisions (Doc. e and review of the student’s record).
 7. While there is documentation of the sporadic provision of the supplementary aids and services required by the IEP, there is no documentation that each of the supplementary aids and services have been provided on a daily basis since September 30, 2015 (Docs. g-j).

DISCUSSION/CONCLUSIONS:

Allegation #1: Recording of the IEP Team Meeting

The IDEA does not address the use of audio or video recording devices at IEP team meetings, and no other federal statute either authorizes or prohibits the recording of an IEP team meeting by either a parent or a school official. Therefore, the State Education Agency (SEA) or local public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording

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devices at IEP meetings (Appendix A to Part 300 – Notice of Interpretation, Federal Register, Special Edition, p. 111, July 1, 2006).

The MSDE does not have a policy that limits or prohibits the use of audio recording devices at IEP team meetings, but requires that local policies be consistent with the intent of IDEA. The PGCPS has developed a policy requiring two business days notice prior to the meeting date if a parent intends to create an audio recording of an IEP team meeting.

Based on Findings of Facts #3 the MSDE finds that the PGCPS followed proper procedures, consistent with their policy, when denying the request for audio recording of the September 30, 2015 IEP team meeting. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2: Prior Written Notice

The public agency must provide parents with written notice prior to any proposal or refusal to initiate or change the identification, evaluation, or educational placement or the provision of a Free Appropriate Public Education (FAPE) to a student with a disability. This notice must include a description of the action, and explanation of why the public agency is taking or refusing to take the action, a description of the data used as a basis for the decision, and a description of other options that were considered (34 CFR §300.503).

Based on Findings of Fact #6, the MSDE finds that there is no documentation that written notice of the IEP team's decisions at the November 16, 2015 IEP team meeting was provided to the complainant prior to implementation of these decisions. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegations #3 and #4: IEP Implementation

The public agency must ensure that each student is provided with the special education instruction and related services required by the student's IEP (34 CFR §300.101).

Based on Findings of Facts #1 and #2, the MSDE finds that there is no documentation that the supplementary aids and services, including the provision of the dedicated assistant services, were provided to the student prior to September 30, 2015. Based on Findings of Facts #4-7, the MSDE finds that there is not sufficient documentation to conclude that the student was consistently provided with the supplementary aids and services on the frequency required by the student's IEP, since September 30, 2015. Therefore, this office finds that violations have occurred with respect to these allegations.

Allegation #5: IEP Team Decision to Discontinue the Dedicated Assistant Services

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 (34 CFR §300.324).

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Based on Findings of Facts #4 and #5, the MSDE finds that the IEP team considered the required data and made a determination consistent with that data when deciding that a dedicated assistant is no longer required. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #6: Annual Review/Revision of the IEP

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved (34 CFR §300.324).

Based on Findings of Facts #1, and #3, the MSDE finds that the student's IEP, developed on September 9, 2014 was not reviewed until September 30, 2015. Therefore, this office finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by September 30, 2016 that the supplementary aids and services required by the student's IEP are being consistently provided to the student, in accordance with his IEP since the date of this Letter of Findings.

The MSDE further requires the PGCPS to provide documentation by September 30, 2016 that the IEP team has determined the compensatory services, or other agreed upon remedy for the violations identified through this investigation.

School-Based

The MSDE requires the PGCPS to provide documentation by November 1, 2016 that steps have been taken to determine whether the violations identified through this investigation are unique to this case or whether they constitute a pattern of violations at XXXXXXXXXXXXXXXX.

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 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.

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.

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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 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, conclusions and corrective actions 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 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:gl

c: Kevin Maxwell
LaRhonda Owens
Gwendolyn Mason
Jodi Kaseff
Kerry Morrison
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Dori Wilson
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