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January 13, 2017

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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: #17-070

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.

ALLEGATION:

On December 14, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 allegation that the PGCPS has not ensured that the student has been provided with the special education and related services to address social skills and self-regulation in a separate special education classroom, as required by the Individualized Education Program (IEP) since February 9, 2016, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On December 14, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Executive Director, Department of Special Education, PGCPS.
2. On December 16, 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 December 19, 2016, the MSDE requested documents from the PGCPs.
4. On January 5 and 11, 2017, the PGCPs provided the MSDE with documents to be considered.
5. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. The student's 2015-2016 school year schedule;
 - b. The special education teacher's schedule in effect since January 20, 2016;
 - c. IEP, dated November 11, 2015 and revised on February 9, 2016;
 - d. The special education teacher's service logs from February 9, 2016 to November 22, 2016;
 - e. Reports of the student's progress towards achievement of the IEP goals, dated April 5, 2016, June 17, 2016, and November 4, 2016;
 - f. Written summary of the April 8, 2016 IEP team meeting;
 - g. Report of a Functional Behavioral Assessment (FBA), dated October 11, 2016;
 - h. Report of assessment results, dated October 27, 2016;
 - i. Written summary of the September 12, 2016 IEP team meeting;
 - j. IEP, dated November 7, 2016 and written summary of the IEP team meeting;
 - k. Behavioral Intervention Plan (BIP), dated November 7, 2016;
 - l. Related services log from December 1, 2016 to January 6, 2017;
 - m. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on December 14, 2016; and
 - n. Written summary of a December 14, 2016 IEP team meeting.

BACKGROUND:

The student is nine (9) years old and is identified as a student with an Emotional Disability under the IDEA. He attends the XXXXXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. c and j).

There is documentation that, during the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. c, f, i, j, and n).

FINDINGS OF FACTS:

1. The IEP in effect prior to February 9, 2016 required the provision of special education in order to assist the student with achieving a goal to improve social skills for self-regulation by November, 2016. At that time, the IEP required that the student be provided with one hour and forty-five minutes per day of special education instruction in the general education classroom and forty minutes per week of special education instruction in a separate special education classroom per week to address the goal (Doc. c).

2. On February 9, 2016, the IEP team decided to begin a trial period where the student would receive thirty minutes per week of special education instruction in a separate special education classroom to address the goal and to discontinue the special education instruction in the general education classroom. The IEP team decided to reconvene to review the student's progress within 45 days (Doc. c).
3. On April 8, 2016, the IEP team reconvened to consider the student's progress. The student's teachers reported that since the IEP was revised on February 9, 2016, the student often shuts down and will not continue to work, that he has not been able to accept constructive criticism, and that he has not been able to use the strategies taught to him when he is frustrated. The IEP team decided to add instructional supports, including checks for understanding, and the use of a calming strategy checklist in order to assist him with self-regulation (Doc. f).
4. On June 17, 2016, a report of the student's progress towards achievement of the goal was generated, which states that the student was not making sufficient progress to meet the goal (Doc. e).
5. On September 12, 2016, the IEP team convened and discussed that, although the classroom-based assessments reflect that the student had made progress, he had failing grades and "his work is often impacted by his behavior." The complainant expressed concern that the student does not have sufficient support in the classroom to address his behavioral needs and requested that an aide be added to his class. The IEP team determined that "the current supports have not been sufficient to mitigate [the student's] behaviors," and that additional data was needed on his current levels of performance. The team recommended assessments in the areas of academics, communication, and emotional/social/behavior development, a Functional Behavior Assessment (FBA), and a classroom observation. However, the IEP team did not consider positive behavioral interventions and strategies and other supports that could be used in an attempt to address the behavior while the additional data was being obtained (Doc. i).
6. On November 7, 2016, the IEP team considered the assessment data. At that time, the data reflected that the student "continues to struggle with regulating his emotions and displaying adequate coping skills," and that his "emotions frequently impact his availability for learning, due to tantrum behaviors including yelling, crying, and classroom elopement." The IEP team identified the student, who was previously identified with an Other Health Impairment due to inattention, as a student with an Emotional Disability, and the complainant disagreed with that determination. The IEP team also developed a Behavioral Intervention Plan (BIP) to address the interfering behaviors (Docs. g, h, i, j, and k).
7. Based on the report of the student's lack of progress, new goals were developed on November 7, 2016, to be achieved by November, 2017. The IEP was revised to require the provision of two and one-half hours per week of special education instruction in the general education classroom and counseling services one time per week for thirty minutes

in a separate special education classroom to assist the student with achievement of the newly developed goals to improve self-regulation and anger management (Doc. j).

8. On December 14, 2016, the IEP team agreed to have additional assessments conducted by county employees outside of the school due to her concerns about the results of the previously-conducted assessments (Doc. n).
9. The student's schedule, the special education teacher's schedule, and the special education teacher's service logs document that the student was provided with services to address the goal through participation in a "lunch bunch"¹ (Docs. a, b, and d).
10. The school counselor's service log documents that she has provided individual counseling services to the student since December 1, 2016, as required by the IEP (Doc. l).

DISCUSSION/CONCLUSIONS:

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

In this case, the complainant alleges that the reason why the student has not made progress with improving his self-management skills is that special education and related services have not been provided in a separate special education classroom, as required by the IEP (Doc. m).

Based on the Findings of Facts #1 - #10 above, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred with respect to the allegation.

VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

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 consistent with the evaluation data. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320, and .324).

The public agency must ensure that the IEP team reviews and revises, as appropriate, 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 and must make sure that each student has an appropriate IEP in effect at the start of the school year (34 CFR §§300.323 and .324).

¹ This is a gathering of a small group of students for socialization while eating lunch (<http://savvyschoolcounselor.com/lunch-bunch-anyone/>).

Based on the Findings of Facts #4 and #5, the MSDE finds that the IEP team did not convene to address the lack of expected progress reported in June 2016 until after the start of the school year on September 12, 2016.

Further, based on the Findings of Facts #5 - #7, the MSDE finds that the IEP team did not consider positive behavioral interventions and supports to address the student's interfering behaviors pending the completion of assessments from September 12, 2016 to November 7, 2016. Therefore, this office finds that a violation occurred because there was a delay in addressing the student's lack of progress with improving his social skills from the start of the 2016-2017 school year until November 7, 2016.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by April 1, 2017 that the IEP team has developed a plan to provide compensatory services to the student during the remainder of the 2016-2017 school year that are designed to accelerate his progress with improving social skills and to monitor the effectiveness of those services.

The MSDE requires the PGCPS to provide documentation by May 1, 2017 that the student's progress with the provision of compensatory services is being monitored.

School-Based

The MSDE requires the PGCPS to provide documentation by April 1, 2017 of the steps taken to ensure that the XXXXXXXXXXXXXXXX School staff comply with the requirements related to ensuring that IEP teams convene to address lack of expected progress towards achievement of annual IEP goals and that students have an appropriate IEP in effect at the start of each school year.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, MSDE. Ms. Preis may be reached 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

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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:am

c: Kevin Maxwell
LaRhonda Owens
Deborah Anzelone
Kerry Morrison
XXXXXXXX
Dori Wilson
Anita Mandis
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