



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

October 4, 2019

Ms. Debrah Martin
Best Solutions Educational Service
1300 Mercantile Lane, Suite 129-2
Largo, Maryland 20774

Ms. Trinell Bowman
Director of Special Education
Prince George's County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: [REDACTED]
Reference: #20-009

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education 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 August 5, 2019, the MSDE received a complaint from Ms. Debrah Martin, hereafter, “the complainant,” on behalf of the above-referenced student, and her father, Mr. [REDACTED]. 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 was provided with supplementary aids and services required by the Individualized Education Program (IEP) during the 2018 - 2019 school year, in accordance with 34 CFR §§ 300.101 and .323.
2. The PGCPS did not follow proper procedures when disciplinarily removing the student from school on January 2, 2019, in accordance with 34 CFR §§300.530-.536, and COMAR 13A.08.01.11. and 08.03.08.

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services.

From September 2018 to January 2019, the student attended [REDACTED] School. From January 2019 to March 2019, the student was disciplinarily removed from school. In March 2019, she was administratively transferred to [REDACTED] an alternative education setting (AES) in PGPCS for the remainder of the 2018 - 2019 school year. She currently attends the [REDACTED] School in PGPCS.

ALLEGATION #1: PROVISION OF SUPPLEMENTARY AIDS AND SERVICES

FINDINGS OF FACTS:

1. The IEP reflects that the student was to be provided with small group testing over a period of several days with breaks and extended time. There is no documentation that this supplementary support was provided to the student during the 2018 - 2019 school year.
2. The IEP reflects that the student was to be provided with alternative ways to demonstrate mastery of concepts. There is documentation that the student was provided with this supplementary support when she was enrolled at the [REDACTED]. However, there is no documentation reflecting that she was provided with alternative ways to demonstrate mastery of concepts while attending [REDACTED] School.
3. The IEP reflects that the student was to be provided with feedback from the guidance counselor and teachers to reinforce appropriate behavior and positive peer relationships in academic and non-academic settings. There is documentation that the student was provided with support to promote positive peer relationships during the 2018 - 2019 school year.
4. The progress reported on the student's annual goals reflects that the student was making sufficient progress to achieve the annual goals within one year.

CONCLUSIONS:

Based on the Finding of Fact #4, the MSDE finds that there is no documentation that the student was consistently provided with all of the support required by the IEP throughout the 2018 - 2019 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Findings of Facts #4 and #5, the MSDE finds that the violation did not have a negative impact on the student's ability to benefit from the education program. Therefore, no further student-specific corrective action is required.

ALLEGATION #2: DISCIPLINARY PROCEDURES

5. On January 3, 2019, the student was disciplinarily removed from school and recommended for expulsion as a result of her “threats of mass violence, bomb threat, cyber bullying, and gross misconduct.”
6. On January 7, 2019, the IEP team convened to determine whether the student’s behaviors were a manifestation of her disability, decided that the behaviors were not a manifestation of the disability. The team documented that the basis for the decision was that “the behaviors had no direct and substantial relationship to her disability of a Specific Learning Disability (SLD),¹ because the disability of SLD has no social emotional component which may have lead to a threat of massive violence.”
7. The team further documented that the student’s previous behavioral incidents were managed with peer mediation and did not rise to the level of the current behavioral incident. The team decided that they did not anticipate that the behaviors resulting in the disciplinary removal would occur again, and thus, a BIP was not needed to ensure that the behavior involved in the current incident would not recur.
8. The IEP team decided that a Free Appropriate Public Education (FAPE) could be provided to the student, who previously received twenty-seven hour and thirty minutes (27.5) of special education instruction each week and thirty (30) minutes of counseling each week, with one (1) hour of instruction two times each week at [REDACTED] School. However, the team did not document the basis for that determination.
9. There is documentation that an expulsion hearing was scheduled for January 16, 2019, but was rescheduled twice, for February 14, 2019 and February 20, 2019, before being held on February 26, 2019 because the parent did not appear for the hearing on the previous dates.
10. At the February 26, 2019 hearing, the Superintendent’s Designee documented that the student had, by that time, been disciplinarily removed for thirty-seven (37) number of days. The Superintendent’s Designee decided that, due to the serious nature of the behavior exhibited, the student’s placement would be changed to [REDACTED] [REDACTED] for the remainder of the school year. The Superintendent’s Designee decided to uphold an “extended suspension” instead of the requested expulsion because the student had not yet been disciplinarily removed from school for more than forty-five (45) days as a result of the incident.
11. There is documentation, dated February 26, 2019, that the school staff contacted the student’s father by electronic mail (email) on the previous day, and informed him that FAPE services for the student would be provided at [REDACTED] School on February 26, 2019, from 3:00pm - 4:30pm, and that additional services would be

¹ During the time period covered by this investigation, the student was identified as a student with a Specific Learning Disability (SLD) under the IDEA. On August 6, 2019, the IEP team determined that the student was a student with an Emotional Disability (ED) under the IDEA.

offered pending the decision of the expulsion hearing scheduled for February 26, 2019. In response, the parent informed the school staff that the student would not be available for services on February 26, 2019. With the exception of February 26, 2019, there is no further documentation that attempts were made by the school staff to provide FAPE services to the student between January 3, 2019 and March 14, 2019.

12. On March 14, 2019, the student began attending [REDACTED] in PGCPS for the remainder of the 2018 - 2019 school year.
13. On June 14, 2019, the IEP team convened to address parental concerns. The meeting summary reflects that the student's parent reported that the student did not receive "instructional support" during the time expulsion was being considered for the student. In response, the school-based members of the team indicated that they would "follow up with the boundary high school to determine the accuracy of the information and next steps."
14. On July 23, 2019 and August 7, 2019, the IEP team convened to review and revise the IEP, as appropriate. The meeting summary reflects that the team determined compensatory services for the loss of FAPE from January 2019 to March 2019.
15. At the same IEP team meeting, the student's parent raised concern about the BIP being outdated. In response, the team reported again, that the boundary school staff did not observe any behaviors that would warrant a BIP prior to the exhibited behavior that resulted in a request for expulsion. However, the team determined that a Functional Behavioral Assessment (FBA) would be conducted for the student based on recent data.

DISCUSSION/CONCLUSIONS:

Reevaluation

In this case, the complainant alleges that disciplinary procedures were not followed because the IEP team did not conduct a reevaluation prior to determining whether the behavior was a manifestation of her disability.

Based on the Finding of Facts #5 - #8, the MSDE finds that the manifestation was consistent with the data and there was no requirement to conduct a reevaluation in order to obtain additional data before making the manifestation determination. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Behavior Intervention Plan (BIP)

The complainant further alleges that the IEP team did not ensure that a BIP was in place to ensure that the behavior that resulted in the removal did not recur.

Based on the Finding of Facts #5 - #7, and #15, the MSDE finds that there is documentation to support the IEP team's decision that a BIP was not needed to address the behavior at the time that decision was made. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

COMAR Disciplinary Actions

In addition, the complainant alleges that the PGCPS did not follow the required procedures for determining that a long term disciplinary removal was required, and did not ensure that she was provided with a FAPE while disciplinarily removed from school from January 1, 2019 through March 2019.

An extended suspension is the exclusion of a student from a student's regular program for a time period between 11 and 45 school days, which only may occur when the Superintendent or Designated Representative has determined that the student's return to school prior to the completion of the suspension period would pose an imminent threat of serious harm to other students and staff, or the student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for the other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted (COMAR 13A.08.01.11)

Based on the Findings of Facts #5, #9, #10, and #12, the MSDE finds that the PGCPS did not follow proper procedures to ensure that an expulsion or extended suspension only occur when the circumstances existed, in accordance with COMAR 13A.08.01.11 Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #8, #11, #13 and #14, the MSDE finds that the PGCPS did not ensure that the student was provided with a FAPE while disciplinarily removed from January 3, 2019 to March 14, 2019, in accordance with 34 CFR §§300.530-.536, and COMAR 13A.08.03.08. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #13 and #14, the MSDE finds that there is documentation that the IEP team determined the compensatory services to remediate the denial of FAPE from the time the student was held out of school, from January 3, 2019 to March 14, 2019. Therefore, no further student-specific corrective action is required.

CORRECTIVE ACTIONS/TIMELINES:

School-Based

The MSDE requires the PGCPS to provide documentation by December 31, 2019 of the steps [REDACTED] School staff have taken to ensure that supports are provided as required by the IEP, and that a FAPE is offered when disciplinarily removing a student with a disability for more than ten (10) school days. The steps should include a description of how the PGCPS will monitor to ensure that the violations do not recur at [REDACTED] School.

System-Based

The MSDE requires the PGCPS to provide documentation by December 31, 2019 of the steps taken to ensure that an expulsion or extended suspension only occur when the circumstances described in COMAR 13A.08.01.11 exist. The steps should include a description of how the PGCPS will monitor to ensure the effectiveness of the steps taken.

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.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parent 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 a due process complaint.

Sincerely,

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

MEF:ac

c: [REDACTED]
Monica Goldson
Gwen Mason
Barbara VanDyke
Jeff Krew
[REDACTED]
Dori Wilson
Anita Mandis
Albert Chichester
Nancy Birenbaum