



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

April 24, 2020

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

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: [REDACTED]
Reference: #20-100

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 February 26, 2020, the MSDE received a complaint from Ms. Debrah B. Martin, hereafter, “the complainant,” on behalf of Ms. [REDACTED] Mr. [REDACTED] and their 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:

[REDACTED] Elementary School:

1. The PGCPS did not ensure that proper procedures were followed when the student was disciplinarily removed from school on March 8-10, 2019, and April 2 and 3, 2019 of the 2018-2019 school year, in accordance with COMAR 13A.08.01.11.

2. The PGCPS did not ensure that the parents were provided with accessible copies of the psychological assessment report dated May 7, 2019, and other assessments the IEP team used to discuss eligibility at the student's Individualized Education Program (IEP) team meeting at least five (5) business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
3. The PGCPS did not ensure that the IEP team's determination of the student as a student with Traumatic Brain Injury and by reason thereof, needs special education and related services was consistent with the data on May 14, 2019, in accordance with 34 CFR §§300.8 and .301-.306.
4. The PGCPS did not ensure that the student's safety needs were addressed since May 30, 2019, in accordance with 34 CFR §300.324.
5. The PGCPS did not ensure that the student's occupational needs were addressed since May 30, 2019, in accordance with 34 CFR §300.324.
6. The PGCPS did not ensure that the parents were provided with the home/school communication, required by the IEP since May 30, 2019, in accordance with 34 CFR § 300.324.
7. The PGCPS did not ensure that a Behavioral Intervention Plan (BIP) was implemented since May 30, 2019, in accordance with 34 CFR §§300. 324.

Elementary School:

8. The PGCPS did not ensure that the student was provided with special education instruction by a special education teacher, as required by the IEP, during the 2019-2020 school year, in accordance with 34 CFR §§300.101 and .323.
9. The PGCPS did not provide Prior Written Notice (PWN) of the IEP team's decisions following the IEP team meeting held in October 2019, in accordance with 34 CFR §300.503.
10. The PGCPS did not follow proper procedures to provide access to the student's educational record and copies of providers' service logs in response to a request made on November 9, 2019, in accordance with 34 CFR §§300.613.
11. The PGCPS did not ensure the required participants were in attendance at the IEP team meetings held on December 19, 2019 and January 9, 2020, in accordance with 34 CFR §§300.321.

BACKGROUND:

The student is seven (7) years old, is identified as a student with a Traumatic Brain Injury under the IDEA, and has an IEP that requires the provision of special education services.

During the 2018-2019 school year, the student attended [REDACTED]

At the start of the 2019-2020 school year, the student began attending [REDACTED] as a result of a change in educational placement made by the IEP team.

Since January 2020, the student has been placed by the PGCPS at the [REDACTED] a non-public separate special education school in Prince George's County, Maryland.

FINDINGS OF FACTS:

March 7, 2019 IEP Team Meeting

1. On March 7, 2019, the IEP team met to conduct an IDEA evaluation. The teacher reported that the student exhibited inappropriate behaviors including temper tantrums, physical aggression towards peers, teachers, and staff, inattention, excessive crying, and elopement from the classroom. She reported that because of the student's individual needs, the student required interventions including a visual schedule, frequent breaks during instruction, and a rewards system that differed from the schoolwide positive behavioral intervention system. The teacher stated that all of the adults who come in contact with the student must use a moderate cadence, with low volume and tone when speaking to the student to avoid triggering inappropriate reactions from the student.
2. The IEP team reviewed the student's educational history, current academic performance, assessment data including report cards, a parent questionnaire, and attendance. Based on the review of referral information and a classroom observation, the IEP team determined that the student's fine and gross motor skills were age appropriate and that the student's needs included instruction of social, emotional, and behavioral skills. The IEP team decided to conduct assessments based on the data collected at the IEP team meeting.

March/April 2019 Disciplinary Removals

3. On March 8, 2019 and April 2, 2019, the student, who was in the kindergarten at the time, was disciplinarily removed from school for a total of 5 days. There is no documentation that the school administrator consulted with a mental health professional to determine that the removal was necessary because of an imminent threat of serious harm to the student or others that could not be reduced or eliminated through the provision of interventions and supports.

May 14, 2019 IEP Team Meeting

4. On May 14, 2019, the IEP team reviewed the results of a psychological assessment, including the assessment of the student's cognitive, social, emotional, and behavioral functioning. The IEP team also considered the results of an educational assessment, classroom based assessments, work samples, teacher's reports, and the parents' input. There is no documentation that the parents received copies of the PGCPS assessment reports prior to the IEP team's review of the reports. The IEP team also reviewed a private neurologist's report from the [REDACTED] provided by the parents.
5. In the report of the psychological assessment results, the student's overall cognitive ability is assessed in the "average" range. The report documents the areas of psychosocial difficulties including difficulty relating to others, impaired ability to demonstrate age-appropriate behavior, impaired emotional control, and restlessness. The report also documents the student's cognitive impairments, such as his attention, concentration, lack of ability to initiate, organize, complete tasks, sequence, generalize, plan, problem solving, abstract thinking, judgment, and perception. The report reflects that based on the above data, as well as staff reporting of the continued display of significant maladaptive behaviors, and behavioral interventions in place, the student's maladaptive behaviors "appears to be a result of a traumatic brain injury noted from the medical documentation from [REDACTED]"
6. The medical report dated March 5, 2019, from the [REDACTED] states that the student suffered a "skull fracture" from a motor vehicle crash that occurred in 2015, when the student was 2 years old.
7. The IEP team meeting summary reflected that the psychological report indicated that the student was in the "very likely" range for the probability of having Attention Deficit with Hyperactivity Disorder (ADHD). However, the school psychologist reported that "the underlying causes for the student's ADHD like behaviors were the result of the traumatic brain injury that occurred in 2015."
8. The educational assessment report indicated that the student's performance ranged from "low average to high average." The report reflects that the student's comprehension skills are a challenge, while all other curriculum tests reflect grade level functioning.
9. The report of a Functional Behavioral Assessment (FBA), conducted as part of the evaluation, identified the completion and comprehension of academic tasks, and a lack of social, emotional, and behavioral skill development as areas of concern. The report identified the targeted behaviors as hitting and screaming which escalated whenever the adults used a stern voice or touched the student. The FBA documented the use of interventions, including a positive behavior rewards system, social stories, frequent breaks and use of a peer model to assist the student in the prevention of the undesired behaviors. At the time of the FBA report, the frequency of behaviors occurred 10 or more

times per day. The FBA report indicated that some of the interventions and the supports only worked well initially.

10. Based on the data, the IEP team determined that, as a result of a Traumatic Brain Injury (TBI), he is a student who requires special education under the IDEA.

May 30, 2019 IEP Team Meeting

11. On May 30, 2019, the IEP team convened to develop an IEP. The documentation of the meeting states that, based on assessment data from formal and informal assessments, the student was functioning on a kindergarten level in academics. It also states that the student's self-management, decision making, and social interaction skills indicated that when the student experiences auditory, visual, or physical sensory stimulation and loud noises he responds with excessive crying, inattention, temper tantrums, and aggression such as hitting, throwing objects, and kicking peers and staff. It further states that the student's maladaptive behaviors affect his performance in accessing the general education curriculum and requires supports, accommodations, specialized instruction, and services.
12. The IEP that was developed includes goals and services in the areas of self-management, which includes the student's sensory needs, and includes goals to improve social interaction skills, and decision making skills.
13. The IEP team developed a Behavioral Intervention Plan (BIP) that identified the triggers of the two previously identified behaviors in the FBA report, and strategies to be taught to the student for reducing the target behaviors. The BIP documented the need for all staff interacting with the student to be trained in the implementation of the BIP. The BIP required a daily collection of data and an initial review of the effectiveness of the strategies being used on May 15, 2019 and an evaluation of its effectiveness by October 1, 2019.
14. The IEP requires daily contact with the parents, including a communication system that allows them to be notified about the student's behavior through Class Dojo, an online communication tool used by the PGCPs staff and parents, an agenda book, notes and behavior charts. There is no documentation that this communication system was provided, as required.
15. The IEP requires 5 one hour sessions of special education instruction per week in the general education classroom from the general and special education teachers and 5 one hour sessions of special education instruction per week inside of the special education classroom from the special education teacher for "specialized instruction for math and written language."

16. At the May 30, 2019 IEP team meeting, the parents further expressed concerns about the student's safety and requested a meeting with the school administration to address their concerns. The parents stated that the student often gets hit and injured by other students, indicating that the student was threatened and bullied. The parents stated that the school staff has not been responsive of requests to provide detailed information about the incidents. The school staff reported that the student's behavior can trigger inappropriate response behaviors from others and that this would be addressed through the IEP and BIP.

June 27, 2019 IEP Team Meeting

17. On June 27, 2019, the IEP team met to address the student's interfering behaviors that were impacting his availability to access instruction. The maladaptive behaviors included temper tantrums, hitting, kicking, and scratching. There is documentation that the student's haphophobia, which is a fear of being touched, resulted in the student becoming physically aggressive when touched, even when attempting to hold his hand and guide him. While the IEP and BIP indicated these behaviors, the school staff reported that the behaviors had increased in frequency and intensity.
18. The IEP Team proposed an increase in services to 22 hours of special education and 30 minutes of counseling, per week to address the student's increase in behaviors. The team revised the IEP by adding crisis intervention and social skills training. The IEP team based these changes on the student's need for increased behavioral, academic, and counseling support and determined that a change in educational placement to [REDACTED] for the 2019-2020 school year was needed to implement the revised IEP.

October 9, 2019 IEP Team Meeting

19. The IEP team met on October 9, 2019 to review the student's IEP, classroom behaviors, teacher's input, and parent concerns. The IEP team documented that the student's aggressive behaviors continued to increase but that it would reconvene on a later date to review the student's BIP. There is no documentation of the basis for the decision to delay addressing the student's interfering behaviors.

Provision of Special Education Instruction from a Special Education Teacher

20. On November 1, 2019, the administration of [REDACTED] informed the parents there was a first grade special education teacher vacancy and that due to a shortage of teachers the position was being filled by a substitute teacher and a paraprofessional. The administration also indicated that reading would be taught by a reading specialist and math by an instructional lead teacher. There is no documentation that any of these teachers held special education certification or consulted with a special education teacher when providing special education instruction to the student.

Access to the Record

21. On November 9, 2019, December 9, 2019 and December 12, 2019, the student's parent requested access to the student's educational record, specifically, service provider logs for speech/language and psychological services. On December 12, 2019, the principal responded to the request for records by assigning a special education instructional specialist to ensure the request was fulfilled. On December 20, 2019, the student's records were provided to the parent.
22. There is no documentation that an IEP team meeting was held on December 19, 2019 as alleged by the complainant.

January 9, 2020 IEP Team Meeting

23. On January 9, 2020, the IEP was revised to reflect increased special education services and supports to be provided in a therapeutic environment. The parents expressed their concern for the student's safety; specifically, they alleged that the student was being threatened and hit while at school. The parents acknowledged that the student's behaviors had escalated but they felt the escalation was due to the need the student felt to protect himself. The IEP team recommended the student attend a non-public separate special education school for the remainder of the 2019-2020 school year to ensure therapeutic services to address the student's behavioral and sensory needs that resulted in his increased maladaptive behaviors.
24. There is no documentation that the IEP team held on January 9, 2019 included a special education teacher of the student or a special education provider of the student who had knowledge of the student.

CONCLUSIONS:

Allegation #1 Disciplinary Removal

Based on the Finding of Fact #3, the MSDE finds that there is no documentation that the principal consulted with a mental health professional and determined that there was an imminent threat of serious harm to students or others that could not be reduced or eliminated through the provision of interventions and supports before disciplinarily removing the student from school, in accordance with COMAR 13A.08.01.11. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #2 Provision of Assessment Reports Prior to the Team Meeting

Based on the Finding of Fact #4, the MSDE finds that the PGCPS did not ensure that the parents were provided with copies of the assessment reports at least five (5) business days before the May 14, 2019 IEP meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #3 Identification with Traumatic Brain Injury (TBI)

In this case, the complainant alleges that the IEP team identified the student with a TBI “without adequate medical documentation, a formal diagnosis or a psychological evaluation.” She asserts that because the report of a private neurologist indicated that the headaches the student was experiencing were not related to his head injury, or identified any academic concerns, there was no evidence of a TBI.

Based on the Findings of Facts #4, #5 and #6, the MSDE finds that the private neurologist documented that the student had acquired a head injury. Based on the Findings of Facts #4, #5, and #7, #9, the MSDE further finds that there is assessment data, including a psychological evaluation, that identified problems with the student’s attention, judgement, perception, and psychosocial behavior. In addition, based on the Findings of Facts #1, #10, #11, #17, and #23, the MSDE finds that the IEP team had data from the parents and teachers that the student’s behavior results from his sensory difficulties when finding a TBI. The fact that the student also suffers from headaches, which his neurologist does not believe are caused by the head injury, did not impact the neurologist’s conclusions.

Therefore, this office finds that there was data to support identification of the student with a TBI under the IDEA, in accordance with 34 CFR §300.8, and does not find that a violation occurred with respect to the allegation.

Allegation #4 Addressing the Student’s Safety Needs

In this case, the complainant alleges that the student has been “hit, threatened and bullied” by peers at both [REDACTED] Elementary School and [REDACTED] Elementary School and that the staff at these schools have been unresponsive to the parents’ requests for assistance to address the student’s “adjustment difficulties.”

Based on the Findings of Facts #12, #13, #16, #17, and #18, the MSDE finds that the parent’s concern about the student’s safety was addressed at the May 30, 2019 IEP team meeting through the determination of behavioral supports for the student and at the June 27, 2019 IEP team meeting through the addition of behavior supports and a change in educational placement, in accordance with 34 CFR §300.324.

However, based on the Findings of Facts #19, and #23, the MSDE finds that when these additional supports were not successful, there was a delay in addressing the matter from October 9, 2019 until January 9, 2020, in accordance with 34 CFR §300.324. Therefore, this office finds a violation with respect to this allegation for this time period.

Allegation #5 Addressing the Student’s Occupational Therapy Needs

In this case, the complainant alleges that the IEP team was required to consider whether the student requires occupational therapy services at school because an occupational therapist

discussed with the parent how she could investigate obtaining private services through her health insurance.

Based on the Finding of Fact #2, the MSDE finds that there is no documentation that the student demonstrates fine motor skills needs at school that require the provision of occupational therapy services. Therefore, this office finds that the IEP team was not required to consider this service, in accordance with 34 CFR §300.324, and does not find that a violation occurred with respect to the allegation.

Allegation #6 Implementation of Home/School Communication

Based on the Finding of Fact #14, the MSDE finds that there is no documentation that the parents were provided with the home/school communication as required by the IEP since May 30, 2019 through January 2020, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #7 Implementation of the Behavior Intervention Plan

Based on the Findings of Facts #13, #17, and #19, the MSDE finds that the PGCPS did not ensure that the BIP was implemented since May 30, 2019, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #8 Provision of Special Education Instruction by a Special Education Teacher

Based on the Findings of Facts #15 and #20, MSDE finds that the PGCPS did not ensure that special education instruction was provided by a special education teacher, as required by the IEP, from the start of the 2019-2020 school year through January 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #9 Provision of PWN for October 2019 IEP Team Meeting

Based on the Finding of Fact #19, the MSDE finds there is no documentation that the PGCPS proposed or refused to initiate or change the identification, evaluation, or educational placement or provision of a Free Appropriate Public Education (FAPE) to the student on October 9, 2019, and thus, no PWN was required, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #10 Request for Student's Record

Based on the Finding of Fact #21, MSDE finds that the PGCPS provided access to the student's records within required timelines, in accordance with 34 CFR §§300.613. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #11 Special Education Teacher Attendance at the IEP Team

Based on the Finding of Fact #22, MSDE finds that there is no documentation that the PGCPS held an IEP team meeting on December 19, 2019 and thus the requirements of 34 CFR §§300.321 do not apply. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Finding of Fact #24, MSDE finds that there is no documentation that there was a special education teacher or special education provider of the student who had knowledge of the student at the January 9, 2020 IEP team meeting, in accordance with 34 CFR §§300.321. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established a reasonable timeframe below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the timeframes below may not be met, or if either party seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the PGCPS to provide documentation that the IEP team, which includes the required participants, has reviewed the January 2020 educational placement decision, and determined whether it remains appropriate, or whether a change in educational placement is

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

required. The IEP team must also determine the compensatory services or other remedy for the violations identified through this investigation.

School-Based – [REDACTED]

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that the PGCPS staff comply with the following requirements:

- a. Students in prekindergarten, kindergarten, first (1st), or second (2nd) grade are not to be disciplinarily removed from school unless school administration, in consultation with a school psychologist or other mental health professional, determines that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports.
- b. Parents are to be provided with accessible copies of documents to be discussed at an IEP team meeting at least five (5) business days before the meeting.
- c. IEPs are to be revised to address each student's needs without delay.
- d. IEPs, including the BIPs, are to be implemented consistently.

School-Based - [REDACTED]

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that the [REDACTED] staff comply with the following requirements:

- a. IEPs, including the BIPs, are to be implemented consistently.
- b. IEP teams are to include the required participants.

Documentation of completion of the corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

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 timeframes reported in this Letter of Findings.


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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
and Special Education Services

MEF/sf

c: Monica Goldson
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