



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

June 8, 2020

Megan Berger, Esq.
Disability Rights Maryland
1500 Union Avenue, Suite 2000
Baltimore, MD 21211

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

RE: [REDACTED]
Reference: #20-119

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 April 10, 2020, the MSDE received a complaint from Megan Berger, Esq., hereafter “the complainant,” on behalf of the above-referenced student and his mother, Mrs. [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 student.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the Individualized Education Program (IEP) has been consistently implemented since April 10, 2019, in accordance with 34 CFR §§300.101 and .323. The complainant specifically alleged the following:
 - a. The student has not consistently been provided with a dedicated aide from April 10, 2019 to June 14, 2019 and since October 17, 2019; and
 - b. The school staff did not collect data on the effectiveness of the Behavioral Intervention Plan (BIP) from April 10, 2019 until December 2, 2019.

2. The PGCPS has not ensured that the IEP has addressed the student's social, emotional, behavioral needs, that the IEP has been reviewed no less than annually, and that the IEP has been revised to address lack of progress since April 10, 2019, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is nine (9) years old and is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder. He has an IEP that requires the provision of special education and related services.

The student attended [REDACTED] School until the March 16, 2020 closure of all schools, as a result of the national COVID-19 pandemic.

ALLEGATION #1 IEP IMPLEMENTATION

FINDINGS OF FACTS:

Provision of a Dedicated Aid

1. Since April 10, 2019, the IEP has required the provision of a dedicated aid to the student on a daily basis. In clarifying this supplementary support, the IEP states that the student "will have [a] dedicated aid with him in the general education classroom and specials to assist with social/emotional, behavioral, and academic difficulties."
2. There is no documentation of the provision of a dedicated aid from April 10, 2019 to June 14, 2019.
3. On November 6, 2019, the complainant sent an email to the school system staff expressing concern that the student has not had the support of a dedicated aid for three (3) weeks, and asking how this issue would be resolved.
4. On November 19, 2019, the IEP team met and documented that the staff hired at the start of the 2019 - 2020 school year to provide the student with daily additional adult support had resigned, and that the school staff were having difficulty finding a replacement. The school staff agreed to provide a schedule of adult coverage for the student while attempting to hire a replacement. In addition, the IEP team agreed to meet with the Central Office staff to explore the possibility of additional resources.
5. The Prior Written Notice (PWN) of the February 20, 2020 IEP meeting documents that the team again discussed that the staff hired at the start of the 2019 - 2020 school year to support the student throughout the day had resigned in mid-November 2019. The school staff reported that, following the resignation, "multiple staff members" have provided adult support to assist the student. However, there is no documentation of who has been assigned to perform this service or that that these staff members were informed of their responsibilities. There is also no documentation of efforts to fill the vacant position to

provide the student with a dedicated aide.

BIP Data Collection

6. Since April 10, 2019, the student's IEP has required a BIP that targets the two (2) interfering behaviors of leaving the classroom without permission and not completing class assignments.
7. For each of the target behaviors, the BIP has required daily data collection, specifically through either interval/class recording or frequency data, in order to monitor the effectiveness of the BIP supports.
8. There is no documentation of the data collection required by the BIP.

CONCLUSIONS:

Based on the Findings of Facts #1 - #5, the MSDE finds that, while the IEP requires that the student receive daily support from a dedicated aide, there is no documentation that the student was provided with a dedicated aide from April 10, 2019 to June 14, 2019, and since mid-November 2019, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #6 and #7, the MSDE finds that the BIP required specific data collection using daily interval/class recordings or frequency data. However, based on the Finding of Fact #8, the MSDE finds that there is no documentation of the data collection that was required by the BIP from April 10, 2019 to December 2019, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation with respect to this aspect of the allegation.

ALLEGATION #2 IEP DEVELOPMENT

FINDINGS OF FACTS:

9. The IEP in effect on April 10, 2019 was developed on March 7, 2019.
10. The March 2019 IEP identifies that the student's disability affects his behavior in the areas of self-management, social interaction skills, and social emotional skills. The IEP includes the following specific information about his behavioral functioning:
 - He exhibits "patterns of aggressive and disruptive behavior in the classroom," and behaviors in the "clinically significant" range that include hyperactivity, aggression, conduct problems, depression and atypicality.
 - He has difficulty with verbally expressing his feelings, and will "shut down or internalize" when he doesn't know what to say. He also may become "selectively

mute” when he is unable to manage his feelings, even with cue cards to help him express his emotions and feelings.

- He has difficulty with self-regulation, focusing his attention on one thing and ignoring distractions, monitoring his impulse control, and is disorganized
- He has difficulty with using appropriate verbal and non-verbal communication to initiate, engage in, and maintain social interaction with peers and adults, and with providing appropriate emotional responses to social situations. In addition, he has difficulty with focus and attention.
- He demonstrates externalization of problems and depression that fall in the “clinically significant” range, and his internalization of problems falls in the “at risk” range.
- His teacher reports that he displays “anxiety-based behaviors,” is “withdrawn, pessimistic, and/or sad in the school setting,” and “generally seems disconnected from his surroundings.” She also reports that he has “extreme difficulty” with responding to changes, and difficulty maintaining necessary levels of attention and with comprehending and completing schoolwork. In addition, he has difficulty with decision making, has “weak” study skills, and is “poorly” organized. His teacher further reports that he has difficulty making friends, is “generally alone,” is unwilling to join group activities, and that his receptive and expressive language skills are “poor.”

11. The IEP reflects that a Functional Behavior Assessment (FBA) was conducted on October 10, 2018. The FBA states that the student has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and a “Conduct Disorder,” and receives weekly therapy to develop coping skills. The FBA includes the report of the student’s mother that the student has difficulty with attention, hides his feelings, “overreacts” when encountering a problem, and gets “frustrated” when doing school work and “confused” when he does not know what to do.
12. The FBA identifies leaving the classroom without permission and not completing class assignments as the behaviors of concern. The FBA identifies that the functions of both behaviors are to obtain adult attention and access to/use of an activity, object or event, and to avoid or escape participating in/using an activity, object or event.¹
13. The IEP also reflects that the student has a BIP that was developed on December 13, 2018 to address the target behaviors of leaving the classroom without permission and not completing class assignments.
14. The BIP preventative strategies include allowing the student to select a classmate to complete classwork together, providing structure for all academic activities, establishing

¹ The FBA is based on a review of the student’s educational record including an educational and psychological assessment, anecdotal reports of behavior incidents, interviews with a parent, the student and school staff, and a behavior rating scale, and data obtained over approximately five (5) weeks.

- classroom rules and reinforcing the rules often, keeping a chart for the student to tally the assignments that he completes each day, and offering rewards.
15. The BIP teaching strategies include explaining to the student that it's acceptable to want a break but not appropriate to leave the classroom due to safety, teaching him to retreat to a safe place in the classroom instead of leaving the classroom and teaching him to ask questions about what he does not understand.
 16. The BIP response strategies include reminding the student about a safe place in the classroom as an alternative to leaving the classroom, and reminding him that he can draw or engage in another activity while waiting for a teacher to come help him if he cannot get the teacher's attention right away.
 17. The BIP also includes short term 4 – 6 weeks replacement behavior goals for the student to retreat to a safe place instead of leaving the classroom 80% of the time, and to complete his class assignments 80% of the time. The long term goals require the student to perform the replacement behaviors 100% of the time.
 18. The IEP includes several accommodations and supplementary supports, such as small group instruction, frequent breaks, reduced distractions, repetition of directions, monitoring independent work, frequent and immediate feedback, checks for understanding, use of emotion cards, social skills training, and the use of positive/concrete reinforcers.
 19. The IEP also requires that the student receive daily support from a dedicated aid in the general education classroom and specials "to assist with social/emotional, behavioral, and academic difficulties."
 20. The IEP includes the following three (3) goals that were expected to be achieved by January 6, 2020:
 - "Given directions for a familiar task, after the teacher repeats the directions and checks for understanding and/or required materials, [the student] will start the task within (1 minute) and remain on task until completion with no more than (2) verbal prompts from the teacher for (4 out of 5) familiar tasks."
 - "After making a decision that impacts the learning environment and is acknowledged by the teacher, administrator or support staff, when asked to identify the emotion that led to the decision, [the student] will verbalize the emotion that led to the decision, for (4 out of 5 trials) verbally or by use of emotions chart, band, etc."
 - "During a moment of frustration, and when offered a pre-taught calming strategy by a teacher, with the use of a prop such as counting, deep breathing and option to move to an alternate space such as a calming space or safe place, [the student] will use the calming strategy within (1 minute), with no more than (2) verbal or gestural teacher prompts, for (4 out of 5) moments of frustration."

21. The IEP requires two and one half (2.5) hours of specialized instruction per week in a general education classroom for behavioral support. Counseling services once a week are also required by the IEP.

May 2019

22. On May 2, 2019, the student was disciplinarily removed from school due to “continuous classroom disruption, [and] physical aggression.” He received a two (2) day suspension.
23. On May 29, 2019, the school staff developed progress reports documenting that the student was not making sufficient progress on the IEP goals.

June 2019

24. On June 12, 2019, the student was disciplinarily removed from school due to “disruption, physical attack on adult(s), [and] unauthorized use of electronic device.” He received a two (2) day suspension.
25. On June 12 and 26, 2019, the IEP team convened and discussed the student’s lack of progress on the IEP goals and objectives, and that he “is not producing any work according to his teachers.” The IEP team determined that the student is eligible for ESY services. They documented that the student is not demonstrating a degree of progress toward mastery of IEP goals related to critical life skills, and that he is demonstrating “severe interfering behaviors throughout the day that prevent him from accessing the general education curriculum.”
26. The IEP team discussed an observation of the student that was conducted on May 30, 2019 by an itinerant crisis resource teacher (behavior consultant) from the Central Office staff. The observation lasted almost two (2) hours, during which the student left the classroom without permission to go to the main office. He also was sent to the main office following a refusal to comply with a teacher directive. In each case, the student sat in a chair until asked if he is ready to return to class or directed to return to class. The behavior specialist documented that the total time that the student was in the office, which he labeled as “exclusion,” was one (1) hour and five (5) minutes.
27. The report of the behavior specialist states that the student “appears to be resistant” to academic demands and expectations, and includes the report of the school team that “he’s missing, on average, over 50% of his instructional opportunities.”
28. The behavior specialist questioned the function of the student’s behaviors, noting his belief that the function may be “more of an avoidance/escape from adult attention,” and recommended having the student’s additional adult support be provided by a “preferred” adult. The behavior specialist also made other recommendations, including conducting a speech/language assessment of the student’s pragmatic and expressive language skills, using a timer with auditory/visual features for managing “timeouts,” setting limits, and

guiding the student back to instruction, and using reinforcement items with limits so that the student is clearly made aware of expectations.

29. The IEP team did not adopt the recommendations of the behavior specialist. However, there is no documentation of the basis for the team's decision.
30. The parents expressed their belief that the "FBA/BIP appear to be ineffective" and requested that the FBA/BIP be revised with the expertise of a Board-Certified Behavior Analyst (BCBA). The IEP team agreed to review and revise the FBA/BIP, but decided to have the participation of a psychologist.

August 2019

31. On August 23, 2019, the IEP team convened and revised the BIP with the participation of a psychologist. Additional preventative strategies were added, including a daily behavior chart that allows the student to be able to earn rewards and can be shared with the parent, an adult for the student to check in and out with each day, daily review and modeling of calming strategies, and noncontingent breaks every 15-20 minutes not to exceed one (1) minute. The BIP teaching strategies were also revised, and include teaching, modeling, encouraging and reinforcing the student for using calming and problem-solving skills as well as coping strategies, and setting a daily goal to improve completion of work. Further, the BIP response strategies were revised to allow the student to use his check in/out person, use safe places outside of the classroom, and to put his head down at his desk for a break.

November 2019 – December 2019

32. On November 19, 2019, the IEP team convened and discussed that there had been a continued increase in the student's interfering behaviors; he does not complete work, and is not making progress despite prompts to engage him in instruction. The PWN of the meeting documents the team's discussion that the student's "elopement" and work refusal "continue to negatively impact" his performance across settings.
33. The IEP team revised the IEP to include a new supplementary support requiring a quarterly consult by an occupational therapist with teachers and the IEP team to identify and implement strategies that promote greater self-management skills in an effort to increase the student's focus and attention at school.
34. The IEP team agreed to reconvene an IEP meeting with the participation of Central Office staff (CIEP) to discuss the availability of other resources to support the student.
35. On December 18, 2019, the student was disciplinarily removed from school due to "making threats against a student." He received a three (3) day suspension.

February 2020

36. On February 27, 2020, the student was disciplinarily removed from school due to an “attack on a student.” He received a two (2) day suspension.
37. On February 20, 2020, the CIEP team convened and conducted the annual review of the student’s program. The CIEP team discussed that the student was still not completing assignments and was continuing to “elope” from class, and that his behaviors were continuing to have a negative impact on his performance.
38. The CIEP team updated the present levels of performance in all areas of behavior and made revisions to all of the IEP goals.
39. The CIEP team determined that the student requires crisis intervention on a daily basis, and revised the IEP to include this as an additional supplementary support.
40. In addition, the CIEP team determined that the student requires therapeutic supports in order to access the general education curriculum. They revised the IEP to require thirty (30) hours of specialized instruction per week in a “private separate day school program.” The parents agreed with the team’s decision to refer the student for admission to the Philips School and The Foundation School.
41. On February 28, 2020, the school staff documented that the student was not making sufficient progress on any of the IEP goals.

CONCLUSIONS:

In this case, the complainant alleges that the IEP in effect since April 10, 2019 has not addressed the student’s social, emotional, and behavioral needs. The complainant alleges that the PGCPS did not ensure that data was obtained to ensure the effectiveness of the BIP until December 2, 2019. The complainant also alleges that when the student did not make progress, the PGCPS did not ensure that the BIP was revised based on data about the function of the behavior to effectively address the lack of progress. The complainant further alleges that the PGCPS did not ensure that the IEP was reviewed at least annually.

Based on the Findings of Facts #9 - #21 and #37, the MSDE finds that the IEP and BIP in effect on April 10, 2019 were designed to address the student’s identified social, emotional, and behavioral needs and that the IEP was reviewed annually, in accordance with 34 CFR §300.324.

However, as stated in the conclusion of Allegation #1, the MSDE finds that the PGCPS did not ensure that the effectiveness of the BIP was appropriately monitored until December 2019.

Based on the Findings of Facts #22 - #41, the MSDE finds that, since the May 2019 reports that the student has not made sufficient progress with the supports required by the IEP and BIP, the IEP team has met and added supports and strategies to address the student’s continuing interfering behavior, in accordance with 34 CFR §300.324.

However, based on the Findings of Facts #24 - #30, the MSDE finds that the IEP team did not obtain data to determine the function of the student's continued behavioral problems consistent with the recommendation of the behavior specialist in June 2019, or provide the additional supports that the behavior specialist recommended, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred since May 2019.

CORRECTIVE ACTION/TIMELINE:

Student-Specific

The MSDE requires the PGCPS to provide documentation that the IEP team has again considered the recommendations made by the behavior specialist in June 2019, and made decisions consistent with those recommendations, or documents the basis for rejecting them and the data relied upon to do so.

The MSDE further requires the PGCPS to provide documentation that the IEP team has determined the amount and nature of compensatory services or other remedy for the violations identified in this letter.

The MSDE also requires the PGCPS to provide documentation that after each quarter of the 2020-2021 school year, the IEP team, has considered the student's progress based on the data required by the IEP and BIP, and reviewed and revised the IEP and BIP consistent with that progress data. The MSDE also requires the [REDACTED] School staff to participate in the IEP team meeting held after the first (1st) quarter of the 2020-2021 school year.

School-Based

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that the [REDACTED] School staff follow an established procedure for conducting and implementing BIPs consistent with COMAR 13A.08.04.02. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do 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 Early Intervention and Special Education 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.

Megan Berger, Esq.
Ms. Trinell Bowman
June 8, 2020
Page 10

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 parents 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 Free Appropriate Public Education (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/ksa

c: Monica Goldson
Gwen Mason
Trinell Bowman
Barbara VanDyke
[REDACTED]
Gail Viens
Jeffrey Krew
Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum