



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

June 10, 2020

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Public Justice Center
1 North Charles Street, Suite 200
Baltimore, Maryland 21201

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

RE: [REDACTED]
Reference: #20-120

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 13, 2020, the MSDE received a complaint from Monisha Cherayil, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and her mother, Ms. [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 Individualized Education Program (IEP) addressed the student’s identified behavioral and social/emotional needs from September 3, 2019 to January 22, 2020, in accordance with 34 CFR §300.324.
2. The PGCPS has not ensured maintenance of the education record with respect to disciplinary removals during the 2019-2020 school year, in accordance with 34 CFR §300.229, COMAR 13A.08.02.28, and the *Maryland Student Records System Manual*.

3. The PGCPS did not provide a copy of the IEP document within five (5) business days after the IEP team meeting held on January 22, 2020, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
4. The PGCPS has not ensured that the decisions made by the IEP team to revise the Behavioral Intervention Plan (BIP) on January 22, 2020, have been implemented, in accordance with 34 CFR §§300.101 and .323.

Exceptional Circumstance Timeline Extension

While the IDEA requires that complaint investigations be completed within sixty (60) days of receipt of the State complaint, it permits an extension of the timeline if exceptional circumstances exist with respect to a particular complaint.

In this case, the MSDE has determined that exceptional circumstances exist with respect to Allegation #4, which require the extension of the timelines for completion of this Allegation. Specifically, the PGCPS has indicated that documentation exists to demonstrate compliance with the requirements related to Allegation #4, but that the school system does not currently have access to the documentation due to the closure of schools in response to the COVID-19 outbreak.

Therefore, the timelines for completion of Allegation #4 are being extended to thirty (30) days after the reopening of schools within the PGCPS. Because there is sufficient documentation to complete the investigation of the remaining allegations, this report contains the results of the investigation into those allegations. A separate Letter of Findings addressing Allegation #4 will be issued within thirty (30) days after the reopening of schools within the PGCPS.

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with an Intellectual Disability under the IDEA. She has an IEP that requires the provision of special education instruction.

During the 2019-2020 school year, she attended the [REDACTED] School, until the March 16, 2020 Statewide closure of all schools, as the result of the national COVID-19 pandemic.

ALLEGATIONS #1 AND #2

ADDRESSING SOCIAL, EMOTIONAL, BEHAVIORAL NEEDS FROM SEPTEMBER 3, 2019 TO JANUARY 22, 2020 AND RECORDS MAINTENANCE

Finding of Facts:

1. The BIP in effect on September 3, 2019 was developed on January 30, 2019. At that time, the student was identified with behavioral needs arising from defiance,

aggressiveness, stealing, and eloping from the classroom or from the groups of students with whom she was supposed to be working. These identified behaviors were consistent with a Functional Behavioral Assessment (FBA) that had been conducted. The FBA was developed by reviewing assessment data, including behavior rating scales, conducting interviews with the student, her parent and teachers, and reviewing behavior checklists which outlined the antecedents, behaviors and consequences.

2. The FBA identified target behaviors, antecedents for the behaviors, and the function of those behaviors are as follows:
 1. Defiance and Stealing: The student demonstrates these behaviors, usually during transitions when she is not being monitored, or when she is requested to perform a nonpreferred task in order to avoid adult attention, peer attention and sensory stimulation.
 2. Aggression: The student demonstrates this behavior when she wants her own way, usually when she is tired or talked about by peers, in order to obtain and/or avoid adult attention, accessing a desired object, participating in a desired activity or event, and sensory input. The kinds of rewards she receives, types of peer interactions and length of activities in class also impact the student's behaviors.
 3. Defiance and Eloping: The student elopes from the class or group when she refuses to listen to instructions during transition in order to obtain and/or avoid adult attention, peer attention, access to a desired object, participating in an activity or event and sensory input.
4. The FBA states that verbal praise for good behavior was used as a prevention strategy for all three behaviors, but that this had not been successful. The FBA states that explaining consequences, withholding rewards, redirection and close supervision were response strategies that had also been used, but had not been successful.
5. The FBA contains a recommendation for new prevention and response strategies, as follows:
 1. Defiance and Stealing: Classroom rules would be reviewed and discussed with the student. Positive Behavior Intervention and Supports (PBIS) observed by the School System should be implemented in the class. Rewards (computer time) should be emphasized and implemented. Additionally, visual presentation and verbal prompts on the importance of following instructions should be emphasized.

2. Aggression: Provide the student with positive reinforcement of appropriate behavior and keeping her hands to herself would be stressed. Additionally, visual cues and verbal prompts would be provided for the student to observe the average distance of personal space.
3. Defiance and Eloping: The student would be asked to verbalize the importance of following directions, staying and remaining with the group or class for safety.
5. The team updated the BIP that targets the behaviors identified above.
6. The BIP includes the following prevention strategies to address the functions served by the problem behavior: verbal praise, positive reinforcement, planned ignoring, proximity control, “interest boosting”, focusing on the desired behavior, promoting the use of replacement behavior, “high-fives”, group activity choices and determining healthier snack choices.
7. The BIP includes the following response strategies: staff will watch and supervise closely for stealing of items, have other students move away, contact administration, provide redirection and reinforce desired behavior.
8. The BIP required that data be collected on an hourly basis to monitor the effectiveness of the strategies through behavior charts and work samples. However, there is no evidence that data was collected as required by the BIP.
9. In addition to the BIP, the IEP includes goals for the student to improve peer interactions and reduce aggression and elopement. The IEP required the provision of special education instruction and related counseling services to assist her with achieving the goals. It also included supports such as redirection, small group instruction, frequent breaks and reduced distractions.
10. There is documentation that the school staff made arrangements for the parent to keep the student home from school for one (1) day following a behavior incident that occurred on September 20, 2019. However, the school staff did not document this as a disciplinary removal from school.
11. On September 26, 2019, the student was disciplinarily removed from school for two (2) days for aggressive behavior towards school staff.
12. On October 31, 2019, the student was disciplinarily removed from the bus for five (5) days for a behavioral incident that occurred on the bus, and there is no documentation that she was able to access instruction on those days. However, the school staff did not document this as a disciplinary removal from school.
13. On November 8, 2019, the school system issued a report stating that the student was not making sufficient progress to achieve the goal to improve social, emotional, behavioral

functioning. However, there is no documentation that the IEP team convened to address the lack of expected progress until January 22, 2020, following the complainant's request.

14. At the January 22, 2020 IEP team meeting, the complainant expressed concern that the student's behavior was resulting in disciplinary removals from school and that not all of the removals were being documented. The team documented its discussion that any future early dismissals from school or removals from the bus for behavior would be documented as disciplinary removals, and that to date, the student had been disciplinarily removed from school for nine (9) days during the 2019-2020 school year.
15. The team also revised the BIP at the January 22, 2020 IEP team meeting, pursuant to the parent's concerns regarding discipline. The revised BIP, sent to the parent on March 19, 2020, indicated that the trigger conditions occurred when the student focuses on what she wants to do rather than required tasks, when there is no adult supervision, when she is near someone with snacks, when school staff raise their voice, and when people laugh at her. The resulting behaviors include elopement, stealing, physical aggressiveness, and excessive crying and screaming.
16. The revised BIP contains some of the same prevention strategies including verbal praise, positive reinforcement, planned ignoring, proximity control, "interest boosting", focusing on desired behaviors, and promoting the use of appropriate behaviors. In addition, the staff would provide the student with regularly scheduled snack breaks in order to prevent food-related inappropriate behaviors.
17. The revised BIP contains response strategies that include redirection and speaking to the student in a calm voice during incidents of defiance and noncompliance.
18. The Prior Written Notice (PWN) from the IEP team meeting on January 22, 2020 reflects that the IEP team made decisions about where the student will eat lunch, the use of positive incentives to be provided during transportation, and the sharing of the daily spreadsheet that contains behavior questions or concerns with the parent.

DISCUSSION/CONCLUSIONS:

Allegation #1 Addressing the student's identified behavioral and social/emotional needs from September 3, 2019 to January 22, 2020

In this case, the complainant alleges that the PGCPs did not properly develop and use an FBA and BIP to address the student's behavior and instead relied on "ineffective interventions or exclusionary discipline." Based on the Findings of Facts #1 - #9, #13, and #15 - #18, the MSDE finds that the data does not support the allegation.

However, the complainant also alleges that the PGCPs did not monitor the student's progress with the provision of the BIP supports to ensure that it remained appropriate, and based on the

Findings of Facts #8 and #13, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Allegation #2: Maintenance of the education record

The complainant alleges that the student's parent was asked to keep the student home from school and was not permitted to ride the bus in order to access instruction due to behavior, but that these actions were not documented as disciplinary removals.

Based on the Findings of Facts #10 - #12, the MSDE finds that the PGCPS did not ensure that disciplinary removals of the student were documented, in accordance with 34 CFR §300.229, COMAR 13A.08.02.28, and the *Maryland Student Records System Manual*, and that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Findings of Facts #14, the MSDE finds that the IEP team convened and addressed the violation, and that the student's removal did not constitute a change in educational placement requiring the provision of the IDEA disciplinary protections. Therefore, no corrective action is required.

ALLEGATION #3 PROVISION OF IEP AND BIP

Findings of Facts:

19. There is no documentation that the parent was provided with the IEP and BIP revised on January 22, 2020 within five (5) business days of the IEP team meeting.

DISCUSSION/CONCLUSIONS:

Based on the Finding of Fact #19, the MSDE finds that the PGCPS did not ensure that the parent was provided with the IEP and BIP revised on January 22, 2020 within required timelines, in accordance with COMAR 13A.05.01. Therefore, this office finds that a violation occurred.

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 below¹ This office will follow

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.

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 the timeframe below may not be met, or if any of the parties 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 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 that the PGCPS provide documentation that the IEP team has determined the compensatory services or other remedy for the violations identified through this investigation.

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 monitoring BIPs to ensure continued effectiveness, 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.

The MSDE also requires the PGCPS to provide documentation of the steps taken to ensure that the [REDACTED] School staff provide parents with an accessible copy of the completed IEP, not later than five (5) business days after the scheduled IEP team meeting, consistent with 34 CFR §300.322 and COMAR 13A.05.01.07.

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.

² The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.


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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 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 Early Intervention/Special Education Services

MEF:dee

c: Monica Goldson
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