



August 11, 2017

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

RE: XXXXX  
Reference: #17-138

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 May 8, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX hereafter, "the complainant," on behalf of her 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 above-referenced student.

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that the student's Individualized Education Program (IEP) included positive behavioral interventions and strategies to address the student's interfering behaviors, since the start of the 2016-2017 school year, in accordance with 34 CFR §300.324;
2. The PGCPS did not ensure that the student was provided with the opportunity to participate in community field trips, as required by the IEP since the start of the 2016-2017 school year, in accordance with 34 CFR §§ 300.101; and .323;

XXX

Ms. Trinell Bowman

August 11, 2017

Page 2

3. The PGCPS did not follow proper procedures when using physical restraint with the student during transport from the classroom and while being transported on the school bus, in accordance with COMAR 13A.08.04.05;
4. The PGCPS did not ensure that the student was provided with the occupational therapy and speech/language services in the placement required by the IEP since the start of the 2016-2017 school year, in accordance with 34 CFR §§300.101 and .323;
5. The PGCPS did not provide the student with the use of the communication device required by the IEP between December 1, 2016 and March 17, 2017, in accordance with 34 CFR §300.101;
6. The PGCPS did not ensure that the student was consistently provided with the feeding protocol required by the IEP since the start of the 2016-2017 school year, in accordance with 34 CFR §300.101;
7. The PGCPS did not follow proper procedures in responding to a request for a reevaluation on January 24, 2017, in accordance with 34 CFR §§300.303 - .311 and .503; and
8. The PGCPS did not ensure that the student was provided with the services required by the IEP since March 17, 2017, in accordance with 34 CFR § 300.101.

**BACKGROUND:**

The student is ten years old. He is identified as a student with Multiple Disabilities under the IDEA, due to Autism, an Intellectual Disability and an Other Health Impairment related to an Attention Deficit Hyperactivity Disorder, and has an IEP that requires the provision of special education and related services.

On July 24, 2017, the student was placed by the PGCPS at XXXXXXXXXXXXX, a nonpublic separate special education school in Rockville, Maryland. Previously, the PGCPS placed him at the XXXXXX, a nonpublic, separate special education school.

**ALLEGATIONS #1 - #3      ADDRESSING INTERFERING BEHAVIORS WITH  
POSITIVE BEHAVIORAL INTERVENTIONS,  
PARTICIPATION IN COMMUNITY FIELD TRIPS, AND  
PROPER PROCEDURES WHEN USING RESTRAINT  
DURING TRANSPORTATION AND AT SCHOOL**

**FINDINGS OF FACTS:**

1. There is documentation that the student's IEP, in effect at the start of the 2016-2017 school year included positive behavioral interventions and that the IEP team reviewed

XXX

Ms. Trinell Bowman

August 11, 2017

Page 3

the student's progress with those interventions and revised the IEP based on the data at IEP team meetings held on September 1, 2016, October 4, 2016, November 10, 2016, January 24, 2017, March 17, 2017, February 2, 2017, March 17, 2017 and April 10, 2017.

2. The IEP states that the student can participate in nonacademic and extracurricular activities, specifically, community referenced instruction through community trips. On September 1, 2016, the IEP team decided to delay the student's participation in community field trips for a period of 30 to 60 days for observation of behaviors and until he had safely transitioned into the new school.
3. On March 17, 2017, the IEP team discussed that the student's behavior was not safe enough to participate in community trips based on the data collected about his behavior so far during the 2016-2017 school year.
4. The student was physically restrained 23 times while enrolled at the XXXXXXXX. The documentation of the incidents do not describe behavior that indicated that the student was in imminent danger of seriously physically injuring himself or others, and there is no documentation that other less intrusive, non physical interventions were deemed appropriate.

#### **DISCUSSION/CONCLUSIONS:**

##### **Allegation #1: Positive Behavioral Interventions to Address Interfering Behaviors Since the Start of the 2016-2017 School Year**

Based on the Finding of Fact #1, the MSDE finds that the PGCPS has ensured that the IEP includes positive behavioral interventions to address the student's interfering behavior, and that the IEP team continues to monitor the student's progress with the provision of those interventions, as required by 34 CFR §300.324. Therefore, no violation is found with respect to this allegation.

##### **Allegation #2: Participation in Community Field Trips Since the Start of the 2016-2017 School Year**

Based on the Findings of Facts #2 and #3, the MSDE finds that the IEP team has decided that the student cannot safely participate in community field trips. Therefore, there was no requirement to ensure that the student participated in those activities, in accordance with 34 CFR §300.323. Thus, no violation is found with respect to this allegation.

**Allegation #3: Proper Procedures When Using Physical Restraint In School and While Being Transported on the School Bus**

Based on the Finding of Fact #4, the MSDE finds that the BCPS did not ensure that physical restraint was used only when there was imminent danger of serious physical injury and only after less intrusive, non-physical interventions had failed or been determined inappropriate consistent with the data, in accordance with COMAR 13A.08.04.05. Therefore this office finds that a violation occurred with respect to this allegation.

**ALLEGATIONS #4 - #5 PROVISION OF OCCUPATIONAL THERAPY AND SPEECH/LANGUAGE SERVICES AS REQUIRED BY THE IEP AND PROVISION OF THE REQUIRED COMMUNICATION DEVICE**

**FINDINGS OF FACTS:**

5. The IEP in effect since August 24, 2016 states that the student is to receive occupational therapy (OT) three times per month, 30 minutes each session. OT services will address fine motor skill development. Services may be provided inside or outside of the classroom. Services may be delivered in a one to one situation or in a small group. It also requires that the occupational therapist provide consultative services 15 minutes per month for staff training, to include techniques to increase independence with his academic, fine motor and adaptive skills, and an exploration of adaptive equipment.
6. The IEP in effect since August 24, 2016 states that the student is to receive speech/language therapy four times per month, 30 minutes each session. On January 17, 2017, the services delivery were changed to one time per week, for 30 minutes each session. Speech/language therapy will be provided by the speech/language pathologist in collaboration with the entire team of teachers to support the student's acquisition of language skills throughout the school day. Services may be provided individually or in a group via a pull-out or push-in model based on the clinical judgment of the speech/language pathologist.
7. The IEP requires the student use a "dynamic display" speech generating device<sup>1</sup> for communication across all settings of the day. Prior to the 2016-2017 school year, the complainant signed an agreement to keep the "dynamic display" communication device home during the summer of 2016.
8. At an IEP team meeting held on October 4, 2016, the complainant expressed concern that the student's communication device for school had yet to arrive. There is

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<sup>1</sup> The dynamic display speech generating device for the student is the Nova Chat which is designed for individuals with existing or emerging literacy skills and has an English/Spanish option ([www.https://saltillo.com](http://www.https://saltillo.com)).

documentation that the student's device arrived at the school on October 5, 2016.

9. The complainant and the school staff report that the student's communication device was not charged when the complainant requested to see the device on November 10, 2016.
10. At an IEP team meeting held on April 10, 2017, the complainant expressed concern about the need for the student to be able to access a charge cord for the communication device that was kept at home and questioned whether the student was being provided with the communication device as required by the IEP.
11. The related services provider logs indicate that the student was provided speech/language and occupational therapy in individual and varying small groups and with the class group, as required by the IEP.
12. The logs of speech/language services, document the student's use of the assistive technology device within speech therapy, speech classroom activities, and throughout the school day.

#### **DISCUSSION/CONCLUSIONS:**

##### **Allegation #4          Provision of OT and Speech and Language Services as Required by the IEP**

Based on the Findings of Facts #5, #6 and #11, the MSDE finds that there is documentation that the student was provide with the speech/language and occupational therapy services as required by the IEP, in accordance with 34 CFR §300.323. Therefore, the MSDE does not find that a violation has occurred with regard to the allegation.

##### **Allegation #5          Provision of the Communication Device as Required by the IEP**

Based on the Findings of Facts #7-#10 and #12, the MSDE finds that there was a delay in the provision of the communication device at the start of the 2016-2017 school year, the device was inoperable on November 10, 2016. Therefore, this office finds a violation occurred, in accordance with 34 CFR §300.323, with respect to this allegation from August 24, 2016 to October 5, 2016 and November 10, 2016.

##### **ALLEGATION #6          PROVISION OF THE REQUIRED FEEDING PROTOCOL**

#### **FINDINGS OF FACTS:**

13. The IEP in effect since August 24, 2016, states that the student requires a consistent routine at school for mealtimes, including a quiet, familiar and consistent environment outside of the large cafeteria and consistent adult supervision during meal times. The

school staff should document what and how much the student eats during mealtimes to monitor nutritional intake. Prior to the beginning of the 2016-2017 school year, the complainant informed the school staff of “the need for school staff to monitor the student’s food intake and to track his nutritional intake.” The complainant also informed school staff that the student’s intake “is likely to increase if he is allowed to watch a show on television or the *iPad* while eating.”

14. At IEP team meetings held on September 1, 2016, October 4, 2016, November 10, 2016, January 24, 2017, March 17, 2017, February 2, 2017, March 17, 2017 and April 10, 2017, the complainant expressed concerns that the student’s feeding protocol was not being implemented. The school staff informed the complainant that they will continue to implement the student’s feeding protocol as required by the IEP.
15. While there is documentation of daily correspondence between school and home from January 30, 2017 to March 13, 2017, regarding the student’s lunch items, it did not indicate the amount of food and fluid consumed, as required by the IEP.

**DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #13-#15, the MSDE finds that there is no documentation that the student’s feeding protocol was followed as required by the IEP, in accordance with 34 CFR §300.323. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

**ALLEGATION #7                      USE OF PROPER PROCEDURES WHEN A  
REEVALUATION IS REQUESTED BY A PARENT**

**FINDINGS OF FACT:**

16. On January 24, 2017, the complainant expressed concerns about whether the assessments conducted as part of the student’s reevaluation completed on March 18, 2016 were sufficient to identify the student’s needs. The documentation reflects that the school staff reviewed the assessment data with the complainant and the IEP team decided that the assessment data was sufficient.

**DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #16, the MSDE finds that because there was no agreement of the parties to conduct a reevaluation within one year of the previous reevaluation, there was no requirement to ensure that the reevaluation was conducted, in accordance with 34 CFR §300.303. Therefore, no violation is found with respect to this allegation.

**ALLEGATION #8                      PROVISION OF IEP SERVICES REQUIRED SINCE  
MARCH 17, 2017**

**FINDINGS OF FACTS:**

17.     On March 17, 2017, the complainant stopped sending the student to the XXXXXXXXX due to her concern about the use of physical restraint and the lack of implementation of the student's feeding protocol.
18.     On April 10, 2017, the IEP team met and offered to have the complainant assist with the student's feeding protocol and modified schedule. The team decided that the use of physical restraint remained appropriate to address the student's behaviors of spitting and throwing objects but did not document why other less intrusive, non-physical interventions were inappropriate.
19.     On July 24, 2017, the PGCPS began providing compensatory services to address the period of time, from March 18, 2017 until the end of the 2016-2017 school year, when the student was did not attend school.

**DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #17 and #18, the MSDE finds that the student was not made available for the provision of IEP services from March 17, 2017 to the end of the 2016-2017 school year, and thus, the PGCPS was unable to provide those services. Therefore, this office does not find that a violation of 34 CFR §300.323 occurred with respect to this allegation.

However, based on those same Findings of Facts, this office finds that the IEP team's offer to have the complainant provide the IEP services that were not being implemented did not ensure that a Free Appropriate Public Education (FAPE) was offered. Further, proper procedures were not followed when deciding to continue the use of physical restraint. Therefore, this office finds that the PGCPS did not take appropriate steps to ensure that the student was provided with an appropriate IEP in order to address his need to return to school, and that a violation of 34 CFR §300.324 occurred.

Notwithstanding the violation, based on the Finding of Fact #19, the MSDE finds that the PGCPS is providing compensatory services for the time the student did not attend the XXXX XXXXX. Therefore, no student-based corrective action is required to remediate the violation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires that the PGCPS provide documentation, by October 1, 2017, that the IEP team has determined the nature and amount of compensatory services necessary to redress the violations related to the use of physical restraint and the lack of provision of the communication device and the feeding protocol.

The PGCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or to file a due process complaint, in accordance with the IDEA.

**System-Based**

The MSDE requires the PGCPS to provide documentation, by November 1, 2017, of the steps that have been taken to ensure the following with respect to students with disabilities who are placed by the school system at XXXXXXXXXX:

- a. That students are provided with IEP services in accordance with the IEP at no cost to parents; and
- b. That physical restraint is used only when there is imminent danger of serious physical injury and only after less intrusive, non-physical interventions had failed or been determined inappropriate.

In addition, the results of this investigation are being shared with the MSDE's Division of Educator Effectiveness for their use in monitoring compliance of the IDEA and related State requirements by the nonpublic schools.

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

Please be advised that the PGCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they



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Ms. Trinell Bowman

August 11, 2017

Page 9

disagree with the findings of fact 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 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, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant 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 due process.

Sincerely,

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

MEF:sf

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