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January 9, 2018

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

RE: XXXXX
Reference: #18-040

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 November 16, 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 student.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the student’s Behavior Intervention Plan (BIP) has been consistently implemented, as required by the Individualized Education Program (IEP), since the start of the 2017 – 2018 school year, in accordance with 34 CFR §§300.101 and .323.
2. The PGCPS has not ensured that the student has been consistently provided with the amount of counseling services required by the IEP, since the start of the 2017 – 2018 school year, in accordance with 34 CFR §§300.101, and .323.

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3. The PGCPS has not ensured that the IEP team has considered positive behavioral interventions to address the student's interfering behaviors, since the start of the 2017 – 2018 school year, in accordance with 34 CFR §§300.101, .320 and .324.
4. The PGCPS did not ensure that proper procedures were followed when determining that the student's behavior is not a manifestation of his disability, in November 2017, in accordance with 34 CFR §§300.530 and .531.
5. The PGCPS did not ensure that the IEP team conducted a review of the February 2016 IEP at least annually, in accordance with 34 CFR §300.324.
6. The PGCPS did not ensure that IEP team meeting convened since November 2016, had the required participants, in accordance with 34 CFR §300.321.
7. The PGCPS did not ensure that the parent was provided written notice at least ten (10) days in advance of IEP team meetings, since November 2016, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
8. The PGCPS has not ensured that the parent has been provided with Prior Written Notice of the IEP team's decisions at meetings convened since November 2016, in accordance with 34 CFR §300.503.
9. The PGCPS has not ensured that the parent has been provided with quarterly reports of the student's progress towards achieving the annual IEP goals since November 2016, in accordance with 34 CFR §§300.101 and .323.
10. The PGCPS has not ensured that the parent was provided with copies of the procedural safeguards notice since November 2016, in accordance with 34 CFR §300.504.

BACKGROUND:

The student is sixteen (16) years old, is identified as a student with Other Health Impairment under the IDEA, due to Attention Deficit Hyperactivity Disorder (ADHD). He attends XXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education and related services.

ALLEGATION #1

IMPLEMENTATION OF THE BIP SINCE THE START OF THE 2017 - 2018 SCHOOL YEAR

FINDINGS OF FACTS:

1. The BIP identifies the following three (3) target behaviors, and documents that the functions of the student's behaviors are to obtain adult and peer attention, and to avoid or escape adult attention and participation in an activity:

- The student becomes argumentative when redirected;
 - The student becomes combative with peers when “he is upset or faced with adversity;” and
 - The student does not attend class, or elopes from class, when frustrated.
2. The BIP requires that the student receive instruction in coping strategies and strategies to deal with peer conflict, and identifies that, for each behavior, the response strategy by the school staff is a “daily check-in” with the student. It also requires data collection of the student’s behaviors on a daily basis in the form of “permanent products,” such as behavior chart or work sample, and documents that the IEP team will convene on September 25, 2017, to review the effectiveness of the BIP.
 3. The student participates in a separate special education classroom in the “Transition Program” at XXXXXXXXXXXXXXXXXXXX (XXXXXX), described as “a highly structured and supportive educational environment” designed to facilitate student success in order to return to a general education classroom through the use of a behavior management system. The Transition Program also provides counseling services, crisis intervention support, and social skills training.
 4. While the Transition Program in which the student participates is described as providing social skills training, there is no documentation that the student received instruction specifically in coping strategies or strategies to address peer conflict, that the school staff maintained daily data collection of the student’s behaviors targeted by the BIP, or that the student received “daily check-ins,” as required by the BIP.
 5. The IEP team did not convene on September 25, 2017, to review the BIP as scheduled. While documentation indicates that the IEP team reviewed the BIP at the manifestation determination meeting convened on November 14, 2017, there is no documentation that the IEP team considered the effectiveness of the BIP requirements at that meeting, or any time subsequent to that meeting.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #1 - #5, the MSDE finds that there is no documentation of implementation of the student’s BIP since the start of the 2017 - 2018 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation occurred.

ALLEGATION #2

PROVISION OF COUNSELING SERVICES SINCE THE START OF THE 2017 - 2018 SCHOOL YEAR

FINDINGS OF FACTS:

6. The IEP requires that the student receive counseling services 30 minutes per week, which are to be provided by a psychologist, social worker, or guidance counselor. It specifies that the counseling will focus on teaching problem solving skills and training in anger management skills to assist the student with developing positive responses to stressful situations. In addition, it describes that relaxation techniques may be helpful, and that

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periodic practice of the skills may encourage and assist the student to utilize the skills when the need arises.

7. The IEP also states that the counseling services will support the student's understanding of school and classroom behavior expectations and consequences when he does not comply with the expectations.
8. There is no documentation that the student was provided with counseling services, as required by the IEP, before December 2017.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #6 - #8, the MSDE finds that there is no documentation that the student was consistently provided with 30 minutes of counseling services each week, as required by the IEP, until December 2017, in accordance with 34 CFR §§300.101, and .323. Therefore, this office finds that a violation occurred.

ALLEGATION #3

CONSIDERATION OF POSITIVE BEHAVIORAL INTERVENTIONS SINCE THE START OF THE 2017 - 2018 SCHOOL YEAR

FINDINGS OF FACTS:

9. The IEP in effect at the start of the 2017 - 2018 school year states that the student's "weakness[es] in the areas of inattentive behavior, sustaining emotional control, visual spatial skills, verbal comprehension and visual processing tasks cause [him] to have difficulty with completing assignments, sustaining attention and attending to details when completing classwork in all subject skills areas."
10. The IEP also documents the following information about the student:
 - He "thrives on adult attention, verbal praise, and encouragement." He requires "extra" support during transition times.
 - He has "below average" verbal reasoning abilities that are "significantly impacted by his weak vocabulary development."
 - He demonstrates hyperactivity, aggression, and difficulty in "multiple areas of adaptive functioning."
 - He has difficulty complying with established rules of conduct, especially within the school setting. He requires daily organizational support to start the day.
 - He likes to walk around in the classroom, and may exhibit "loud outburst[s]." He will respond best to adults who approach him in a "calm manner," and when he feels that his concerns have been heard.
 - His instructional grade level of performance in reading comprehension ability is approximately three (3) grade levels below his grade level, approximately four (4) grades below his grade level in math calculation, and approximately two (2) grade levels below his grade level in written language expression.

11. The IEP reflects that the student requires a small structured class environment in order to address his social and emotional needs as well as his academics. It notes that he “often demonstrates interfering behaviors” in a large classroom environment. The IEP requires that the student be provided with 29.5 hours of specialized instruction per week, by a special educator, in a separate special education classroom.
12. The IEP includes a goal to address the student’s social and emotional needs. It requires the student to display an appropriate emotional response when presented with a situation that causes him to be anxious or frustrated, by demonstrating his ability to engage in conflict resolution, display active listening to aid in problem solving, and verbalize his feelings during conflict. The IEP also contains two (2) goals in the area of self-management. The first (1st) goal requires the student to independently begin a task within 2-3 minutes, with the use of movement breaks, self-regulation strategies and self-monitoring checklists. The second (2nd) goal requires the student to follow classroom procedures to complete a non-preferred task or independent assignment, or participate in a small-group activity, for 20 minutes without demonstrating task avoidance behaviors.
13. The IEP also requires supplementary supports to address the student’s behavior, including encouragement of positive communication in conversation with the school staff, strategies to initiate and sustain attention, encouragement and positive reinforcement “as often as needed to continuously promote” positive behavior, and implementation of a behavior contract monitored by the school staff. The IEP also includes crisis intervention, which consists of the student’s use of a crisis pass at his selection, and a point and level system of behavior management with increasing privileges to reward appropriate behavior. Each of these supports is required to be provided to the student on a daily basis.
14. There is documentation that, starting the first week of September 2017, the student exhibited behaviors that interfered with his access to instruction. The behaviors continued, with increased frequency and intensity, and resulted in the student’s frequent removals from the classroom as well as disciplinary removals from school.
15. The documentation reflects that, from September 6, 2017 through November 2, 2017, the student refused to attend class, “skipped,” or “cut” class on approximately 14 occasions, and that he had been late to class or “walked out of class” on approximately 9 occasions. He also exhibited disrespect, school disruption, and noncompliance, on numerous occasions during this same time period.
16. The documentation also reflects that the student was disciplinarily removed from school on September 20, 2017, and again on October, 13, 2017, for “school environment disruption.” Each time, the student was suspended for three (3) days.
17. On October 2, 2017, the complainant requested an IEP team meeting. The school staff developed a written invitation notice of an IEP team meeting scheduled on

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October 25, 2017, for the purpose of addressing the complainant's concerns, to conduct a periodic review, and to address the FBA and BIP. There is no documentation that the complainant was provided with written notice of the IEP meeting scheduled on October 25, 2017.

18. The IEP team did not convene on October 25, 2017. There is no documentation that the school staff rescheduled the meeting.
19. On November 3, 2017, the student was suspended for three (3) days due to "disrespect."
20. On November 13, 2017, the student was suspended again, due to a "physical attack on another student." The school staff requested an extended suspension beyond ten (10) days.
21. On November 14, 2017, the IEP team convened to conduct a manifestation determination. The IEP team reviewed the IEP, FBA and BIP. They discussed that, while the student is able to focus and complete assignments when he attends class, he was having difficulty attending class, arriving to class on time, and not disrupting the class during instructional times. The IEP team documented that the student's behaviors "have not change[d] dramatically," and that he continues to exhibit the identified behaviors "throughout the school day." However, the IEP team decided to continue the IEP and BIP without explanation.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #9 - #21, the MSDE finds that the student continues to display interfering behaviors which have increased in frequency and intensity since September 2017. Based on the same Findings of Facts, the MSDE finds that the IEP team's decision that the IEP and BIP remain appropriate, without explanation, is inconsistent with the data, in accordance with 34 CFR §300.324. Therefore, the MSDE finds that a violation occurred.

ALLEGATION #4

PROCEDURES WHEN CONDUCTING A MANIFESTATION DETERMINATION

FINDINGS OF FACTS:

22. On November 9, 2017, the student was involved in a "physical attack on another student." On November 13, 2017, the student was disciplinarily removed from school and the school staff requested an extended suspension beyond ten (10) days.
23. On November 14, 2017, the IEP team convened to determine whether the student's conduct resulting in disciplinary action was a manifestation of his disability.
24. The IEP team determined that the student's behavior was not a manifestation of his disability, documenting that the IEP had been properly implemented and that the behavior was not a direct result of the school's failure to implement the IEP.

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25. There is no documentation that the student was provided with instruction in coping strategies or strategies to address peer conflict, that the school staff maintained daily data collection of the student's behaviors targeted by the BIP, or that the student was provided with "daily check-ins," as required by the BIP.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #1 - #8 and #22 - #25, the MSDE finds that the data does not support the IEP team's decision that the student's IEP was being properly implemented, in accordance with 34 CFR §300.101, .320, and .324. Therefore, this office finds that a violation occurred.

ALLEGATION #5

ANNUAL REVIEW OF THE FEBRUARY 2016 IEP

FINDING OF FACT:

26. The school system staff acknowledge that a violation occurred with respect to the allegation.

DISCUSSION/CONCLUSION:

The MSDE concurs with the PGCPs's conclusion that a violation occurred, in accordance with 34 CFR §300.324, and appreciates the school system's responsiveness.

ALLEGATION #6

IEP TEAM PARTICIPANTS AT MEETINGS CONVENED SINCE NOVEMBER 2016

FINDINGS OF FACTS:

27. The IEP reflects that, in addition to the requirement to provide the student with 29 hours and 35 minutes per week of specialized instruction in a separate special education classroom, the student will receive instruction in a general education classroom for 3 hours and 20 minutes per week.
28. The IEP also includes supplementary supports that are required to be provided to the student on a daily basis. The IEP specifies that several supports are to be provided "across all settings by all teachers," "throughout the day in all settings," and "monitored daily by all teachers in and out of the general education classroom[s]."
29. The Transition Program, in which the student participates, is designed to facilitate student success, with the expectation that students will gradually access increasing amounts of instruction in the general education classroom.
30. The student's schedule indicates that he is assigned to general education classes, and identifies that the primary educators for these classes are general educators.

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31. Since November 2016, the IEP team has convened once, on November 14, 2017.¹
32. The written invitation notice developed by the school staff for the November 14, 2017 IEP team meeting identified specific personnel, with titles, who were expected to attend the meeting. The notice does not indicate that a general education teacher was expected to attend the meeting.
33. The November 14, 2017 IEP team meeting sign-in sheet documents that the following individuals participated in the meeting: the complainant, the student, three (3) special education teachers, an administrator, a pupil personnel worker, a school counselor, a school psychologist, and an IEP chairperson. There is no documentation that a general education teacher was present at the meeting.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #27 - #33, the MSDE finds that the IEP team meeting convened on November 14, 2017, did not include a general education teacher, a required member of the IEP team, in accordance with 34 CFR §300.321. Therefore, this office finds that a violation occurred.

ALLEGATION #7

WRITTEN NOTICE IN ADVANCE OF IEP TEAM MEETINGS SCHEDULED SINCE NOVEMBER 2016

FINDINGS OF FACTS:

34. There is documentation that, on October 12, 2017, the school staff developed a written invitation notice for an IEP team meeting scheduled on October 25, 2017. While there is no documentation that the notice was provided to the complainant, the IEP team did not convene on October 25, 2017.
35. There is documentation that, on November 13, 2017, the school staff developed a written invitation notice for the IEP team manifestation determination meeting that was scheduled and convened on November 14, 2017. While there is no documentation that the notice was provided to the complainant ten (10) days in advance of the meeting, the complainant participated in the meeting.

DISCUSSION/CONCLUSIONS(S):

Based on the Finding of Fact #34, the MSDE finds that, while there is no documentation that the complainant was provided with written notice of an IEP team scheduled on

¹ While an IEP team meeting was scheduled on October 25, 2017, the IEP team did not convene. The school staff and the complainant conducted a parent – teacher conference on October 25, 2017.

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October 25, 2017, at least ten (10) days in advance, the IEP team did not meet on this date. Therefore, this office does not find a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #35, the MSDE finds that there is no documentation that the complainant was provided with ten (10) days advance written notice of the IEP team meeting convened on November 14, 2017. Based on the same Finding of Fact, the MSDE finds that the meeting was convened on an expedited basis in order to address disciplinary matters, and therefore, there was no requirement to provide the complainant with ten (10) days advance written notice, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07. Therefore, this office does not find a violation occurred with respect to this aspect of the allegation.

**ALLEGATION #8 PRIOR WRITTEN NOTICE OF DECISIONS MADE AT IEP
TEAM MEETINGS CONVENED SINCE NOVEMBER 2016**

FINDING OF FACT:

36. The school system staff acknowledge that a violation occurred with respect to the allegation.

DISCUSSION/CONCLUSION:

The MSDE concurs with the PGCPs's conclusion that a violation occurred, in accordance with 34 CFR §300.503, and appreciates the school system's responsiveness.

**ALLEGATION #9 PROVISION OF QUARTERLY IEP PROGRESS
REPORTS SINCE NOVEMBER 2016**

FINDINGS OF FACTS:

37. The IEP requires that reports of the student's progress towards mastery of the annual IEP goals be provided to the complainant on a quarterly basis.
38. There is documentation that, since November 2016, the school staff have developed two (2) reports of the student's progress towards mastery of the IEP goals. Those progress reports were made on April 7, 2017, following the third (3rd) quarter of the 2016 - 2017 school year, and on November 14, 2017, after the 1st quarter of the 2017 - 2018 school year.
39. There is no documentation of reports of the student's progress towards mastery of the IEP goals following the second (2nd) and fourth (4th) quarters of the 2016 - 2017 school year.
40. There is no documentation that the complainant has been provided with any progress reports since November 2016.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #37 - #40, the MSDE finds that the complainant has not been provided with quarterly reports of the student's progress towards achieving the annual IEP goals, as required, since November 2016, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

**ALLEGATION #10 PROVISION OF PROCEDURAL SAFEGUARDS NOTICE
SINCE NOVEMBER 2016**

FINDING OF FACT:

41. The documentation reflects that the complainant was provided the procedural safeguards on April 24, 2017, June 14, 2017, and on November 14, 2017.

DISCUSSION/CONCLUSION:

Based on the Finding of Fact #41, the MSDE finds that, on three (3) occasions since November 2016, the school staff provided the complainant with the procedural safeguards. Therefore, this office does not find a violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the PGCPS to provide documentation by February 15, 2018, that the IEP team has convened, with the complainant and the required members of the IEP team, and taken the following actions:

- a. Determined whether the behavior that resulted in the student's disciplinary removal that began on November 14, 2017 was a manifestation of his disability, consistent with the data;
- b. Reviewed the IEP and BIP, and revised each, as appropriate, to ensure that the IEP appropriately addresses the student's behavioral needs, based on the data; and
- c. Determined the amount and nature of compensatory services or other remedy to be provided to the student to remediate the violations identified in this Letter of Findings, and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

The PGCPS must also provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of the complainant's refusal of such compensatory services or other remedy.

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School-Based

The MSDE requires the PGCPS to provide documentation by March 1, 2018, of the steps it has taken, including staff training, to ensure that the staff at XXXXXXXXXXXXXXXXXXXX properly implement the requirements in the areas of noncompliance identified through this investigation, including the following:

- a. Ensuring that proper procedures are followed when determining whether a behavior resulting in a disciplinary removal of a student is a manifestation of his or her disability;
- b. Ensuring that IEP team decisions are consistent with the data;
- c. Ensuring that the IEP team considers positive behavior interventions to address interfering behaviors;
- d. Ensuring that a review of a student's IEP is conducted at least annually;
- e. Ensuring that the required members of an IEP team participate in each IEP meeting;
- f. Ensuring that the parent is provided with Prior Written Notice of decisions made, and all information considered, at each IEP team meeting; and
- g. Ensuring that reports of a student's mastery towards achievement of the annual IEP goals are provided as required.

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 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 both the complainant and the PGCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts 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.

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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 consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. 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 Special Education/
Early Intervention Services

MEF/ksa

c: Kevin Maxwell
Gwendolyn Mason
Barbara VanDyke
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin
Bonnie Preis