



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

May 22, 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: #18-131

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 March 23, 2018, the MSDE received a complaint from Ms. XXXXXXXX, hereafter “the complainant,” on behalf of 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 Individualized Education Program (IEP) has identified and addressed all of his academic and social, emotional and behavioral needs, whether or not commonly linked to the disability category in which he has been classified, since March 2017, in accordance with 34 CFR §§300.101, .320 and .324.
2. The PGCPS has not ensured that the parent has been provided with reports of the student’s progress towards achievement of the annual IEP goals, since March 2017, in accordance with 34 CFR §§300.101, .320 and .323.

BACKGROUND:

The student is twelve (12) years old and is identified as a student with a Specific Learning Disability (SLD). He has an IEP that requires the provision of special education and related services. He is in the seventh (7th) grade and attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX MS).

ALLEGATION #1 ADDRESSING THE STUDENT’S NEEDS

FINDINGS OF FACTS:

January 31, 2017 IEP

1. At the start of the investigation period, the student was in the sixth (6th) grade and attended XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX ES). The IEP in effect at that time was developed on January 31, 2017. It documents that the student’s SLD affects him in all academic areas.
2. The IEP reflects that the student is functioning three (3) grade levels below his nondisabled peers, at the third (3rd) grade instructional level, in the areas of reading, written language mechanics and written language expression. In the areas of math problem solving and math calculation, he is functioning four (4) grade levels below his nondisabled peers, at the second (2nd) grade instructional level. The IEP includes goals to address each of these identified areas of impact.
3. The IEP states that the student’s SLD “affects his involvement in the general education curriculum. In reading and mathematics, [the student] needs constant monitoring, especially in performing classroom seat work assignments, writing or reciting (using complete sentences) or answering questions orally. [He] finds more successes within a small class size, with a low teacher to student ratio” and when “provided the appropriate modifications and accommodations in order to access the general education curriculum.”
4. The supplementary aids required by the IEP include verbatim reading of tests, informal assessments and classwork, research based math and reading interventions, frequent and immediate feedback, checks for understanding, monitoring of independent work, and repetition of directions, all of which are to be provided daily primarily by a special educator.
5. The IEP states that the student requires “direct specialized instruction and a low teacher to student ratio with the appropriate modifications to the general education curriculum.” It also documents that the student receives small group instruction, as well as one-to-one instruction, in the areas impacted by his disability.

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6. The IEP requires the following specialized instruction: five (5) hours and forty-five (45) minutes per day, in a separate special education classroom, taught primarily by a special educator, and one (1) hour per day, in a general education classroom, taught primarily by a general educator.
7. The IEP explains that the student receives instruction in a “comprehensive special education program [CSEP] with a special education teacher and paraprofessional for the remainder of the 2016 - 2017 school year,” and that “he will receive services in a co-taught environment with a special educator and a general education teacher when he arrives to middle school.”
8. The CSEP class size ranges from five (5) to ten (10) students, and is taught by a special educator with the support of a paraprofessional.

March 31, 2017 IEP

9. On March 31, 2017, the IEP team convened and revised the IEP. The revised IEP reflects that, the student increased his skills in the areas of reading phonemic awareness and reading comprehension to the fourth (4th) grade instructional level, and made some improvement in his written language mechanics and written language skills to the mid-third (3rd) grade instructional level. However, the revised IEP also reflects that the student did not increase his math calculation or problem solving skills which remained at the second (2nd) grade instructional level.
10. The IEP revised by the team at this meeting reflects that the team decided to decrease the daily amount of specialized instruction that the student requires in a separate special education classroom each day, from five (5) hours and forth-five (45) minutes, to three (3) hours and thirty (30) minutes, for the remainder of the 2016 - 2017 school year.
11. The complainant expressed concern about the availability of services and supports in middle school to meet the student’s needs. The Prior Written Notice (PWN) document reflects that the school staff “explained to the parent that as students transition to middle school there are tiered levels of supports within the general education classroom.” They described the three (3) tiers of special education services as the following:
 - (i) special education supports in the general education classroom delivered only by a general educator;
 - (ii) special education supports in the general education classroom delivered by a general educator and a special educator or paraprofessional; and
 - (iii) special education supports in a general education classroom delivered by a general educator and a special educator, but in a reduced class size, referred to as “supported inclusion.”

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12. The IEP was revised to require that, beginning September 6, 2017 when the student transitions to middle school, he will receive five (5) hours and twenty-five (25) minutes per day of specialized instruction in a general education classroom, provided primarily by a special educator, with a general educator as another provider.
13. The IEP team determined that the student “will not be removed from the general education environment in Middle School.” In the section explaining the delivery of services, the IEP describes that the student “will receive all academic instruction and special education supports in a general education environment with a special educator and a general education teacher when he arrives to middle school. He will receive mathematics instruction and special education services in a supported inclusion general education environment with a smaller student teacher ratio.”
14. The IEP team agreed to reconvene at XXXXXXXX MS to conduct a periodic review of the student’s performance in the new setting.

September 2017

15. The student’s schedule reflects that he was placed in science and social studies classes taught by a general educator and a special educator. Both classes included thirty (30) students. The school system staff report that these classes were also supported by a paraprofessional.
16. The student’s schedule also reflects that he was placed in math, English language arts, and reading enrichment classes taught by a special educator. The English language arts and math classes included twelve (12) students, and the reading enrichment class included nine (9) students.
17. The school system staff report that the “supported inclusion” math, English language arts and reading enrichment classes are taught by either a special educator or a general educator, with the support of an instructional assistant, and are considered general education classes because the classes include general education students without disabilities.
18. The school system staff report that the maximum class size for the “supported inclusion” general education classes is twenty (20) students, and thirty (30) students for the general education classes.

December 15, 2017 IEP Team Meeting

19. On December 15, 2017, the IEP team convened at the complainant’s request to conduct a reevaluation.
20. The IEP team recommended an educational assessment and a psychological assessment to obtain additional information about the student’s skill levels, and the complainant provided consent.

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21. The IEP team discussed that, in science and social studies courses, the student was enrolled in a general education classroom taught by a special educator and a general educator, and in math and reading courses, he was enrolled “in general education using the supported inclusion model.” His first (1st) quarter grades included Cs in math, English language arts, reading enrichment, and Spanish classes, a D in social studies and an A in science classes.
22. The IEP team decreased the amount of specialized instruction that the student requires per day to four (4) hours and forty-five (45) minutes. The IEP team did not document the basis for this decision.
23. The IEP team revised the IEP to clarify that the student receives specialized instruction in reading in a “supported inclusion” general education classroom.

January 23 and 29, 2018 IEP Team Meetings

24. On January 23 and 29, 2018, the IEP team convened to review assessment results and conduct the annual review of the student’s IEP.
25. The IEP team documented no improvement in the student’s instructional grade level of performance in reading where he continued to function at the fourth (4th) grade level.
26. In written language mechanics and expression, the IEP team documented an increase in the student’s instructional grade level of performance to fourth (4th) grade, and in math problem solving to the third (3rd) grade instructional level.
27. The IEP team documented no improvement in the student’s instructional grade level of performance in math calculation where he continued to function at the second (2nd) grade level.
28. The results of the educational assessment and psychological assessment were discussed. The report of the educational assessment reflect the following about the student’s performance:
 - He is functioning in the “very low range” in broad math, in the “low range” in broad reading, and in “low average range” in broad written language.
 - His overall level of achievement is “low,” his level of academic knowledge is in the “low range,” and his ability to apply academic skills in in the “low average range.”
 - “He struggles significantly with math reasoning and problem solving.”
29. The results of the psychological assessment document that, while the student’s full scale IQ score indicates that his cognitive functioning is in the “extremely low range,” his

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adaptive functioning is in the “average range” and “commensurate with that of his same-aged, non-disabled peers.” The student’s conceptual, social and practical skill areas were also found to be “average.”

30. The IEP team considered the student’s second (2nd) quarter grades consisting of Cs in math and reading enrichment classes, a B in science, and Ds in Spanish and social studies classes.
31. The IEP team revised the IEP to require several instructional and testing accommodations, including the use of a graphic organizer, spell check device, frequent breaks, reduced distractions, notes and outlines of assignments, math calculation devices, and extended time.
32. The IEP team also added a supplementary aid requiring weekly check-ins with a school counselor or psychologist. The IEP states that the student has an anxiety disorder diagnosis from a private provider, and the check-ins will allow him the opportunity to discuss any concerns he is having.
33. With the exception of the annual goal in the area of written language mechanics, the IEP team did not revise any of the annual IEP goals which were developed a year prior and expected to be achieved by the time of the January 2018 meeting. The IEP team did not document the basis for continuing the goals for another year without revision.
34. The IEP team determined that the student will continue receiving specialized instruction in a general education classroom for science and social studies, and in a smaller “supported inclusion” general education classroom for reading and math. The complainant disagreed with the decision.
35. The complainant expressed her belief that the student requires a more restrictive environment to meet his academic and social and emotional needs that cannot be provided at XXXXXXXXX MS. The PWN documents the complainant’s concern that the team’s decision was based on the availability of “services that can be delivered at SDMS [XXXXXXXXX MS] and not reflective of the services [the student] needs to receive a [Free Appropriate Public Education] FAPE.”
36. The complainant requested an “expedited” observation by school system instructional staff (SEIS), and an IEP meeting with the participation of the Central Office school system staff (CIEP). The school staff submitted a request for consultation by a SEIS.

February 2018 to April 2018

37. There is documentation that, on February 1, 2018, the school staff contacted the complainant regarding the student’s “depressed mood and somewhat withdrawn behavior.”

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38. On February 14, 2018, the student was suspended for five (5) due to “classroom disruption, leaving school grounds, threatening to leave school grounds,[and] disrespect.”
39. On February 27, 2018, the complainant sent an email to the school system staff documenting her continued disagreement with the IEP and belief that it does not reflect the student’s need for a Least Restrictive Environment with a low student-teacher ratio and a “strong social emotional/mental health component combined with differentiated instruction tailored to his learning disabilities.” She also inquired about the SEIS consultation for consideration of a more restrictive placement.
40. There is documentation that on March 9, 2018, the student made statements of suicidal ideation at school.
41. On March 27, 2018, the IEP team convened. The team discussed the observation of the student during Spanish class. The SEIS reported observing the student using profanity, talking out loud, not initiating a class assignment, shouting at peers, making jokes during instruction and speaking rudely with the school staff. The student was observed to complete only six (6) out of twenty-two (22) questions on a worksheet during a forty-five (45) minute period.
42. The IEP team agreed to conduct a Functional Behavioral Assessment (FBA) to develop a Behavioral Intervention Plan (BIP) to address the interfering behaviors observed during the observation.
43. The IEP team also agreed to conduct additional observations of the student in the smaller “supported inclusion” general education reading class, and in the larger general education social studies class taught by a special educator and a general educator.
44. On April 19, 2018, the IEP team reconvened. The IEP team discussed the additional classroom observations. In the “supported inclusion” general education reading class of ten (10) students, a special educator and a paraprofessional, the student was observed getting out of his seat without permission, walking into a desk, cursing, yelling out, not attending to instruction, refusing to participate in an activity, and distracting to and distracted by other students. During a small group activity, the student was engaged, participated and asked appropriate questions.
45. In the general education social studies class of twenty (20) students, a substitute teacher and a paraprofessional, the student was observed remaining in his seat, raising his hand, and initiating and continuing work. While he was also observed using profanity, he was able to return to work after prompting.
46. The observer made several recommendations, including a BIP to address off task behavior and cursing, wait time during transitions, frequent reminders to stay in his seat and use appropriate language, redirection and verbal prompts to complete assignments.

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47. The IEP team reviewed the results of the FBA targeting “off task behavior such as being unfocused,” cursing aloud in class when excited or upset, and being out of his seat during instruction. The FBA documents that the behaviors are triggered when the student is given an assignment that is difficult and when excited, and identifies that the functions of the behaviors are to gain adult and peer attention, and to avoid or escape participation in an activity or event. The IEP team developed a BIP addressing the target behaviors identified in the FBA.
48. The IEP team also reviewed the student’s third (3rd) quarter grades consisting of Ds in history, science, math, and reading enrichment, and Bs in English language arts and Spanish courses. They considered that, while the student earned a score of 215 on a formal reading assessment given in Fall 2017, representing on grade level reading skills, he achieved a score of 206 on the same assessment given in Spring 2018, representing a lower performance and decreased reading skills at the fifth (5th) grade level. They also considered the student’s 2017 PARCC scores documenting that he did not meet grade level expectations in reading or math.
49. The IEP team added the supplementary supports of a home-school communication system, movement breaks, and organizational strategies to the IEP.
50. The IEP team determined that the student needs “a classroom with lower student teacher ratio and support for the implementation of the BIP and close monitoring due to depressive behaviors.”
51. The PWN of the April 2018 meeting documents that the IEP team agreed to refer the student to the CIEP team for consideration of a more restrictive placement.
52. There is documentation that, on April 20, 2018, the school staff contacted the complainant regarding the student’s “thoughts of self-harm and depressed mood.”

May 15, 2018 IEP Meeting

53. On May 15, 2018, the IEP team convened with the participation of the CIEP school system staff to determine the level of special education services and placement that the student requires.
54. The IEP team discussed that the student has “self defeating thoughts when approaching assessments,” and has shown a decline in his skills from pre to post assessments. The school staff reported that although the student demonstrates interfering behavior such as cursing and disrespect, he is not physically aggressive, and is able to sit and attend to task.
55. The complainant reported that the student is taking medication to assist with his behaviors, and attending therapy once a week to address depression, anxiety, and mental health concerns. She expressed her belief that the student’s needs cannot be met in a comprehensive school setting, and that he needs a smaller environment that includes “intensive behavior supports.”

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56. The IEP team identified that the student has needs in the area of self-management, and determined that he requires IEP goals to address coping strategies and organization, alternate ways to demonstrate his learning, an editing checklist, and the use of a flash-pass to check in with a school counselor or psychologist.
57. The IEP team decided to continue specialized instruction in a general education classroom, with services provided by a general educator and a special educator. However, the PWN documents that the IEP team decided that the student requires, as an additional supplementary support, ten (10) seventy-two (72) “minute sessions of special education services outside of general education, monthly” in an Academic Resource Support Class for the 2018 - 2019 school year.
58. To date, there is no documentation of a revised IEP following decisions made by the team at the May 2018 IEP meeting.
59. The 2017 - 2018 school year reports of the student’s progress towards achievement of the annual IEP goals state that he was making sufficient progress to achieve the goals. However, the student’s performance on statewide assessments in math and reading, formal reading assessments, and informal reading and math assessments given during the 2017 - 2018 school year documents a decline in his achievement and skill levels in both math and reading.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #33, the MSDE finds that there is no documentation that the IEP team’s decisions were based on the data regarding the student’s needs, in accordance with 34 CFR §§300.101, .320 and .324. Based on the Findings of Facts #34 and #35, the MSDE finds that the IEP team’s decision was not based on the needs of the student, but on the service delivery system, in accordance with 34 CFR §§300.101, .320, and .324. Based on the Findings of Facts #53 - #58, the MSDE finds that the IEP has not been revised to reflect the IEP team’s decisions, in accordance with 34 CFR §300.324.

Based on the Finding of Fact #59, the MSDE finds that the violations impacted the student’s ability to benefit from the educational program and that the student has been denied a FAPE since March 2017.

ALLEGATION #2

PROGRESS REPORTS SINCE MARCH 2017

FINDINGS OF FACTS:

60. The IEP requires that reports of the student’s progress towards mastery of the annual IEP goals be provided to the parent on a quarterly basis.

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61. There is documentation that, since April 2017, the school staff have developed reports of the student's progress towards mastery of the IEP goals. Those progress reports were made on April 12, 2017, following the third (3rd) quarter of the 2016 - 2017 school year, June 6 and 7, 2017, following the fourth (4th) quarter of the 2016 - 2017 school year, November 15, 2017, following the first (1st) quarter of the 2017 -2018 school year, February 13, 2018, following the second (2nd) quarter of the 2017 -2018 school year, and April 19, 2018, following the third (3rd) quarter of the 2017 -2018 school year. However, there is no documentation that the parent was provided with these progress reports.
62. On April 19, 2018, the school staff documented that the complainant did not receive the IEP goal progress reports for the 2017 - 2018 school year, and agreed to "send her a second set" of the reports. On April 25, 2018, the reports were provided to the complainant via email.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #60 and #61, the MSDE finds that the parent was not provided with reports of the student's progress towards achieving the annual IEP goals on a quarterly basis as required by the IEP, since April 2017, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #62, the MSDE finds that the reports have been provided to the complainant, and therefore no additional student corrective action is required.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the PGCPS to provide documentation, by August 1, 2018, that the IEP team has convened and taken the following actions:

- a. Reviewed and revised the IEP, as appropriate, to ensure that the IEP addresses the student's academic and social, emotional and behavioral needs, based on the data;
- b. Determined the amount and nature of compensatory services or other remedy to be provided to the student for the loss of a FAPE since March 31, 2017; and
- c. Developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

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The PGCPS must 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.

School-Based

The MSDE requires the PGCPS to provide documentation by August 15, 2018, of the steps it has taken, including training, to ensure that the XXXXXXXX MS staff comply with the requirements for the development of an IEP that addresses all of a student's needs and is not based on the availability of the service delivery system, ensuring that IEP team decisions are consistent with the data, and ensuring that reports of a student's progress towards mastery of the IEP goals are provided as required.

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.

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 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 FAPE for the student, including issues subject to this State complaint

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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
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