



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

April 5, 2019

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

RE: XXXXX
Reference: #19-106

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 February 5, 2019, 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 did not ensure that proper procedures were followed when exclusion was used with the student from the start of the 2018-2019 school year through January 2019, in accordance with COMAR 13A.08.04.04.

2. The PGCPS did not ensure that the student's Individualized Education Program (IEP) included positive behavioral interventions and strategies to address his interfering behaviors, from the start of the 2018-2019 school year through January 2019, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is four (4) years old and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX. He is identified as a student with a Developmental Disability under the IDEA, and has an IEP that requires the provision of special education and related services.

FINDINGS OF FACTS:

1. The IEP that was in effect at the start of the 2018-2019 school year was developed on June 20, 2018. The IEP indicated that the student would receive four (4) hours of special education instruction services per week for social, emotional and behavioral skills.
2. The student's present levels of performance indicated aggressive behaviors with peers, communicating his emotions and feelings by tantruming, jumping up and down, and throwing items. The three goals developed to address the student's social, emotional and behavioral needs, included learning to wait for his turn, taking turns with peers, using appropriate coping skills, and following adult directions. The IEP did not include the use of exclusion or removal of the student to a supervised area for a period of time to regain self-control, during which time the student would not receive special education, related services or support.
3. While the IEP attempted to address the student's needs, and included frequent eye contact, proximity control, use of first and then language, frequent reminders of classroom rules, and the use of positive and concrete reinforcers, these were ineffective in supporting the student's social, emotional and behavioral needs.
4. The weekly behavior logs and behavior incident reports, since the start of the 2018-2019 school year through January 2019, indicated that exclusion was used with the student. However, the school staff did not document that the behavior was unreasonably interfering with his learning or the learning of others, that it constituted an emergency and was necessary to protect the student or another person from imminent, serious, physical harm after other less intrusive, nonphysical interventions had failed or been deemed inappropriate, or that it was requested by the student. The logs also did not consistently document the length of time the student spent excluded from his classroom.

5. On October 15, 2018 and November 7, 2018, the student's IEP was amended to include a communication system between home and school to support the student's social and behavioral skills. The amended IEP required a home and school communication system for the complainant to be aware of the student's behavioral needs while at school. The IEP also required that the student be provided with frequent reminders of rules and concrete reinforcers when he performed the tasks and activities in the classroom and complied with teacher directive
6. On November 7, 2018, at the request of the complainant, the IEP team referred the student for a reevaluation to determine his current educational, social, emotional and behavioral functioning. On January 9, and January 28, 2019, the report of psychological assessment indicated that the student was able to adhere to adult directives. The report indicated that the student does not do well in larger, whole group activities and refuses to participate in an activity if it does not hold his interest.
7. On January 28, 2019, the Functional Behavioral Assessment (FBA) summary report indicated that verbal reminders, removal from activities, removal from the area, redirection, time to be with support staff, and time out in a different classroom were previously tried and resulted in inconsistent responses.
8. The two behaviors identified as concerning included the student not following directives from teachers and his physical and aggressiveness towards peers. The behaviors occurred when the student was not allowed to participate in a preferred activity and during the afternoons. The behaviors were triggered by the teacher telling the student "no" and "when the student was tired and in need of a nap." The goals on the FBA were for the student to follow adult directions and use coping skills.
9. On January 28, 2019, the prevention strategies outlined in the Behavior Intervention Plan (BIP) included providing the student with many high-interest activities, maintaining maximum supervision, restating the class rules prior to beginning an activity, partnering the student with appropriate behaving peers, providing the student with options to prevent total refusal, maintaining consistency in rules, and providing an incentive statement.

CONCLUSIONS:

Allegation #1: Use of Exclusion

Based on the Finding of Fact #4, the MSDE finds that proper procedures were not followed when exclusion was used with the student, through January 2019, in accordance with COMAR 13A.08.04.04. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #2: Positive Behavioral Interventions

Based on the Findings of Facts #1 - #9, the MSDE finds that the IEP did not contain effective positive behavioral supports to address the student's interfering behaviors, from the start of the 2018-2019 school year to January 2019, in accordance with 34 CFR §§300.324. Therefore, this office finds a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student Specific

The MSDE requires the school system to provide documentation, by the end of the 2018-2019 school year, that the IEP team has determined the compensatory services to remediate the violations identified through this investigation and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

School Based

The MSDE requires PGCPS to provide documentation by the end of the 2018-2019 school year, of the steps taken to ensure that XXXXXXXXXXXXXXXXXXXXXXXXXXXX staff follow proper procedures when implementing the positive supports and services required by the IEP, and that proper procedures are followed with regard to the use of exclusion. The documentation must include a description of how the PGCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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.

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.

Questions regarding the findings and conclusions 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 Free Appropriate Public Education for the student, including issues

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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
and Special Education Services

MEF/sf

c:

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