



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

May 3, 2019

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Ms. Linda Chambers
Acting Director of Special Education, Compliance,
and Student Support
Frederick County Public Schools
191 South East Street
Frederick, Maryland 21701

RE: XXXXX
Reference: #19-130

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and Special Education Services (MSDE), 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 15, 2019, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The FCPS has not provided the student with an education program and placement that addresses his social, emotional, and behavioral needs since March 15, 2018, in accordance with 34 CFR §§300.101, .324, and COMAR 13A.05.01.

2. The FCPS has not ensured that the student has been provided with a Free Appropriate Public Education (FAPE) that meets the State's standards in conformity with an Individualized Education Program (IEP) that includes goals and services to enable the student to progress through the general curriculum since March 15, 2018, in accordance with 34 CFR §§300.101, .160, .320, .324, and COMAR 13A.05.01.

BACKGROUND:

The student is fourteen (14) years old, is identified as a student with Multiple Disabilities, including Emotional Disability and Speech/Language Impairment, under the IDEA, and has an IEP that requires the provision of special education and related services.

The student is placed at the XXXXXXXXXXXXXXXXXXXX, a FCPS alternative school.

FINDINGS OF FACTS:

IEP in Effect on March 15, 2018

1. The IEP in effect on March 15, 2018 was developed on December 18, 2017. At that time, the student was placed in a separate special education classroom at the XXXXXXXXX, which is an alternative learning program for students who need intensive academic, behavioral, or emotional support that is not available in other schools. The academic program follows that of the FCPS. A structured behavior management system provides feedback to students regarding their ability to be compliant throughout the day. Therapeutic services offer students small group and individual opportunities to learn coping strategies to use in the classroom. The student had been in this placement since January 30, 2017.
2. At the December 18, 2017 meeting, the IEP team documented that the student is diagnosed with Attention Deficit Hyperactivity Disorder and often becomes easily upset and off task, and then uncooperative. It also documented that the student experiences behavioral difficulty when demands are made that he does not wish to comply with and during unstructured activities. The team documented that "behaviors when off task are intense and [a]ffect those around [the student]." These behaviors included attacks on adults, physical aggression, classroom disruption, defiance of authority, abusive language, and disrespect.
3. The December 18, 2017 IEP also documents that the team discussed that the student has "severe difficulties in the areas of receptive, expressive, and pragmatic language," and struggles to solve social situations with peers and adults appropriately. The IEP further documents that English is not the student's native language and that he requires extra time

for processing in order to comply when given a direction or prompt as well as visuals to assist with verbal comprehension.

4. At the December 18, 2017 IEP team meeting, the team considered the school staff's reports that the student "started the school year on leadership and achieving success but quickly declined when he was stressed and frustrated." The school staff reported that, as the day goes on, the student's struggles increase, to the point where he can no longer access instruction, and that he had "minimal success with restructuring his day with more adult support and separating him from distracting peers." The school staff also reported that the student "has had negative or no reactions" to the strategies being used to assist him with managing his feelings as part of the Behavioral Intervention Plan (BIP) that was in place. The team documented its discussion that the student was experiencing stressors in his home and that his parents were having difficulty managing his behavior in that setting as well.
5. At the December 18, 2017 IEP team meeting, the team considered the results of a Student Threat Assessment that was conducted on December 11, 2017 by a school psychologist. The assessment report states that it was conducted in response to threats made by the student to blow up the school and to stab the assistant principal, followed by the student's hitting the window of a room at the school with a stick while the assistant principal was in the room. The report notes that this was the third such assessment that was conducted for the student, and states that the student fell within the "high risk range for future acts of violent or aggressive behaviors." The school psychologist recommended that the student be given the opportunity to earn his way out of his current setting based on clear parameters and expectations within his current setting, such as appropriate behaviors and work effort. The school psychologist further recommended that, if the student cannot return to baseline once current stressors have been addressed, consideration be given to a more structured setting.
6. On December 18, 2017, the IEP team revised goals for the student to improve his reading comprehension, math calculation, communication, problem solving, self-management, and personal interaction skills by December 2018 based on his lack of progress on the existing goals. However, the IEP states only that the student was performing "below grade level," and therefore, does not provide sufficient information about his levels of performance to determine whether the goals are designed to assist him to progress through the general curriculum.
7. On December 18, 2017, the IEP team also revised the BIP and the IEP supports to be provided. The IEP in effect on December 18, 2017 IEP required that the student be given visual and verbal prompts to request predetermined coping strategies, including taking a walk, requesting support, deep breathing, and using stress balls. It required that the student be provided with a word bank of targeted vocabulary to reference, monitoring of his work to ensure understanding, paraphrasing of questions and instruction, breaking down of assignments into smaller units, use of clear, precise, and short directions, additional time to

process staff requests, and the provision of structured choices. It further required preferential seating near peers that are positive or actively engaged in the work, assistance with maintaining attention, opportunities for movement to focus on tasks, and weekly social skills training. The IEP was revised to add the provision of writing tools, text-to-speech technology, use of a human reader, and the provision of breaks upon request.

8. The December 18, 2017 IEP also requires the provision of seven and one-half (7.5) hours of special education instruction per week in the general education classroom, as well as one (1) hour of speech/language therapy per week and one (1) hour of counseling per week in a separate special education classroom to assist him with achieving the annual goals.
9. On January 26, 2018, reports were made that the student was not making sufficient progress to achieve the annual goals due to his interfering behaviors. The reports reflect that the student had eighteen (18) discipline referrals since the start of the 2017-2018 school year and that he was earning about one-half (.5) of the total daily points for appropriate behavior.

February 5, 2018 IEP Team Meeting

10. On February 5, 2018, the IEP team convened. The school staff reported that the student's behavior had become increasingly violent, and that he had to be separated from the other students for safety reasons. The student's parents expressed concern about the student's physically violent behavior towards them in the home, as well.
11. On February 5, 2018, the IEP team decided that a referral would be made for community-based services to assist the parents, and that the parents would permit the student to use his cell phone only as a reward for progress made at school. While the parents agreed, the student's mother reported that she was concerned that if they did so, the student would stop attending school. The team documented that the program specialist "explained that we needed to try something different to help [the student] re-engage in his education," but did not document the consideration of any other options in order to address the mother's concern.

February 26, 2018 IEP Team Meeting

12. On February 26, 2018, the IEP team reconvened and considered the mother's concern that the student's behavior was getting worse at home and at school. The school staff reported that when attempts were made to introduce the student back into the classroom, the student's interfering behaviors increased. The team discussed the interventions that had been provided, and that the school staff was unable to identify triggers for the student's explosive behavior.

13. Based on the data, the team decided that the student would receive the same amount of instruction, but over a period of four (4) days per week instead of five (5), and that he would begin participating in the Twilight Program at the XXXXXXXX. This program operates Monday through Thursday from 3:00 p.m. to 6:15 p.m. for students who demonstrate aggressive behaviors or extreme noncompliance over an extended period of time, which cannot be effectively managed in the day program. The program also offers online courses with staff support. However, there is no documentation that the team recommended an updated Functional Behavioral Assessment (FBA) or decided to obtain any additional information to attempt to identify the cause of the behavior so that it could be addressed.
14. On April 9, 2018, reports were made that the student was not making sufficient progress to achieve the annual IEP goals.

May 1, 2018 IEP Team Meeting

15. On May 1, 2018, the IEP team convened to consider the student's lack of sufficient progress towards achievement of the annual goals. The school staff reported that the student had engaged in work for only five (5) of the twenty-six (26) days that he had been placed in the program and that his behavior was "out of control." However, the team decided that the BIP remained appropriate without explanation.
16. At the May 1, 2018 IEP team meeting, the school staff expressed concern that the student would be arrested by the police if his behavior continued, and suggested that the parents take away his access to the internet and video games until his behavior improved. The student's father reported that he was unable to control the student and hoped that the student would be arrested so that he might change his behavior, but agreed to attempt to continue to use consequences in the home for the behavior. There is no documentation that the IEP team considered how to address the student's behavior in school.

June 5, 2018 IEP Team Meeting

17. On June 5, 2018, at the end of the student's eighth (8th) grade year, the IEP team met and documented the following:

This meeting was scheduled before the Term #4 Quarterly Progress on [the student's] IEP was assessed but indications at midterm were that [the student] had made no academic progress by midterm of Term 4. This meeting was scheduled to discuss that lack of progress, however, in the weeks that followed the midterm, [the student] started to catch up on his missing assignments and ask for more work to do so he could pull up his grades.

The IEP team documented that the student was failing all of his classes at the end of Term 3 and the midterm for Term 4, but that, at the time of the June 5, 2018 meeting, he was receiving a “C” grade in language arts, science, and American studies, and a “D” grade in math. The team also documented that there had been no incidents of discipline or unacceptable behavior in the past two (2) weeks. Based on this data, the IEP team determined that the IEP and BIP continued to remain appropriate.

18. On June 15, 2018 reports were made that the student was not making sufficient progress to achieve all of the annual IEP goals by December 17, 2018. The progress report on the self-management goal reflects the same information considered by the IEP team on June 5, 2018 that, since the midterm the student had been working hard to turn in missed assignments, which has resulted in improved grades. However, the report states that the student’s overall progress was not sufficient to achieve the goals by December 17, 2018, and that the IEP team needed to convene to address the lack of progress. However, there is no documentation that the IEP team did so.
19. On November 2, 2018, reports were made that the student was at that time making sufficient progress to achieve the annual IEP goals by December 17, 2018. However, the progress report for the speech/language goal states that the student “continues to have [behavior] which impact[s] overall progress,” and the reports on other goals cite the student’s grades as the basis for the reports, but do not reflect that progress was measured as indicated in the IEP.

December 11, 2018 IEP Team Meeting

20. On December 11, 2018, the IEP team conducted the annual IEP review. The team continued the annual goals and IEP supports and added a short-term objective to the math calculation goal without explanation and extended the time period for the goals to be achieved by another year.
21. On January 25, 2019, reports were made that the student was not making sufficient progress towards achievement of the goals.

March 14, 2019 IEP Team Meeting

22. On March 14, 2019, the IEP team convened and considered information from the student’s parents that they are having difficulty getting him to attend school, even when his cell phone and games are taken away as a consequence of school refusal. The speech/language service provider’s log reflects that, at that time, the student had attended four (4) of the twenty (20) days of school that term. The school staff reported that the student was not attending school regularly, and that when he does attend, he is sleeping, off-task, and refusing to complete work.

23. The documentation of the meeting reflects that the student's father reported that the student might be willing to attend school if he were to return to the day program and receive instruction with other students. The school staff reported that the student is currently receiving instruction with four (4) or five (5) other students, and that they have not heard the student express the desire to return to the day program. The school staff also reported that the student's behaviors were not able to be managed in the day program. The team recommended that updated psychological, educational, and speech/language assessments be conducted, but did not document a recommendation to obtain additional information about the cause of the student's behavior in order to address his needs in this area.
24. The student's Report Card Summary indicates that he received an "F" in ninth (9th) grade English during the first, second, and third terms of the 2018-2019 school year, an "F" in algebra during the first and second terms, and an "F" in health for the third term. It does not reflect that he was enrolled in more than two (2) courses at a time during any term. The school staff report that the number of courses to which a student is assigned is based on the amount of instruction the student is able to access, and there is documentation that other students enrolled in the Twilight Program are taking more courses than the student.

LEGAL REQUIREMENTS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability, whether or not commonly linked to the disability category in which the student has been classified. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §§300.101, .304, .320, and .324).

In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability to enable the student to progress through the general curriculum, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §300.320). In order to progress through the general curriculum and be awarded a Maryland High School Diploma, a student must have earned a minimum of 21 credits, including specific core credits (Md. Code Ann., Educ. §7-103).

In developing an IEP, the IEP team must consider how the student's disability impacts his or her ability to make progress toward grade level standards during the period covered by the IEP. While the annual goals need not necessarily result in the student attaining grade level proficiency within the year covered by the IEP, they should be sufficiently ambitious to help close or reduce the achievement gaps. The team must consider, as appropriate, goals that target critical age/grade

appropriate skills essential to facilitate student independence and enable the student to access and participate in grade level instructional and social activities, and make progress toward achieving grade-level standards (34 CFR §300.320 and *MSDE Technical Assistance Bulletin #19-01 – Improving Outcomes for Students with Disabilities*).

In order to develop ambitious and achievable IEP goals, IEP team members must first have a firm grasp of the age-appropriate and grade level standard. They must review the student's present levels of academic and functional performance in light of the grade level standards, as well as those unique needs that result from the student's disability. This knowledge allows the team to analyze the gaps between current skills and the expectations of the grade level standards, and allows the team to identify the behaviors and skills that are needed for active participation in school as a learner. Once the team has identified the priority skills and an appropriate target, it can set goals that are estimates of the student's anticipated growth that would result from receiving specially designed instruction (34 CFR §300.320 and *MSDE Technical Assistance Bulletin #19-01 – Improving Outcomes for Students with Disabilities*).

The public agency must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities, including instruction in regular classes, special classes, and special schools. In determining the educational placement, the IEP team must ensure that the decision is based on the IEP and is consistent with the requirement to place the student in the Least Restrictive Environment (LRE) in which the IEP can be successfully implemented. This means that, special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §§300.114 - .116).

The public agency must ensure that the IEP team reviews the IEP at least annually to determine whether the annual goals are being achieved. It must also ensure that the IEP is revised, as appropriate, to address lack of expected progress towards achievement of the annual IEP goals, information about the student, and the student's anticipated needs (34 CFR §300.324).

DISCUSSION/CONCLUSIONS:

Allegation #1 Education Program and Placement

In this case, the complainant alleges that the IEP team did not consider positive behavioral interventions to address the student's behavioral needs and lack of progress towards achievement of annual IEP goals. The complainant also alleges that the IEP team has not considered a more structured educational placement, as recommended by the school psychologist in December 2017.

Based on the Findings of Facts #1 - #23, the MSDE finds that the FCPS has regularly reviewed the IEP in response to the student's lack of progress, in accordance with 34 CFR §300.324. However, based on those Findings of Facts, the MSDE also finds that there is no documentation that the team

has obtained updated data to identify the cause or causes of the student's interfering behaviors in the school setting since March 15, 2018 in order to address them, and that the team's decisions have been consistent with the existing data, in accordance with 34 CFR §§300.304 and .324. Therefore, this office finds that the FCPS has not ensured that the student's education program addresses his social, emotional, and behavioral needs, and that a violation occurred with respect to this aspect of the allegation since March 15, 2018.

Based on the Findings of Facts #1 - #23, the MSDE finds that the IEP team has given the student the opportunity to earn his way out of the current educational setting, consistent with the December 11, 2017 threat assessment recommendation. However, based on those Findings of Facts, the MSDE finds that the IEP team has not considered a change in educational placement, consistent with recommendation in the threat assessment, since the student's behaviors have not been effectively addressed in the current setting, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation since March 15, 2018.

Allegation #2 IEP that Meets State Standards

In this case, the complainant alleges that the FCPS has not ensured that the IEP includes goals that are designed to assist the student in progressing through the general curriculum. The complainant further alleges that the FCPS has not offered the student the opportunity to earn enough course credits to progress through the general curriculum and pursue a Maryland High School Diploma.

Based on the Findings of Facts #6 and #20, the MSDE finds that there is insufficient information in the IEP's statement of present levels of performance to find that the goals have been designed to enable the student to progress through the general curriculum, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation since March 15, 2018.

Based on the Findings of Facts #1 - #24, the MSDE finds that the student has been unable to access more instruction than what he has been offered, and that additional instruction is offered to students who are able to access such instruction in the XXXXXXXXXXXXXXX. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires that the FCPS provide documentation by June 1, 2019 that it has sought consent from the student's parents to conduct an assessment of the cause or causes of all of the student's behaviors, including his school refusal, lack of engagement in instruction when he attends school, and aggression.

The MSDE requires the FCPS to provide documentation by the start of the 2019-2020 school year of the following:

- a. That any additional data obtained about the cause of the student's behavior has been considered by the IEP team and that the IEP, including the BIP, has been reviewed and revised, as appropriate, to address the student's identified needs in this area consistent with the data regarding the causes of his behaviors.
- b. That the IEP team has considered whether the student requires a more restrictive placement, has made a placement decision that is consistent with the data, and has taken the steps necessary to obtain a placement for the student consistent with the team's decisions.

The MSDE also requires that the FCPS provide documentation by the end of the first (1st) quarter of the 2019-2020 school year and each subsequent quarter of that school year, that the IEP team has considered the student's progress towards achievement of the annual IEP goals and has reviewed and revised the IEP, as appropriate, to address any lack of expected achievement of the goals within the timeframe specified in the IEP.

School-Based

The MSDE requires that the FCPS provide documentation by the start of the 2019-2020 school year that training has been conducted at the XXXXXXXXXX School to ensure the following:

- a. That the IEP team seeks to obtain the data necessary to identify the cause of interfering behaviors and considers positive behavioral interventions to address those behaviors;
- b. That each IEP contains sufficient information about the student's present levels of performance to ensure goals are developed that are designed to assist the student to progress through the general curriculum;
- c. That progress towards achievement of annual IEP goals is measured and reported as described in the IEP; and
- d. That the IEP team addresses the lack of expected achievement of the annual goals within the timeframe specified in the IEP by reviewing and revising, as appropriate, the education program and placement consistent with the data.

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.

Grace Reusing, Esq.
Ms. Linda Chambers
May 3, 2019
Page 11

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.

The school system and the student's 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 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:aam

c: XXXXXXXXXX
 XXXXXXXXXX
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