




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

October 2, 2019




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

RE:   
Reference: #20-031

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/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.

**ALLEGATION:**

On September 11, 2019, the MSDE received a complaint from Ms.  hereafter, "the complainant," on behalf of her daughter, 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) and related State requirements with respect to the student.

The MSDE identified the allegation that the PGCPS did not ensure that proper procedures were followed when identifying the student with an Emotional Disability under the IDEA, in accordance with 34 CFR §§300.8, .303 - .306, and COMAR 13A.05.01.04 - .06.

**BACKGROUND:**

The student is eleven (11) years old, is identified as a student with an Emotional Disability and has an IEP that requires the provision of special education and related services.

The student attended [REDACTED] School during the 2018-2019 school year. The documentation reflects that, at the end of that year, the complainant was granted an administrative transfer to [REDACTED] School for the 2019-2020 school year.

**FINDINGS OF FACTS:**

1. Prior to being identified as a student with an Emotional Disability on June 19, 2019, the student was identified with a Specific Learning Disability under the IDEA.
2. While identified as a student with a Specific Learning Disability under the IDEA, the IEP stated that the student was diagnosed with Generalized Anxiety Disorder and Other Specified Mood Disorder through a private neuropsychological assessment obtained by the complainant in October 2017. The report of the neuropsychological assessment states that the complainant reported that the student had a “history of emotional lability and outbursts beginning around April 2015,” including a “sudden and unprovoked aggression toward her mother,” which resulted in the complainant hospitalizing the student. The assessment report also states that the complainant reported that the student had “experienced significant bullying in the academic setting over the past few years,” by both teachers and classmates. The complainant described “frequent episodes of crying and outbursts upon returning home from school,” and stated that, despite the school staff’s reporting that the student was “very sociable and well-liked by peers,” the student had no close friends at school.
3. At that time, there were also teacher reports that the student was “overly sensitive,” expressed worries about performance-based situations, and exhibited social anxiety. Based on the data, the student’s social, emotional functioning was found to be impacted by her disability. In addition to goals to improve her academic performance, the IEP included a goal for the student to identify her feelings and demonstrate appropriate coping strategies and problem solving skills “when presented with real or imagined social conflict situations.” The IEP required the provision of several social, emotional, and behavioral supports, including frequent changes in activities or opportunities for movement and counseling for social skills training.
4. On January 16, 2019, the IEP team convened to consider the student’s progress and review the IEP. The documentation of the meeting states that the team was able to update the present levels of performance, but could not complete the IEP review due to time constraints. The documentation reflects that the school-based members of the team reported that the student was making “satisfactory progress,” but was recently refusing to participate in a reading intervention. It also reflects that the complainant reported that she believed that the student had not made the progress that she expected.
5. On February 8, 2019, the IEP team completed its review of the IEP. The documentation of the meeting reflects that the amount of special education instruction in the general education classroom was increased and the amount to be provided in a separate special education classroom was decreased based on the school staff’s report that the student was

demonstrating a “negative attitude” towards receiving instruction in the separate special education classroom. The revised IEP states that the student “demonstrated good progress towards her socio-emotional goals during the counseling sessions,” but that at the start of the 2018-2019 school year, she “struggled to express her frustrations in an appropriate manner, revealing difficulties applying learned skills into practice.”

6. The written summary of an IEP team meeting, dated May 9, 2019, documents that the IEP team convened to address “parental concerns.” It states that the team considered information that the student had exhibited a “recent outburst,” and decided that she would be provided with Thera-puddy and a chart with sticky emojis to express how she feels. It also states that the team decided that the student would be permitted to visit with teachers with whom she feels safe and comfortable when experiencing a stressful situation or anxiety, and that an updated psychological assessment would be conducted.
7. On June 17, 2019, the IEP team convened and documented that, in the past, the student had experienced difficulties with anxiety and oversensitivity to criticism from teachers and peers, which led to depression and self-destructive behaviors at home. The documentation states, however, “this school year, those behaviors have started to emerge in the school setting as well.” The school psychologist reported that the student “perceives the world and the actions and reactions of others through an egocentric filter.” The school psychologist stated that the student “misperceives and personalizes everything the teacher does and believes she is the target of an attack even when the teacher’s comments or actions are not about her at all,” and that she reports that her classmates are also treating her poorly and rejecting her. The school psychologist opined that “this egocentric view of the environment likely developed from feelings of being inadequate academically and socially,” which resulted in increased anxiety, which in turn, resulted in further inability to problem solve and further distress.
8. The documentation of the June 17, 2019 IEP team meeting states that the team discussed that, as a result of the student’s “explosive outbursts,” she has had to be removed from the learning environment at times. The team documented that “significant difficulties with attention, executive functioning, and anxiety are interfering with [her] academic and social functioning,” and that her “difficulties with executive functioning are resulting in a rigid approach when trying to solve problems, resulting in an increase in anxiety and frustration.” The team further documented that the student “has also been experiencing difficulties building satisfactory relationships with peers and adults, experiences depression, and has fears associated with school problems, which are adversely impacting her educational performance, and are symptoms/characteristic supportive of an emotional disability.” The team decided that the student’s “academic and socio-emotional needs at school go beyond the needs of a child diagnosed with a specific learning disability alone,” and identified the primary disability as an Emotional Disability. The team also decided to reconvene with participation from PGCPs Central Office staff to consider the student’s educational placement.

9. On August 5, 2019, the IEP team reconvened with participation by PGCPs Central Office staff. The team considered information from the school staff that the student had a history of concerns with emotional regulation in other environments that had been reported to the school, and that in January 2019, the student's behaviors at school "began to escalate." The school staff reported that the student "became irate and would have meltdowns whenever it was time for her pull out services for her reading intervention." The complainant reported that the student only had difficulty with two (2) of her teachers, and that there were no longer concerns of this nature in other environments.
10. The IEP was revised to reflect updated information, consistent with a May 6, 2019 private neuropsychological assessment obtained by the complainant. The report of the neuropsychological assessment states that the complainant reported that the student "misses about 2 hours per day of academic instruction daily due to difficulties with behavior management in the school setting." It further states, "these behaviors have gotten progressively worse as the school year has gone on." The report further states:

[The student] is currently showing a high level of anxiety, frustration, and signs of being overwhelmed. These symptoms stem directly from her learning differences and awareness of her challenges. She needs greater resources and support, at home and school to simultaneously support her learning and give her tools to more effectively manage her mood. The symptoms are currently not well managed, and [the student] needs medication, therapy, and intensive learning intervention services and supports. Without adequate supports, [the student's] awareness of, and distress over, her learning challenges are expected to continue, and thus, it will be important to monitor her emotional functioning over time.

The report further states that the student requires "intensive support of specialists who are trained and experienced in learning disabilities, anxiety, and behavior management." The report contains recommendations for supports in the home, stating "[The student] is in need of a targeted evidence-based cognitive behavioral approach to support her difficulties with anxiety and executive functioning" and that she would "benefit from a cognitive behavioral therapy anxiety treatment group with a parent component."

11. Based on the data, the team recommended increasing the amount of special education and related services. The team decided that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a nonpublic separate special education school due to the student's need for a small, therapeutic school program "to address academic and emotional regulation needs," and discussed specific schools for which applications would be made for the student. The complainant requested a specific school, which the school staff rejected as not having sufficient social/emotional supports for the student.

### **LEGAL REQUIREMENTS:**

In order to be identified as a student with a disability under the IDEA, a student must have one (1) of a list of disabilities, including an Emotional Disability, and require the provision

of special education instruction as a result of that disability. However, nothing in the IDEA requires that students be classified by a particular disability, and the special education and related services required by the IEP must meet the student's needs and cannot be determined by the student's disability category (34 CFR §§300.8, .111, and *Federal Register*, Vol. 71, No. 156, p. 46655, August 14, 2006).

An Emotional Disability means a condition exhibiting one (1) or more of a list of characteristics, over a long period of time and to a marked degree, which adversely affects the student's educational performance. These characteristics can include the following:

- a. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- c. Inappropriate types of behavior or feelings under normal circumstances;
- d. A general pervasive mood of unhappiness or depression; or
- e. A tendency to develop physical symptoms or fears associated with personal or school problems (34 CFR 34 CFR §300.8).

The IDEA does not define terms such as "long period of time," "to a marked degree," or "adversely affects the student's educational performance." The United States Department of Education, Office of Special Education Programs (OSEP) has indicated that these terms are subjected to a variety of interpretations by States. The OSEP further indicated that a number of States define "long period of time" by a range of time between two (2) and nine (9) months, but that the application of such terms for a particular student continues to be based largely on the unique facts and circumstance of each case (*Letter to Anonymous*, 213 IDELR 247, August 11, 1989).

The public agency must ensure that the IDEA evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. When conducting an IDEA evaluation, a variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student. No single measure or assessment should be used as the sole criterion for the eligibility determination and development of an appropriate education program (34 CFR §§300.304).

A Functional Behavioral Assessment (FBA) is not a required source of data to identify a student with an Emotional Disability under the IDEA. An FBA is required to be conducted to provide data for a Behavioral Intervention Plan (BIP) when a student is disciplinarily removed from school in excess of ten (10) days in a school year. The purpose of the BIP is to address the behavior violation so that it does not recur (34 CFR §300.530).

#### **STATE COMPLAINT INVESTIGATION PROCEDURE:**

The OSEP requires that, during the investigation a State complaint challenging a public agency's eligibility determination, the State Educational Agency (SEA) review the procedures that were followed to reach the eligibility determination. The SEA must also review the evaluation data to

determine if decisions made by the IEP team are consistent with the data (*Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act*, OSEP, 61 IDELR 232, July 23, 2013, OSEP Letter #00-20, July 17, 2000 and *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures and makes determinations consistent with the data. The SEA may not, however, overturn an IEP team's decisions when proper procedures have been followed and there is data to support the team's decisions. The OSEP indicates that, in such an instance, parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

### **DISCUSSION/CONCLUSIONS:**

In this case, the complainant does not dispute the identification of the student as a student with a disability under the IDEA. However, she disagrees with the category of disability with which the student is identified.

The complainant asserts that the student has had the diagnoses upon which the Emotional Disability classification was based for years without being identified with this category of disability, and indicates that nothing has changed since that time. She reports that the student has not had any behavioral problems over the summer or since the start of the 2019-2020 school year, and only had problems with two (2) of her teachers during the 2018-2019 school year because they were not properly licensed and trained to provide the special education instruction required by the IEP. She states "the ONLY time [the student] has ever had any issue was when she was in the class of those 2 teachers and she was scared to be there," but that "once she was out of that environment she has been fine."

The complainant asserts that the school system did not have sufficient data that the student exhibited any of the required characteristics of Emotional Disability over a long period of time and across different settings and situations. She asserts that, because the student has not been disciplinarily removed from school for her behavior, and because the school system has not conducted a FBA, there is no data to support the identification of the student as a student with an Emotional Disability under the IDEA. She further asserts that a student "can only be given this diagnosis if the others have already been eliminated."

This office finds that there is no legal requirement to use the Emotional Disability category only if other categories of disability have been eliminated. This office also finds that a student does not need to be disciplinarily removed from school and require a FBA in order to meet the criteria for identification as a student with an Emotional Disability under the IDEA.

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Based on the Findings of Facts #1 - #11, the MSDE finds that the IEP team considered a variety of data, including information and private assessment data provided by the complainant, when identifying the student as a student with an Emotional Disability under the IDEA, in accordance with 34 CFR §§300.8, 300.303 - .311, and COMAR 13A.05.01.04 - .06.

Based on the Findings of Facts #1 - #11, the MSDE also finds that the data reflects that the student has demonstrated the characteristics of an Emotional Disability over a long period. Thus, there is sufficient data to support the IEP team's identification of the student as a student with an Emotional Disability under the IDEA, in accordance with 34 CFR §§300.8, 300.303 - .311, and COMAR 13A.05.01.04 - .06. Therefore, this office does not find that a violation occurred.

**TIMELINE:**

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.

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 Early Intervention and Special Education Services

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