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State Superintendent of Schools

May 8, 2020

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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
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RE: [REDACTED]
Reference: #20-111

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, 2020, the MSDE received a complaint from Ms. Jessica Williams, hereafter “the complainant,” on behalf of the above-referenced student and his parents, Mr. [REDACTED] and Ms. [REDACTED]. 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 behavioral supports required by the Individualized Education Program (IEP), including the Behavior Intervention Plan (BIP), have been provided to the student, since the start of the 2019 - 2020 school year, in accordance with 34 CFR §§300.101 and .323.
2. The PGCPS has not ensured that proper procedures were followed when contacting the police for their involvement in questioning the student on school premises, and when authorizing the removal of the student from the school, since the start of the 2019 - 2020 school year, in accordance with COMAR 13A.08.01.13.

3. The PGCPs did not ensure that copies of the student's special education records were provided for consideration by authorities, in accordance with 34 CFR §300.535.

BACKGROUND:

The student is ten (10) years old and is identified as a student with Multiple Disabilities, including Autism, an Intellectual Disability, and an Other Health Impairment (OHI), under the IDEA. He has an IEP that requires the provision of special education and related services.

The student attended the [REDACTED] ([REDACTED]) until the March 16, 2020 closure of all schools, as a result of the national COVID-19 pandemic.

ALLEGATION #1 IEP IMPLEMENTATION OF BEHAVIORAL SUPPORTS

FINDINGS OF FACTS:

1. The IEP includes two (2) self-management behavior goals that are expected to be achieved by February 2020. The first (1st) goal states that "Given behavior intervention plan, [the student] will reduce the average of physical interventions (transportation, vertical immobilization, and supine immobilization) by 80% from a baseline of 62 per quarter for the IEP year." The second goal states that "Given behavior intervention plan, [the student] will independently request breaks while demonstrating positive learning behaviors (i.e., gaining attention of staff member appropriately by raising hand or stating excuse me with an appropriate tone) from work in 80% of opportunities."
2. BIP requires several proactive and reactive interventions, including the following:
 - Offering frequent choices;
 - Providing a daily schedule (class-wide or individual) that is referred to at the beginning of each new activity;
 - Reviewing classroom/activity expectations;
 - Breaking down classroom and school activities into small chunks;
 - Providing frequent hands-on activities and/or manipulatives to promote attention to task;
 - Using a puzzle board reinforcement system, and removing the puzzle board as the "response cost for unsafe behavior;"
 - Reminders of how to access a break for the removal of a demand for 1-3 minutes;
 - Using planned ignoring;
 - Transporting the student to a quiet "resource" room when he displays "continuous aggressive and/or continuous high magnitude disruptive behaviors (potentially damaging items or the environment) or other significant behaviors;"
 - Clearing the room, when student engages in "crisis behaviors that impact the safety of the classroom and he cannot be removed from the room;" and
 - Implementing crisis intervention strategies, including escort, restraint, exclusion and seclusion.
3. The BIP requires daily data collection which is to be reviewed "monthly or more as needed."
4. The IEP requires accommodations for the provision of frequent breaks to regulate the student's behavior, as well as reduced distractions to self and others.

5. In addition, the IEP requires several supplementary supports that include crisis intervention as needed, close adult supervision, a "daily details" sheet for parent communication, daily and weekly reinforcers, social stories, structured arrival and dismissal routines, positive behavior supports, token economy, verbal praise, embedded movement opportunities, teaching replacement behaviors, and "therapeutic rapport."
6. The IEP documents that the student requires the daily support of a "1:1 behavior aide." In clarifying this support, the IEP reflects that the aide is required in the classroom and throughout the school environment to ensure the student's safety and the safety of others, as well as to monitor his behavior, provide supervision during work and transitions, and "to provide consistent positive attention and reinforcement for appropriate behaviors in order to share desired behavior improvement."
7. The "fade plan" for the student's 1:1 aide outlines three (3) stages of support that are to be provided to the student. These include providing immediate proximity to block attempts of aggression, providing positive feedback, "blocking during aggressive episodes," redirecting following noncompliance, aggression and elopement, implementing a reinforcement system, teaching how to make requests for attention and breaks from demands, providing support during pre-crisis and crisis episodes, and maintaining supervision during transitions and redirecting the student during his out of area behavior and verbal disruptions.
8. The [REDACTED] staff have developed a daily log (Daily Behavior Log) to record whether the student displays either of the target behaviors identified in the BIP during each thirty (30) minute activity throughout the school day. The log also records whether the supports required by the BIP, specifically the proactive interventions, reactive interventions and crisis intervention, are being utilized during each thirty (30) minute activity.
9. The Daily Behavior Logs from August 2019 to March 2020 document that the student is consistently being provided with the supports required by the BIP.
10. During the first (1st) quarter of the 2019 - 2020 school year, the school staff documented that the student engaged in aggressive episodes at least once in 21% of the thirty (30) minute intervals where data was collected, and in verbal disruptions in 51% of the intervals. The documentation notes that this data represents an increase in the behaviors, but also states that "the team is working to equip [the student] with strategies to use in replacement of [the interfering] target behaviors."
11. There is also documentation that, during the first (1st) quarter of the 2019 - 2020 school year, the student engaged in an average of two (2) behavior incidents per day that required the use of the resource room, and that the average duration in the resource room was 76 minutes per incident.
12. The documentation reflects that, "due to an increase in aggressive and verbal disruptive behavior," the student moved back to stage one (1) of the fade plan after the first (1st) quarter of the 2019 - 2020 school year.
13. On November 1, 2019, the school staff documented that the student was making sufficient progress towards mastery of the IEP self-management goal for reducing physical interventions. However, the documentation reflects that the student had a total of eleven (11) physical interventions this period, which represents an increase from the one (1) physical intervention that the student had during the previous reporting period.

14. Also on November 1, 2019, the school staff documented that the student was making sufficient progress towards mastery of the IEP self-management goal for independently requesting breaks while demonstrating positive learning behaviors. However, the progress report specifically notes that the requests for breaks occurred in only 15.85% of opportunities, which represents a decrease from the 100% of opportunities that he requested breaks during the previous reporting period.
15. During the second (2nd) quarter of the 2019 - 2020 school year, the school staff documented that the student “continued to display higher rates” of the target interfering behaviors. Specifically, the data reflects that he engaged in aggressive episodes in 25% of the thirty (30) minute intervals of data collection, and in verbal disruption in 63% of the intervals. The documentation states that “changes to his behavior plan (increasing reinforcement opportunities and removing the response cost) have not resulted in decrease[d] behavior.”
16. There is also documentation that, during the second (2nd) quarter of the 2019 - 2020 school year, the student engaged in an average of twelve (12) behavior incidents per day that required the use of the resource room, and that the average duration in the resource room was 54 minutes per incident.
17. During the second (2nd) quarter of the 2019 - 2020 school year, the school staff also documented that the student engaged in an average of six (6) behavioral incidents per day that required the use of a closed door in a quiet room, for an average of 1.5 minutes per incident. It also reflects that he engaged in an average of five (5) behavioral incidents per day that required the use of a locked door in a quiet room, for an average of 16 minutes per incident. The documentation reflects that the student did not engage in any behavioral incidents during the first (1st) quarter of the 2019 - 2020 school year that required the use of a quiet room.
18. On January 14, 2020, the school staff documented that the student achieved both of the IEP behavior self-management goals. However, the reports also document that the student’s behavior resulted in “more room clears,” that “recently there has been a regression in requesting breaks appropriately,” and that he has not displayed appropriate responses to prompts to leave an area and de-escalate.
19. On January 27, 2020, the IEP team convened for the annual review of the student’s IEP. The team discussed that the student is displaying “numerous unsafe behaviors within the classroom,” that they have been “more explosive behaviors,” and that there has been an escalation in levels of his “outbursts.” They also discussed that the student’s “maladaptive behaviors” have increased during the 1st and 2nd quarters of the school year, which have resulted in twelve (12) removals from the classroom during the second (2nd) quarter as well as and multiple suspensions due to unsafe behaviors.
20. At the January 2020 IEP meeting, the team considered the January 13, 2020 [REDACTED] “Service Coordination Update and Summary of Mental Health Consultation” that included the following information:
 - The student engages in “unsafe, provocative, disruptive and aggressive behavior,” and his behaviors have continued to become more difficult to manage in the school environment.”
 - He “presents as more highly anxious and agitated,” and exhibits “demanding behavior [that] has led to sustained aggression toward staff at high levels.” “As [he] becomes physically stronger, physical management when necessary, becomes an extended, volatile and dangerous scenario.”
 - “Staff have made numerous adjustments to [the student’s] behavior plan though none of these changes have led to sustained behavioral changes. There have been indicators that he is responding positively to a behavior plan adjustment though he satiates quickly to the changes and the reinforcement items no longer provide sufficient motivation for him.”

- “The school has recently informed [the student’s] parents that there are serious conversations occurring with school administration and the team working with [the student] regarding the ability of this program to continue to program for [him.]”
21. The IEP team revised/continued both of the IEP self-management behavior goals for the student to continue working on the same skills, but increased the levels of mastery that are required for achieving the goals.
 22. The written summary of the January 2020 IEP meeting states that the parents “have been told that the school is concerned about its continued ability to program for [the student],” and documents the parents’ concern that “the current behaviors that [the student] has exhibited are no longer able to be managed within the confines of [REDACTED].” The written summary of the meeting documents that the parents provided consent to refer the student to [REDACTED] and [REDACTED] for admission consideration.
 23. The written summary of the January 2020 IEP meeting also documents that, while the parents requested an updated Functional Behavior Assessment (FBA) and a sensory profile, the IEP team decided that “the assessments will be considered at a later date if [the student] changes placement.”
 24. On April 14, 2020, the school staff developed progress reports for the period of quarter three (3) of the school year, that began at the end of January 2020, until the time that schools closed on March 16, 2020. The reports document that the student achieved the IEP self-management behavior goal to reduce physical interventions and that he was making sufficient progress towards mastery of the other IEP self-management goal for independently requesting breaks while demonstrating positive learning behaviors.

CONCLUSION:

Based on the Findings of Facts #1 - #7, the MSDE finds that the IEP, including the BIP, required many supports and interventions designed to address the student’s target interfering behaviors. Based on the Findings of Facts #8 - #24, the MSDE finds there is documentation that the behavioral supports required by the IEP, including the BIP, have been provided to the student from the start of the 2019 – 2020 school year until March 2020 when schools were closed, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE does not find a violation with respect to this allegation.

ALLEGATIONS #2 AND #3

PROCEDURES WHEN CONTACTING THE POLICE AND PROVIDING COPIES OF SPECIAL EDUCATION RECORDS

FINDINGS OF FACTS:

25. The [REDACTED] “Home Handbook” has a policy for making “911 Calls” that states “In the event that a student cannot be safely managed using the crisis procedures, school administrators may decide to call 911. Parent will be notified immediately.”
26. There is documentation that on two occasions, July 15, 2019 and January 9, 2020, the police were called to transport the student from school to a hospital in response to an “Petition for an Emergency Evaluation” initiated by the [REDACTED] staff. The documentation reflects that the student was engaging in “unsafe behavior,” “dangerous/injurious behavior,” and “aggressive behavior,” and that the behavior was “prolonged” and the student “was unable to return to stable functioning.”

27. There is no documentation that, on either of the two (2) occasions when the police were called to transport the student to a hospital, a crime was reported or that the police were conducting an investigation. There is also no documentation that the student was questioned by the police on either occasion.
28. There is documentation that the parents were notified on both occasions when the police were called to transport the student to a hospital. The documentation also reflects that the student did not require hospitalization on either occasion, and was released to his parents.
29. While there is documentation that the parents have requested that the [REDACTED] staff contact them instead of contacting the police, there is no documentation that the IEP team has agreed to this request.

CONCLUSIONS:

Allegation #2 Procedures When Contacting the Police

In this case, the complainant alleges that the school staff did not follow proper procedures when questioning the student on two (2) occasions when the [REDACTED] staff contacted the police.

Based on the Findings of Facts #25 and #26, the MSDE finds that, in response to the student's unsafe behavior on July 15, 2019 and January 9, 2020, the [REDACTED] staff contacted the police to transport the student to a hospital for an evaluation. Based on the Findings of Facts #25 - #29, the MSDE finds that there is no documentation of a crime reported or of an investigation being conducted, on July 15, 2019 or January 9, 2020, when the [REDACTED] staff contacted the police to transport the student to a hospital. Therefore, the procedures required in accordance with COMAR 13A.08.01.13 are not applicable, and the MSDE does not find a violation with respect to the allegation.

Allegation #3 Providing Special Education Records to the Authorities

In this case, the complainant alleges that the [REDACTED] failed to provide the student's special education records to the police when they were contacted and transported the student to a hospital.

Based on the Findings of Facts #26 and #27, the MSDE finds that there is no documentation that, on July 15, 2019 or January 9, 2020, the [REDACTED] staff reported a crime committed by the student. As a result, there was no requirement, in accordance with CFR §300.535, to provide the police with copies of the student's special education records. Therefore, the MSDE does not find a violation with respect to the allegation.

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.

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The parents and the PGCPS 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.
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Division of Early Intervention
and Special Education Services

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c:



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