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State Superintendent of Schools

June 11, 2020

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

RE: [REDACTED]
Reference: #20-122

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.

ALLEGATIONS:

On April 14, 2020, the MSDE received a complaint from Michelle Hall, Esq., hereafter, "the complainant," on behalf of the above-referenced student, and his mother, 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 above-referenced student.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the Individualized Education Program (IEP) has addressed the student's social, emotional, behavioral needs during the 2019 - 2020 school year, in accordance with 34 CFR §300.324.
2. The PGCPS has not ensured that the student has been provided with the supports required by the Behavioral Intervention Plan (BIP) and assistance transitioning between

classes required by the IEP during the 2019 - 2020 school year, in accordance with 34 CFR §300.101 and .323.

3. The PGCPS has not ensured that proper procedures have been followed when disciplinary removing the student from school during the 2019 - 2020 school year, in accordance with 34 CFR §300.530, Maryland Code, Education Article §7-305, and COMAR 13A.08.03. Specifically, the following was alleged:
 - a. The student was disciplinarily removed from school for incidents solely involving attendance-related offenses.
 - b. The student was disciplinarily removed from school in excess of ten (10) cumulative days without a determination being made regarding whether the removals constitute a pattern that resulted in a change in education placement requiring the provision of the IDEA disciplinary protections.
 - c. The student was disciplinarily removed from school in excess of ten (10) days without the provision of special education and related services after the tenth (10th) day of removal.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with an Other Health Impairment, under the IDEA, related to Attention-Deficit Hyperactivity Disorder (ADHD). He has an IEP that requires the provision of special education instruction and related services.

The student is placed at the [REDACTED] School, where he attended school until a March 16, 2020 Statewide closure of all schools as a result of the national COVID-19 pandemic.

ALLEGATION #: AN IEP THAT ADDRESSES THE STUDENT'S SOCIAL EMOTIONAL/BEHAVIORAL NEEDS DURING THE 2019 - 2020 SCHOOL YEAR

FINDINGS OF FACTS:

1. The IEP dated May 9, 2019, which was in effect at the start of the 2019 - 2020 school year, identifies needs in the area of social emotional/behavior. The present level of performance in this area reflects that, when [the student] does not have direct support from teachers, or is in a less structured, more distracted environment, he will engage in impulsive behaviors which include calling out, talking, and getting out of his chair in order to escape the environment and attain attention and interactions from adults.”
2. The IEP requires that that student be provided with redirection during instruction, and states that this support will be provided in his general education classes. The student also

- requires counseling services four (4) times a month, for thirty (30) minutes each session, by a school guidance counselor.
3. The student's social emotional/behavioral annual IEP goal reflects that he will demonstrate "self-control of his body and voice (good personal space, keeping hands/arms/legs near body, and appropriate voice level) in relation to the expected levels of the classroom and peers around him."
 4. On October 22, 2019, the student was disciplinarily removed from school for a period of five (5) days for "fighting."
 5. The Functional Behavioral Assessment (FBA), dated October 24, 2019, identified the same target behaviors, and identified the antecedents of the behaviors, such as specific peers, unstructured classes, when asked to participate and he is unsure of the answer, when confronted by school staff or peers about his behavior, class transitions, negative social interactions, consequences, and invading his personal space. The FBA included information about the prevention and response strategies that had been attempted unsuccessfully and recommended prevention strategies including use of a behavior contract and self monitoring tool, opportunities to make choices, and daily behavior "check-ins" with school staff throughout the day. It further included recommended response strategies such as, ignoring negative behavior, redirection, breaks, warnings by school staff, calling the school office, home communication, and in/out of school suspensions.
 6. On October 24, 2019, the IEP team convened to review the IEP to ensure that it addresses the student's behavior. The documentation of the meeting reflects that the team discussed that the student transferred to the PGCPs with a behavior plan from his previous school in the [REDACTED]. This plan identified the student with "noncompliant" behaviors in general, but did not specifically address behaviors reported by his current teachers, including tardiness to class and leaving class without permission, and did not address other reported behaviors, including making inappropriate comments to teachers and peers and physical aggression.
 7. The documentation of the October 24, 2019 IEP team meeting reflects that the team agreed to develop a BIP to include the supports recommended in the FBA and to continue to provide the supports in the behavior plan. However, there is no documentation that a BIP was developed until February 26, 2020.
 8. On November 6, 2019, the student was disciplinarily removed from school for a period of three (3) days for a "physical attack on a student."
 9. On November 18, 2019, the student was disciplinarily removed from school for a period of ten (10) days for a "physical attack on a student, extortion/shakedown and/or strong arm."

10. There is no documentation that the school staff considered whether the disciplinary removals on October 22, 2019, November 6, 2019, and November 18, 2019, constituted a pattern of behavior that resulted in a change in educational placement, requiring a manifestation determination and other IDEA supports.
11. On December 19, 2019, the student was disciplinarily removed from school for a period of ten (10) days for a “physical attack on a student, extortion/shakedown and/or strong arm.”
12. On January 15, 2020, the IEP team convened to determine whether the student’s behavior of a “physical attack on a student, extortion/shakedown and/or strong arm,” which occurred on December 19, 2019, was a manifestation of his disability. The manifestation document reflects that the IEP team decided that the behavior was not a manifestation of the student’s disability. However, the team did not document the basis for their decision and whether they considered the impact of the disability on the individual student when making the determination that the behavior did not have a direct and substantial relationship to the disability.
13. The manifestation document, dated January 15, 2020, also reflects that the total out-of-school suspension for the current school year was twenty-eight (28) days, and that the student has been removed, or is proposed for removal from the current placement for more than ten (10) consecutive days resulting in a change of placement. However, the document does not reflect that the team determined the services to be provided to address a Free Appropriate Public Education (FAPE) during the time which the student was disciplinarily removed.
14. On February 19, 2020, the student was disciplinarily removed from school for a period of three (3) days for ‘repeated classroom disruption/walking out.’ The PGCPS acknowledges that the removal occurred in violation of the PGCPS’ *Student Rights and Responsibilities Handbook*, but was subsequently expunged from the student educational record on May 15, 2020.
15. On February 25, 2020, the IEP team convened to review and revise the student’s IEP, as appropriate. The IEP meeting summary reflects that the team reviewed the student’s behavioral and suspension data, attendance, teacher and parent reports, and classroom performance. Based on this review, the team revised the IEP to include “frequent changes in activities or opportunities for movement and the use of positive and concrete reinforcement by school staff.” The social emotional/behavioral goal was not revised.
16. The student’s BIP, dated February 26, 2020, identifies target behaviors as “consistently being late to academic classes, leaves the classroom without permission, and makes inappropriate comments directed to teachers and peers.” The BIP includes preventative strategies such as, “teachers should escort or observe the [student] going to and from class depending on class location, give frequent breaks when needed, and receive

check-ins, 1-2 times per day.” The BIP also includes teaching and response strategies by school staff to assist the student with managing his behavior consistent with the recommendations in the FBA.

17. There is documentation that, on February 28, 2020, the student’s case manager contacted school staff by electronic mail (email) to inform them of the IEP and BIP decisions made by the IEP team regarding the student’s behavior. Those decisions included escorting the student to and from class, contacting the school office when he leaves class without permission, providing him with frequent breaks, and sending incomplete homework home.
18. There is documentation that, between February 27, 2020 and March 12, 2020, the student “left class without permission” on seven (7) occasions. However, the documentation does not reflect that the school staff attempted to implement the response strategies as required by the BIP.

CONCLUSIONS:

ALLEGATION #1: ADDRESSING SOCIAL, EMOTIONAL, BEHAVIORAL NEEDS

Based on the Findings of Facts #1 - #14, the MSDE finds that the PGCPS did not ensure that the student’s IEP addressed the student’s social emotional/behavioral needs from the start of the 2019 - 2020 school year until February 25, 2020, when a BIP was developed consistent with the data about the student’s needs, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation during this time period.

ALLEGATION #2: IMPLEMENTATION OF THE BIP AND OTHE SUPPORTS

Based on the Findings of Facts #14 and #16 - #18, the MSDE finds that the PGCPS did not ensure that the student was provided with the support required by the BIP, including transitioning between classes during the 2019 - 2020 school year, in accordance with 34 CFR §300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #3: DISCIPLINARY PROCEDURES

Disciplinary Removal for an Attendance Related Issue

Based on the Finding of Fact #14, the PGCPS acknowledges that the student was disciplinarily removed from school on February 19, 2020, due to disruptive behavior that involved refusal to remain in class, in violation of the PGCPS’ Student Rights and Responsibilities Handbook, in accordance with Maryland Code, Education Article §7-305. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the same Finding of Fact, the MSDE finds that the disciplinary removal was expunged from the student educational record. Therefore, no further school-based corrective action is required.

Disciplinary Removal without Consideration of a Change in Educational Placement

Based on the Findings of Facts #4 and #8 - #10, the MSDE finds that the student was disciplinarily removed from school in excess of ten (10) cumulative days without a determination being made regarding whether the removals constitute a pattern that resulted in a change in educational placement requiring the provision of IDEA disciplinary protections, in accordance with 34 CFR §300.530 and COMAR 13A.08.03. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Disciplinary Removal from School in Excess of Ten (10) days without the Provision of Special Education and Related Services after the Tenth (10th) Day of Removal

Based on the Findings of Facts #4, #8 - #13, and #15, the MSDE finds that the student was disciplinarily removed from school in excess of ten (10) days without the provision of special education and related services after the tenth (10th) day of removal, in accordance with 34 CFR §300.530 and COMAR 13A.08.03. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152).

Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.¹ This office will follow up with the public agency to ensure that it completes the required actions.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

Student-Specific

The MSDE requires the PGCPS to provide documentation that the student's BIP is being implemented once schools resume normal operations.

The MSDE also requires the PGCPS to provide documentation that the IEP team has determined the amount and nature of compensatory services to redress the violations identified.

The PGCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that the [REDACTED] School staff follow an established procedure for implementing and monitoring BIPs to ensure continued effectiveness, consistent with COMAR 13A.08.04.02.

The PGCPS must also provide documentation of the steps taken to ensure that [REDACTED] School staff follow requirements to consider whether there is a pattern of cumulative disciplinary removals in excess of ten (10) days in a school year that constitutes a change in educational placement requiring the provision of the IDEA disciplinary protections.

The PGCPS must further provide documentation of the steps taken to ensure that [REDACTED] School staff follow requirements to provide students with a FAPE after the tenth (10th) day of removal in a school year, regardless of whether the removals are cumulative or consecutive.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

Documentation of completion of the corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

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.

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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 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/Special Education Services

MEF:ac

c: [REDACTED]
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