



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

August 10, 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
Landover, Maryland 20785

RE: [REDACTED]
Reference: #20-135

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 June 4, 2020, the MSDE received a complaint from Julianne Edwards-Ransom, Esq., hereafter, “the complainant,” on behalf of 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.

While there is a sixty (60) day timeline for completion of the investigation process, on August 3, 2020, the MSDE informed the parties that it was extending the timeline for completion for one (1) week in order for the school system to attempt to obtain documentation that had not

been available due to the closure of school buildings as a result of the COVID-19 pandemic. This correspondence is the report of the final results of our investigation.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the Individualized Education Program (IEP) addresses the student's behavioral needs since June 2019, in accordance with 34 CFR §300.324.
2. The PGCPS has not ensured that the student has been provided with the Home and Hospital Teaching (HHT) services, including Extended School Year Services (ESY), required by the IEP since June 2019, in accordance with 34 CFR §§300.101, .323, and COMAR 13A.03.05.

BACKGROUND:

The student is twelve (12) years old, is identified as a student with an Intellectual Disability, under the IDEA, and has an IEP that requires the provision of special education and related services.

Since January 15, 2019, the student has been hospitalized at [REDACTED] due to intensive medical needs, and has been unable to attend a school-based program.

FINDINGS OF FACTS:

1. The IEP, dated February 11, 2019, and in effect in June 2019, identifies pre-academic, behavioral and communication skills as areas of need that are affected by the student's disability. The IEP describes the student as nonverbal, requiring modeling and full physical prompting which result in inconsistent responses and an undetermined level of understanding. The IEP includes goals for the student to improve his skills in each area of need including behavior and special education services to assist him with achieving the goals. The IEP required the provision of Extended School Year (ESY) services from July 8, 2019 to August 1, 2019.
2. On May 17, 2019, the school system staff informed a Prince George's County Department of Human Services staff member working with the family of the requirement to withdraw the student from the current school of enrollment and reenroll him in another school.
3. On May 23, 2019, the Prince George's County Department of Human Services staff member agreed to withdraw the student from the current school of enrollment the following day and to reenroll him in the new school.
4. On May 24, 2019, the student was withdrawn from the PGCPS. However, the Prince George's County Department of Human Services staff member did not reenroll the student at the new school until September 19, 2019.

5. On September 18, 2019, the school system received verification from a physician's assistant that the student was unable to attend school due to a medical condition until November 13, 2019.
6. On September 25, 2019, HHT services were denied because the verification did not have the appropriate signature from a licensed physician or certified nurse practitioner. Additionally, the verification did not include documentation of the diagnosis that prevented the student from attending school.
7. On November 8, 2019, the school system received verification from a licensed physician that the student could not attend school due to a medical condition and requested six (6) hours of HHT for eight (8) weeks.
8. On December 9, 2019, HHT services were initiated.
9. On January 14, 2020, the IEP team met at the request of the HHT Coordinator to discuss the student's academic and behavioral needs and to conduct the annual IEP review. The IEP present levels of performance were revised to include the student's current behavioral needs, including throwing of items, scratching others, spitting, head banging, and pulling medical equipment. The IEP team also identified the triggers for the behaviors and the behavioral goal was revised to reflect the student will comply with requests to complete what he deemed as "less desirable" activities. The team summary reflects that the IEP team discussed educational implications and that strategies would be implemented to improve the student's new behaviors.
10. On January 21, 2020, the school system was provided with reverification from a licensed physician of the need for HHT services for an additional eight (8) weeks. As a result, HHT services were approved through March 17, 2020.
11. On January 21, 2020, a teleconference took place with the special education teacher, speech/language pathologist and the HHT services staff to share teaching and behavioral strategies to address the student's new behaviors, and on January 31, 2020, the HHT staff conducted an observation of the student to help inform the strategies to be used.

12. On January 24, 2020, in a report of the student's behavioral progress, it was stated that the behavior addressed by the goal was "new," and the teacher reported that the student's progress on the goal was not measurable as a result of the lack of time spent on the skill development.
13. There is documentation that HHT services were provided until February 28, 2020. However, the HHT weekly reports reflect that the student did not receive HHT services December 23, 2020 through December 27, 2019; January 13, 2020 through January 17, 2020; January 20, 2020 through January 24, 2020 and; January 27, 2020 through January 31, 2020. In addition, the reports reflect that the student was not provided with at least six (6) hours of HHT services each week, with the exception of February 10, 2020 through February 14, 2020.
14. On March 5, 2020, the school system received reverification from a licensed physician of the student's need for HHT services for an additional eight (8) weeks.
15. On March 10, 2020, visitation restrictions were implemented by the [REDACTED] in response to the COVID-19 pandemic, such that outside educators were not permitted to visit patients.
16. On April 2, 2020, the MSDE issued a Technical Assistance Bulletin indicating that, with parent agreement, a student's IEP could be amended to reflect changes to how the IEP is implemented during the COVID-19 pandemic, consistent with guidance issued by the United States Department of Education on March 16 and 21, 2020.
17. On April 3, 2020, the PGCPS informed parents of students receiving HHT that a systemic Continuity of Learning Plan (ICLP) would be followed for distance learning through April 24, 2020.
18. The parent contact log reflects that the student's special education teacher attempted multiple times to arrange for the provision of computer equipment in the hospital and access to virtual instruction through Zoom and Google classroom meetings. However, the parent log reflects that due to the COVID-19 pandemic and the student's extreme susceptibility to infection due to his medical condition, ESY and HHT services have not taken place to this date. The log also reflects that the special education teacher is in consistent contact with the parent during this time.

DISCUSSION/CONCLUSIONS:

Allegation #1: Behavioral Needs Addressed on IEP

Based on the Findings of Facts #1, #9, #11, and #12, the MSDE finds that the IEP addressed the student's identified behavioral needs, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2: HHT Services

Based on the Findings of Facts #2 - #8, the MSDE finds that the student was not enrolled in the school system, and therefore, was not entitled to services from the PGCPS between May 24, 2019 and September 19, 2019. Therefore, this office does not find that a violation occurred for this time period.

Based on the Findings of Facts #4 - #8, the MSDE finds that there was a delay in initiation of HHT services from November 22, 2019 (ten (10) school days after the provision of verification of the need for HHT services on November 8, 2019, until December 9, 2019, in accordance with 34 CFR §§300.101, .323 and COMAR 13A.03.05. Therefore, this office finds that a violation occurred for this time period.

Based on the Findings of Facts #10 and #13, the MSDE finds that the student was not consistently provided with the amount of HHT services required between December 23, 2019 and February 28, 2020, in accordance with 34 CFR §§300.101, .323. Therefore, this office finds that violations occurred with respect to this time period.

However, based on the Findings of Facts #14 - #18, the MSDE finds that services have been offered to the student since March 2020, but that the student has not been available for those services. Therefore, this office does not find that a violation occurred with respect to this time period.

CORRECTIVE ACTION/TIMELINE:

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.

The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

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 may be reached at (410) 767-7770 or Nancy.birenbaum@maryland.gov.

The MSDE requires the PGCPS to provide documentation that the student is being provided with compensatory services or other remedy for the loss of HHT services for the violations identified related to the provision of HHT services once the school system is provided with access to the student through either face-to-face or virtual instruction.

Documentation 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.

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 subject to this State complaint investigation, consistent with the IDEA.

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.


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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: Monica Goldson
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