



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

March 4, 2021

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Ms. Trinell M. Bowman
Associate Superintendent for Special Education
Prince George's County Public Schools
John Carroll Administration Building
1400 Nalley Terrace
Landover, Maryland 20785

RE: [REDACTED]
Reference: #21-043

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention/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 January 4, 2021, the MSDE received correspondence from Ashley S. VanCleaf, Esq., hereafter, "the complainant" on behalf of Ms. [REDACTED] and her son, 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 above-referenced student.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the student's needs in the areas of academics, social skills, self-care, attention, organization, and school refusal as well as those arising out of Autism and Diabetes Type I, were identified and addressed through an Individualized Education Program (IEP) since January 4, 2020, in accordance with 34 CFR §§300.320, .324, .503 and COMAR 13A.05.01.06. This includes:
 - a. The PGCPS did not ensure that the IDEA evaluation was completed within the required timelines;

- b. The PGCPS did not follow proper procedures when responding to a request for an IEP team meeting in February 2020; and
 - c. The PGCPS did not ensure that the decisions about the student's program were consistent with the data.
2. The PGCPS has not ensured that the IEP team followed proper procedures when determining the placement, since January 4, 2020, in accordance with 34 CFR §§300.300 - .114 - .116, and .324.

BACKGROUND:

The student is seventeen (17) years old, is identified as a student with an Emotional Disability, under the IDEA and has an IEP that requires the provision of special education instruction and related services.

The student attended [REDACTED] until March 16, 2020, when there was a Statewide closure of all school buildings and initiation of virtual learning due to the COVID-19 pandemic.

IEP in Effect on January 4, 2020

1. On January 4, 2020, the student had an IEP that was developed on October 24, 2019. That IEP states that it was based on data obtained two (2) years prior, and that the IEP team could not obtain present levels of performance due to the student's lack of school attendance. The IEP stated that the student had been performing at grade level in all areas of academics, but identified him with needs related to lack of school attendance, inattention, mood instability and emotional dysregulation that caused him to withdraw. It also identified his need to improve social skills. The prior written notice for the meeting documents that the student's diabetes impacts his access to instruction, but the IEP does not address this need.
2. The October 24, 2019 IEP included goals for the student to improve his functioning in the areas of identified need with the exception of diabetes, and required special education instruction, counseling, and the implementation of a Behavioral Intervention Plan (BIP) to assist him with achieving the goals. The IEP also included supports for task completion, prompting for focusing, and preferential seating to support attention to tasks. The IEP states that the Least Restrictive Environment (LRE) in which the IEP could be implemented was a separate special education classroom.
3. At the October 24, 2019 IEP team meeting, the team decided to conduct a reevaluation in order to obtain present levels of performance. However, the IEP team did not consider how to address the student's continued school refusal in order to make him available for assessments, and there is documentation that the PGCPS chose not to take steps to enforce compulsory school attendance.

4. A January 6, 2020 report of an educational assessment reflects that the school staff were able to conduct the educational assessment, and that the student's academic performance was in the "average range" in all academic areas.
5. There is documentation that, on February 21, 2020, the parent requested an IEP team meeting. However, there is no documentation that the school staff responded to this request.

April 14, 2020 IEP Team Meeting

6. While the IEP team convened on April 14, 2020 to determine the services to be provided to the student during the period of virtual learning, it did not review and revise the IEP to include the present levels of academic performance consistent with the January 6, 2020 educational assessment report. The IEP team also did not consider how to address the student's school refusal during virtual instruction.

June 23, 2020 and July 10 and 17, 2020 IEP Team Meeting

7. On June 23, 2020 and July 10 and 17, 2020, the IEP team met to consider the parent's concerns about the student's lack of school attendance and progress. The IEP team documented that the student had not been available to complete all of the assessments recommended in October 2019. The team also considered the parent's concern about the student's difficulty logging onto the computer for virtual instruction and decided to reset his electronic mail account to assist him with doing so. However, it did not consider how to address the student's school refusal or review and revise the IEP to include the present levels of academic performance consistent with the January 6, 2020 educational assessment report. While the parent requested a change in educational placement to address the student's continued lack of school attendance, the IEP team decided to complete the reevaluation and IEP review before considering the educational placement.

August 21 and 28, 2020 IEP Team Meeting

8. On August 21 and 28, 2020, the IEP team reconvened and completed the reevaluation that began on October 24, 2019. The IEP team documented that the student's unavailability for testing resulted in the inability to complete the reevaluation within timelines. In addition to the educational assessment, the IEP team considered the report of the results of a psychological assessment completed on August 7, 2020 that states that the student has cognitive ability in the "average to high average" range. The report also states that, while the student is diagnosed with Autism, his emotional dysregulation is what primarily impacts his availability for learning.
9. At the August 21 and 28, 2020 IEP team meeting, the team further considered concerns of the parent that the student needs to improve his social skills, and that this need arises from Autism, which she believes to be what primarily impacts his education. The team considered information from the school staff that they had not observed social skills

problems with the student in the school setting however, the psychological assessment report reflected that the student's adaptive social skills were in the "at risk" range.

10. Based on this information, the team decided that the primary disability is an Emotional Disability. The IEP team decided to include social skills goals and services to improve the student's decision making skills.
11. At the August 21 and 28, 2020 IEP team meeting, the team also considered information from the school nurse that the student is diagnosed with diabetes and that in the school building, when he reported to her office for blood sugar checks, he informed her that he was not taking his medication so that he could be dismissed early from school when his blood sugar levels spiked as a result. The team discussed that upon return to the school building, the nurse will encourage the student to eat lunch with her and retest his blood sugar levels in an attempt to keep him in school.
12. The team decided to conduct another Functional Behavior Assessment (FBA) in order to update the Behavior Intervention Plan (BIP) when in person instruction was resumed. However, the team did not discuss how the student's lack of attendance would be addressed during virtual instruction prior to revision of the BIP.
13. At the August 21 and 28, 2020 IEP team meeting, the parent reported that the student displays threatening and aggressive behavior in the home, and requested an educational placement in a Residential Treatment Center (RTC) with psychiatric services. The IEP team discussed the range of educational placements made for the student in the past, including nonpublic separate special education schools and an RTC, which the student refused to attend. The IEP team discussed that the only placement that the student was willing to accept was a separate special education classroom at the school he would attend if not disabled. Based on the need to attempt to engage the student in instruction, the team rejected the parent's request and decided to continue the current educational placement.

November 12, 2020 IEP Team Meeting

14. On November 12, 2020, the IEP team met to conduct the annual IEP review, and considered reports of the student's teachers that the student had improved his engagement in instruction and work completion, and that his class participation and grades were better than they had been over the past two (2) years. The team revised the IEP goals consistent with reports of the student's progress and added supplementary aids and services to assist the student with attention, organization, self-care, self management, social skills, specifically, decision making skills, diabetes care, including check ins with the nurse and teacher check ins each Monday during his first period class and meeting reminders sent via email and text.

15. At the November 12, 2020 IEP team meeting, the parent requested an educational placement in a nonpublic separate special education school. Based on the school staff's reports of the student's progress in a separate special education classroom, the IEP team denied the request for a change in educational placement.

December 17, 2020 IEP Team Meeting

16. On December 17, 2020, the IEP team met. At the meeting, the team considered information from the student's parent that the student is not taking his diabetes medication, which is impacting his health and availability for instruction. The student's teachers reported that the student was continuing to participate in instruction, but that his grades were being impacted by his lack of regular completion of work assignments. The school staff also reported that the student was requesting a decrease in individual counseling sessions because he was feeling overwhelmed with the amount of group and individual counseling sessions being provided. The school staff recommended modifying the student's workload to address the matter, which was accepted by the IEP team to address the concern.
17. At the December 17, 2020 IEP team meeting, the parent again requested a change in educational placement to a nonpublic separate special education school. She reported that she was pursuing an RTC for noneducational purposes through the Local Care Team,¹ and was informed that the educational placement would need to be a nonpublic separate special education school in order for the student to be placed in an RTC. The IEP team decided that the LRE in which the IEP can be implemented continues to be a separate special education classroom in his neighborhood school based on the student's reported progress, but agreed to contact the Local Care Team and reconvene once additional information was obtained.

January 14, 2021 IEP Team Meeting

18. On January 14, 2021, the IEP team reconvened and considered information from the school staff that, while the student had reduced his participation in counseling sessions for approximately one (1) week, he had resumed regular participation in counseling and instruction, and was continuing to make sufficient progress. The student reported that he continued to feel overwhelmed with the amount of work required to be made up. He reported that he is a visual learner and needs help understanding and organizing his work.

¹ Local Care Teams (LCTs) include representatives of the local child and family-serving agencies, such as the local Core Service Agency, the Local School System, Juvenile Services, Social Services, Developmental Disabilities, and Addictions Services, as well as representatives of family members and youth. The LCT provides families with information from all of the agencies to see if there are possible community resources, services, or supports to help their child (<http://www.mdcoalition.org/resources/pages/local-care-teams>).

The IEP team decided to add an objective to his self management goal to improve organization and prioritize assignments and tasks. The team also decided that a whiteboard² would be used to provide instruction visually, and that the student will meet with a special education teacher to provide clarification of assignments.

19. The student's parent reported that the student displays noncompliant and disrespectful behavior at home. The team considered information that the Local Care Team was recommending an RTC for the student based on non-educational needs. The team also considered information from the student that he did not wish to be placed in an RTC and that he is willing to work with his parent on his behavior at home. The team discussed community-based agencies that offer in home services that could assist the family. Based on the information, the team again denied the request for a change in educational placement and decided that the LRE in which the IEP can be implemented continues to be a separate special education classroom.
20. The reports of the student's progress, dated February 12, 2021, reflect that he is making sufficient progress to achieve the annual goals.

CONCLUSIONS:

Allegation #1 Addressing the Student's Needs

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP in effect on January 4, 2020 was not designed to address the student's needs because it was not based on his present levels of performance and did not address his needs related to diabetes, in accordance with 34 CFR §§300.101 and .320.

Based on the Findings of Facts #2 and #8, the MSDE finds that the reevaluation that began on October 24, 2019 was not completed within the required timelines, in accordance with COMAR 13A.05.01.06.

Based on the Findings of Facts #3, #7, and #8, the MSDE finds that, while the timelines were not met because the student was unavailable for assessments, the IEP team did not consider how to address the student's interfering behavior of lack of school attendance during the 2019-2020 school year, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #4, #5, and #6, the MSDE further finds that the PGCPS did not ensure that proper procedures were followed to respond to the parent's request for an IEP team

² A whiteboard is a glossy, usually white surface for making nonpermanent markings. They are analogous to blackboards, but with a smoother surface allowing rapid marking and erasing of markings on their surface. The term is also used metaphorically to refer to features of computer software applications that simulate whiteboards. Such "virtual tech whiteboards" allow one or more people to write or draw images on a simulated canvas (<https://en.wikipedia.org/wiki/Whiteboard>).

meeting in February 2020 or to ensure that the IEP was reviewed and revised, as appropriate, consistent with the evaluation data it was able to obtain in January 2020, in accordance with 34 CFR §§300.324 and .503.

Based on the Findings of Facts #1, #3, #6, #7, #12, #14, #16, #18, and #20, the MSDE finds that, while the IEP team did not address the student's interfering behavior of lack of school attendance, in accordance with 34 CFR §300.324, this behavior has not continued into the 2020-2021 school year.

However, the MSDE finds further finds, based on the Findings of Facts #14, #16, and #18, that the PGCPS has ensured that the student's identified needs have been addressed for the 2020-2021 school year consistent with the data, in accordance with 34 CFR §§300.101, .320, and .324.

As result, this this office finds that violations occurred with respect to this allegation from January 4, 2020 through the end of the 2019-2020 school year.

Allegation #2 Placement Decision

Based on the Findings of Facts #1 - #7, the MSDE finds that the IEP team did not make an educational placement decision between January 4, 2020 and the end of the 2019-2020 school year. Therefore, this office does not find that a violation occurred with respect to the allegation during this time period.

Further, based on the Findings of Facts #13 - #19, the MSDE finds that there was data to support the IEP team's educational placement decisions made during the 2020-2021 school year, in accordance with 34 CFR §§300.114 - .116 and .324. Therefore, this office does not find that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMEFRAMES:

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.³

³ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must 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.

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties 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. ⁴ Dr. Birenbaum can be reached at (410) 767-7770 and nancy.birenbaum@maryland.gov.

Student Specific:

The MSDE requires the PGCPS to provide documentation that the IEP team has determined the compensatory services or other remedy to redress the violations identified within this Letter of Findings.

School Based:

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that violations do not recur at [REDACTED] and a description of how the school system will monitor to ensure the effectiveness of those steps.

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.

TECHNICAL ASSISTANCE:

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 timeframes 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 parents 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

⁴ The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

Ashley S. VanCleaf, Esq.
Ms. Trinell Bowman
March 4, 2021
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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

MEF/sf

c: [REDACTED]
Monica Goldson
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