



Mohammed Choudhury
State Superintendent of Schools

April 26, 2022

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Anne Arundel County Office
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Ms. Trinell Bowman
Associate Superintendent for Special Education
Prince George's County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: [REDACTED]
Reference: #22-099

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 February 25, 2022, the MSDE received a complaint from Margaret F. Holmes, 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 above-referenced student.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the student was provided with special education instruction and related services as required by the Individualized Education Program (IEP), including the time he was receiving Home and Hospital Teaching (HHT) services since September 8, 2021, in accordance with §§300.101, .323, and COMAR 13A.03.05.03.

2. The PGCPS has not ensured that the student has been provided with a “private duty nurse” (PDN) as required by the IEP from September 8, 2021 to September 14, 2021, and since November 29, 2021, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is fourteen (14) years old and is identified as a student with Multiple Disabilities under the IDEA. He attends [REDACTED], a public separate day school, and has an IEP that requires the provision of special education instruction and related services. The student is currently residing at a group home where he was placed through the PGCPS Department of Social Services.

FINDINGS OF FACTS:

1. The student’s IEP in effect on September 8, 2021 reflects that he is to be provided with thirty (30) hours and fifty (50) minutes of special education instruction each week in a separate special education classroom by a special education teacher. The IEP also requires that the student be provided with the “care of a private duty nurse retained by the Board of Education,” as a related service. The student requires "one on one skilled nursing care to accompany him to and from school, and throughout the school day. This is to ensure student safety, carry out physician orders, ensure airway patency, and monitor cardio-respiratory status.”
2. There is documentation that from September 8, 2021 to September 14, 2021, the student was unable to attend school due to health-related issues. The documentation also reflects that the student was hospitalized from September 14, 2021 to September 29, 2021, due to health-related issues.
3. On October 7, 2021, the student’s parent provided the school staff with HHT verification from the student’s private physician stating that the student’s medical condition impacts his participation in school and permitted him to participate in a full-time online instruction program. The HHT verification indicates that services were to be provided to the student for “4 - 6 weeks, starting on October 4, 2021.” The school staff reported that the HHT application was received on October 7, 2021, however, additional information was needed from the PGCPS staff and the application was not submitted for approval until October 15, 2021 and approved on October 27, 2021.
4. On October 27, 2021, the IEP team convened to determine the services the student would receive while eligible for HHT services. The documentation reflects that, “at the recommendation of the physician, [the student] qualifies for six hours of instructional service and that the student was approved for HHT from October 4, 2021 to November 29, 2021.” However, the IEP team determined that the student would receive “3 hours per week of instruction depending on his stamina, to address his reading comprehension goal.” The student’s IEP was not revised to reflect the decisions made by the IEP team.

5. There is documentation that the student received 1.5 hours of HHT services on November 2, 4, 16, and 18, 2021. However, there is no documentation that the student received HHT services from October 4, 2021 to November 1, 2021.
6. On November 29, 2021, the approved period of HHT services ended for the student and he was scheduled to return to school at that time. However, the PGCPS was unable to provide the student with transportation to and from school as a result of not having a PDN available for the student, as required by the IEP. The student's IEP was not revised to reflect the decisions made by the IEP team.
7. On January 31 and March 2, 2022, the IEP team convened to review the student's IEP. The complainant raised concerns regarding the student's lack of special education instruction since October 2021 and requested that the student "have the full hours of virtual instruction" if he could not attend school due to the lack of a PDN. In response, the school staff indicated that "virtual was only designed for elementary students, but the student will continue to be provided with instructional support for one (1) hour, two-three (2-3) time each week even if [the group home] didn't always have someone to sit with [the student] to provide the support he needs. [The student] will return to the building when he has a PDN." The student's IEP was not revised to reflect the decisions made by the IEP team.
8. There is no documentation that the student has been provided with a PDN and special education instruction as required by the IEP, since October 4, 2021.

CONCLUSIONS:

Allegation #1: Provision of Special Education

Home and Hospital teaching is to be provided only when a school psychologist, licensed physician or psychiatrist provides verification that a student is unable to attend school due to a physical or emotional condition. Upon receipt of the verification, the IEP team must follow specific steps to ensure that the student receives appropriate services. The IEP team must review and revise the IEP, as appropriate, to determine the instructional services to be provided and to develop a plan for returning the student to a school-based program. Home and hospital teaching services shall be provided to the student as soon as possible, but no later than ten (10) days after receipt of verification of the need for services. The length of instruction for students in a full-day program is a minimum of 6 hours a week and a minimum of 3 hours a week in a half day program (COMAR 13A.03.05.03, .04 and .05.01.10).

Based on the Findings of Facts #1, #2 - #5, #7, and #8, the MSDE finds that the PGCPS has not consistently provided the student with special education instruction as required by the IEP, including the time he was receiving HHT services, since October 4, 2021, in accordance with CFR 34 §§300.101, .323, and COMAR 13A.03.05.03. Therefore, this office finds that a violation continues to occur with respect to the allegation. Further, based on the Findings of Facts #4, #6,

and #7, the MSDE finds that the PGCPSS has not ensured that the IEP has been revised to reflect the special education services to be provided to the student since October 4, 2021, in accordance with CFR 34 §§300.101, .324, and COMAR.05.01.10. Therefore, this office finds that a violation occurred.

Allegation #2: Provision of a Private Duty Nurse as a Related Service

Based on the Findings of Facts #1, #2, and #6 - #8, the MSDE finds that the student has not been provided with a PDN as required by the IEP since November 29, 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation continues to occur with respect to 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.

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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

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 by May 30, 2022 that a PDN has been hired to support the student, and that he is provided with the special education instruction and supports as required by the IEP.

The MSDE also requires the PGCPS to provide documentation by May 30, 2022 that the IEP team has determined the student's present levels of functioning and performance in his identified areas of need, the amount of special education instruction to be provided to the student, that the IEP has been revised, consistent with the data, and that those special education services are being provided to the student, as required by the IEP. The IEP team must also determine the amount and nature of compensatory services to redress the violations identified in this letter and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

If by May 30, 2022, the PGCPS has been unable to obtain PDN services for the student, the MSDE requires the PGCPS to provide documentation each month thereafter demonstrating the efforts made to hire a PDN in order for the student to return to school. The MSDE further requires the PGCPS to determine an alternative method of providing the student with special education instruction and supports required by his IEP, if the student is unable to attend school in-person. Upon the hiring of a PDN, the MSDE requires the PGCPS to provide documentation that the IEP team has again convened and determined whether the violation related to the lack of the provision of a PDN had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

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 violations do not recur at the [REDACTED].

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 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/Special Education Services

MEF:ac

c: Monica Goldson
 Barbara VanDyke
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