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April 19, 2017

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

RE: XXXXX
Reference: #17-096

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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 2, 2017, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, "the complainant," on behalf of 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 followed proper procedures when disciplinarily removing the student from school since October 2016, in accordance with 34 CFR §§300.530 - .536 and COMAR 13A.05.01.07 and .08.01.11.
2. The PGCPS did not ensure that the complainant was provided with documents to be considered at the Individualized Education Program (IEP) team meeting held on November 17, 2016 at least five (5) days before the meeting, in accordance with COMAR 13A.05.01.07.

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3. The PGCPS did not ensure that the complainant was provided with prior written notice of the IEP team decisions from the IEP meeting held on November 17, 2016, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12.
4. The PGCPS has not ensured that the student has been provided with an IEP that addresses behavioral, adaptive physical education, occupational therapy, and transportation needs, since October 2016, in accordance with 34 CFR §§300.101, .324 and COMAR 13A.05.01.06
5. The PGCPS did not ensure that the complainant was provided with written notice to participate in the IEP meetings held on January 13, 2017 and January 27, 2017, in accordance with COMAR 13A.05.01.07.
6. The PGCPS has not ensured that proper procedures were followed when implementing behavior interventions with the student since October 2016, in accordance with COMAR 13A.08.04.05. Specifically, it is alleged that mechanical restraint has been used with the student.

INVESTIGATIVE PROCEDURES:

1. On February 2, 2017, the MSDE received the State complaint and documentation to be considered.
2. On February 2, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS.
3. On February 7, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to clarify the allegations.
4. On February 13, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Bowman of the allegations to be investigated and requested that her office review the alleged violations.
5. On March 23, 2017, Mr. Chichester and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a site visit to XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXXXXX, CSEP Coordinator; and
 - c. Mr. XXXXXXXXXXX, Adapted Physical Education Teacher.

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Ms. Kerry Morrison, Compliance Specialist, PGCPSS, attended the site visit as a representative and to provide information on the school system's policies and procedures, as needed.

6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated June 15, 2016;
 - b. IEP, dated November 17, 2016;
 - c. IEP, dated February 21, 2017;
 - d. PGCPSS Suspension notice, dated January 9, 2017;
 - e. Discipline referrals, dated January 9, 2017 and February 21, 2017;
 - f. Bus discipline referrals, dated October 24, 2016, November 2, 2016, and November 17, 2017;
 - g. The student's attendance record, dated between August 29, 2016 to February 28, 2017;
 - h. Early dismissal sign-out logs, dated between September 12, 2016 and February 2, 2017;
 - i. IEP meeting invitation, dated for November 17, 2016;
 - j. Consent for assessment form, dated November 17, 2016;
 - k. IEP meeting summary, dated November 17, 2016;
 - l. Adaptive physical education log, dated between October 2016 and February 2016;
 - m. Electronic mail (email), dated between October 2016 and March 2017, among the PGCPSS and the complainant;
 - n. Student behavior logs, dated between November 2016 and February 2017;
 - o. Functional Behavioral Assessment (FBA), dated January 9, 2017;
 - p. Behavior Intervention Plan (BIP), dated January 27, 2017;
 - q. Occupational therapy log, dated between October 2016 and February 2017;
 - r. IEP meeting invitation, dated for January 13, 2017;
 - s. IEP meeting invitation, dated for January 27, 2017;
 - t. IEP meeting summary, dated February 21, 2017;
 - u. PGCPSS Transportation Memorandum, not dated; and
 - v. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on February 2, 2017.

BACKGROUND:

The student is 6 years old and is identified as a student with a Developmental Delay, under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. a - c).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a - c).

ALLEGATION #1: DISCIPLINARY PROTECTIONS

FINDINGS OF FACTS:

1. On January 10, 2017, the student was disciplinarily removed from school for a period of three (3) days as a result of an incident involving “disruption and destruction of property.” The student’s attendance record also documents that the student was disciplinarily removed from school from January 10, 2017 to January 12, 2017 (Docs. d and g).
2. The school staff reported that when the student demonstrates inappropriate behaviors in school, they notify the complainant by telephone. The early dismissal logs documents that, on three (3) days, the complainant noted that she was removing the student from school before the end of the school day due to his behavior (Docs. h, n, v, and an interview with the school staff).

DISCUSSION/CONCLUSIONS:

The IDEA provides protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year. Once the student has been disciplinarily removed from school during the school year, the IEP team must convene to determine whether the student’s behavior was a manifestation of the student’s disability (34 CFR §300.530).

If the student’s conduct is determined to be a manifestation of his or her disability, the student must be returned to the educational placement from which he or she was removed. If the student’s behavior was not a manifestation of the student’s disability, the public agency must ensure that after the tenth (10th) day of removal, the student is provided with services that enable him or her to progress in the general education curriculum and to make progress toward achieving the annual IEP goals, although in another setting (34 CFR §300.530 and COMAR 13A.08.03.03).

In order to ensure that students are provided with services in accordance with the IDEA requirements, including the disciplinary protections, each public agency must ensure that specific documents are maintained in a student’s educational record, as specified in the *Maryland Student Records System Manual* (COMAR 13A.08.02.04). This includes IEP documents and disciplinary records (Maryland Student Records System Manual, 2016).

In this case, the complainant alleges that the student was improperly disciplinarily removed from school for behavior that was related to his disability. Further, the complainant asserts that she was requested by the school staff to pick-up the student from school before the end of the school day because of his behavior.

Based on the Finding of Fact #1, the MSDE finds that, because the student was not disciplinarily removed from school in excess of 10 days during the 2016-2017 school year, the disciplinary protections do not apply and there is no requirement to consider whether the behavior was a manifestation of his disability. Therefore, this office does not find that a violation occurred with respect to the allegation.

Further, based on the Finding of Fact #2, the MSDE finds that, while the complainant did remove the student from school before the end of the school day, there is no documentation that the school staff requested that the complainant remove the student from school for his behavior before the end of the school day. Therefore, this office does not find that a violation occurred.

ALLEGATION #2: PROVISION OF DOCUMENTS PRIOR TO AN IEP MEETING

FINDING OF FACT:

3. The IEP meeting invitation and meeting summary indicate that the purpose of the November 17, 2016 IEP team meeting was to discuss the student's interfering behaviors at school and to obtain parental consent to conduct a Functional Behavioral Assessment (FBA) and to develop a Behavioral Intervention Plan (BIP) for the student. Given the purpose of the meeting, school staff report that a draft IEP had not been developed (Docs. i, o, p, v, and an interview with the school staff).

DISCUSSION/CONCLUSIONS:

The public agency must provide parents with a copy of each assessment, report, data chart, draft IEP, or other documents that the IEP team plans to discuss at the meeting at least (5) business days before the meeting (COMAR 13A.05.01.07).

In this case, the complainant alleges that the IEP team did not provide her with a copy of a draft IEP prior to the IEP meeting held on November 17, 2016. Based on the Finding of Fact #3, the MSDE finds that a draft IEP had not been developed prior to the November 17, 2016 IEP meeting, and therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #3: THE PROVISION OF PRIOR WRITTEN NOTICE

FINDINGS OF FACTS:

4. There is no documentation that the complainant was provided with prior written notice following the November 17, 2016 IEP team meeting (Doc. u and an interview with the school staff).
5. On March 23, 2017, the PGCPS emailed the complainant prior written notice from the November 17, 2016 IEP team meeting (Docs. k and m).

DISCUSSION/CONCLUSIONS:

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education (FAPE) to the student (34 CFR §300.503 and COMAR 13A.05.01.12).

Based on the Findings of Facts #4 and #5, the MSDE finds that there is no documentation that the complainant was provided with prior written notice following the November 17, 2016 team meeting. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #5, the MSDE finds that the prior written notice of the November 17, 2016 IEP team meeting was provided to the complainant on March 23, 2017. Therefore, no student-specific corrective action is required with respect to the allegation.

**ALLEGATION #4: ADDRESSING BEHAVIORAL, ADAPTIVE PHYSICAL
EDUCATION, OCCUPATIONAL THERAPY,
AND TRANSPORTATION NEEDS**

FINDINGS OF FACTS:

Behavior Needs in School

6. The IEP in effect in October 2016 does not include goals that are related to behavior. There, however, is documentation beginning in October 2016, that the student began demonstrating inappropriate behaviors at school, including assault toward other students and staff, use of inappropriate language, and noncompliance with directions and task completion (Docs. a, e, f, h, k, n - p, and an interview with the school staff).

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7. On November 17, 2016, the IEP team convened to discuss the student's recent behaviors. The staff reported that the student was currently demonstrating "interfering" behaviors throughout the school day, such as task noncompliance, elopement, opposition to directions, and a lack of program participation. The IEP team recommended that an FBA be conducted and based on the data, that a BIP be developed, and additional revisions to the IEP be made, as appropriate. The IEP team also included additional adult support in the IEP to assist the student with maintaining positive behaviors in the classroom. The complainant provided consent for the FBA to be conducted (Docs. b, k, o, p, j, and v).
8. On January 9, 2017 the FBA was completed and on January 27, 2017, the BIP was developed. On February 21, 2017, the IEP team convened to discuss the data and revised the IEP to include behavioral goals related to following directions, decreasing aggression, self-management of feelings and crisis intervention. The team further decided to conduct a reevaluation of the student for additional data (Docs. c, o, p, t).

Adaptive Physical Education

9. The IEP in effect in October 2016, documents that the student's disability affects his gross motor skills and that he is to be provided with modified adaptations for physical activity through the use of accommodations. The IEP requires that he also be provided with adaptive physical education consult, one (1) hour each month, inside the general education classroom. The IEP, dated November 17, 2016 and February 21, 2017, continue to require the same provision of services with physical education consultation and modified adaptations for physical education (Docs. a - c, l, and v).

Occupation Therapy

10. The IEP in effect in October 2016, documents that the student's disability affects his fine motor skills and that he has difficulty completing fine motor activities with his left arm, with the use of his right arm in a supportive manner. The IEP documents that the student is to be provided with occupational therapy, three (3) times each month, for thirty (30) minutes each session. The IEP has a fine motor goal indicating that the student will demonstrate functional, bilateral coordination of his upper extremities and that he will use his non-dominant hand to assist his dominant left hand while completing class activities. The IEP, dated November 17, 2016 and February 21, 2017, continue to require the same provision of services for occupational therapy (Docs. a - c, q, and v).

Transportation Needs

11. The IEP in effect in October 2016 and November 2016, document that the student is to be provided with bus transportation as a related service, with no specialized equipment, personnel, or supports (Docs. a and b).

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12. There have been three (3) bus disciplinary reports, dated in October 2016 and November 2016, indicating that the student had displayed inappropriate behaviors, such as hitting, throwing objects, using profanity, and standing while the bus was in motion. The complainant reports that she had several informal conversations with the school staff about providing the student with a safety vest on the bus, but that the student has not been provided with a safety vest (Docs. f, u, v, and an interview with the complainant).
13. At the February 21, 2017 IEP team meeting, the complainant raised concern about the student's safety on the bus. The IEP team meeting summary documents that the PGCPs Office of Transportation participated in the meeting by telephone, and based on the team's recommendation, would provide the student with the appropriately sized safety equipment during transport. The team also indicated to the complainant that consent was needed in order to provide and use the equipment with the student while on the school bus (Docs. b and t).
14. At the February 21, 2017 IEP team meeting, while the team acknowledged the need to address the student's behavior issues on the bus, the IEP team did not revised the IEP to address the bus behavior issues, including positive behavioral supports or a bus assistant, pending the provision of a safety vest (Docs. c, p, t, and v).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101).

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that address all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must also consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §300.320 and .324).

The IEP must also include measurable annual goals that are designed to both meet the needs that arise out of the student's disability, and enable the student to be involved in and make progress in the general curriculum, which is defined as the same curriculum used for nondisabled students (34 CFR §300.320).

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

Behavior Needs at School

Based on the Findings of Facts #6 - #8, the MSDE finds that there is documentation that the IEP addresses the student's identified behavior needs in school. Therefore, this office does not find that a violation has occurred with respect to this aspect of the allegation.

Adaptive Physical Education

Based on the Finding of Fact #9, the MSDE finds that there is documentation that the IEP addresses the student's identified adaptive physical education needs. Therefore, this office does not find that a violation has occurred with respect to this aspect of the allegation.

Occupation Therapy

Based on the Finding of Fact #10, the MSDE finds that there is documentation that the IEP addresses the student's identified occupational therapy needs. Therefore, this office does not find that a violation has occurred with respect to this aspect of the allegation.

Transportation Needs

Based on the Findings of Facts #11 - #14, the MSDE finds that, although on February 21, 2017, the IEP team met to consider the student's behavior giving rise to bus safety concerns, and determined the need for a safety vest for the student, the team did not revise the IEP to address these behavioral concerns on the bus, pending the use of the safety vest. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #5: IEP MEETING INVITATION

FINDING OF FACT:

15. The complainant reported that she was not provided with at least ten (10) days notice of the January 13 and 27, 2017 IEP meetings, and that she would be unable to attend these meetings. In response, the school-based members of the IEP team report that, as a result, they cancelled the meetings (Docs. m, r, s, v, and an interview with the school staff).

DISCUSSION/CONCLUSIONS:

A public agency shall take steps to ensure that the parent of the student with a disability is present or are afforded an opportunity to attend and participate at meetings of the IEP team. The parent of a student with a disability shall be provided with written notice in advance of the meeting. In Maryland, notice must be provided at least 10 days in advance of the meeting, unless

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an expedited meeting is being conducted to address disciplinary issues, determine the placement of the student with a disability not currently receiving educational services, or meet other urgent needs of the student to ensure the provision of FAPE (COMAR 13A.05.01.07).

In this case, the complainant alleges that she did not receive at least ten (10) days advance notification to participate in the IEP team meetings that were scheduled to be held on January 13, 2017 and January 27, 2017.

Based on the Finding of Fact #15, the MSDE finds that, although the complainant was not provided with at least ten (10) days advance notice to participate in the January 13 and 27, 2017 IEP meetings, the IEP team meetings did not take place on those days and were rescheduled for February 21, 2017. Therefore, this office does not find that a violation has occurred with respect to the allegation.

**ALLEGATION #6: PROPER PROCEDURES FOR IMPLEMENTING
BEHAVIOR INTERVENTIONS**

FINDINGS OF FACTS:

16. The IEP in effect in October 2016 and revised in November 17, 2016, does not require the use of behavior interventions for the student (Docs. a and b).
17. On February 21, 2017, the IEP team convened and included crisis prevention and intervention to the IEP in response to the student's behavior. The IEP documents that, on an "as needed" basis, the student will have access to a "designated crisis area" in order to de-escalate should he require it (Docs. c, t, and an interview with the school staff).
18. At the February 21, 2017 IEP team meeting, the complainant raised concern about the use of a "restraint chair" being used on the student. The occupational therapist reported that the chair is an adaptive chair with lateral support and a footrest, and is used to assist the student with sitting correctly and maintaining an upright posture while in class, and was used on a trial basis to determine if it effectively assisted the student with posture support. The school staff also reported that the student would move around the room while in the chair and that the chair was not an effective support for the student. The occupational therapist further indicated that the chair is too small for the student and that it is no longer being used (Docs. c, q, t, and v).
19. On March 23, 2017, the MSDE viewed the adaptive chair that was used by the occupational therapist with the student to allow him to maintain an upright posture while in class. The chair has high sides, a foot rests, and a clip-on seat belt that goes around the waist, but does not have ties to prevent the movement of the student's arms and legs (A review of the adaptive chair by the MSDE staff).

DISCUSSION/CONCLUSIONS:

The use of mechanical restraint is prohibited in public agencies and nonpublic schools unless a public agency or nonpublic school is certified by and meets the requirements of the Joint Commission for the Accreditation of Healthcare Organizations (COMAR 13A.08.04.05).

In this case, the complainant alleges that the school staff utilized a “restraint chair” as a means of mechanical restraint with the student when he demonstrated behaviors. Based on the Findings of Facts #16 - #19, the MSDE does not find that a mechanical restraint was used with the student. Therefore, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTION/TIMELINE:

Student-Specific

The MSDE requires the PGCPS to provide documentation by May 15, 2017, that the IEP team has convened and revised the IEP to include behavior supports to be provided to the student on the school bus.

The PGCPS must ensure that the complainant is provided with written notice of the team’s decisions. The complainant 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 by May 31, 2017 of the steps taken to ensure that XXXXXXXXXXXXXXXXXXXX staff implement the requirements regarding the provision of prior written notice following an IEP team meeting.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the PGCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

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If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system 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 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 Special Education/Early Intervention Services

MEF:ac

c: Kevin Maxwell
Gwendolyn Mason
LaRhonda Owens
Deborah Anzelone
XXXXXXXXXXXXX
Dori Wilson
Anita Mandis
Albert Chichester
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Linda Bluth