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June 27, 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: #17-133

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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.

ALLEGATION:

On March 16, 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 student.

The MSDE investigated the allegation that the PGCPS has not ensured that the student was provided with the services required by the Individualized Education Program (IEP) since March 16, 2016, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On May 2, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Executive Director of Special Education, PGCPS, and Ms. Deborah Anzelone, Instructional Supervisor, Support Programs & Services and Due Process and Mediation, Department of Special Education, PGCPS.
2. On May 4, 2017, Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to discuss the allegation being investigated.

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3. Also on May 4, 2017, the complainant provided documentation to the MSDE for consideration.
4. On May 10, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegation and requested that the school system review the alleged violation.
5. On May 9, 10, and 11, 2017, the PGCPS provided the MSDE with documentation for consideration.
6. On May 12, 2017, Ms. Floyd and Ms. Nicole Green, Dispute Resolution Data Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX and interviewed Ms. XXXXXXXXXXX, Special Education Department Chairperson; and Mr. XXXXXXXX, Professional School Counselor. Dr. Barbara Vandyke, Compliance Instructional Specialist, PGCPS, attended the site visit as a representative of the PGCPS and to provide information on the PGCPS policies and procedures, as needed.
7. On May 18, 2017, the complainant corresponded with Ms. Floyd and provided the MSDE with additional documentation, via electronic mail.
8. On May 23, 2017, Ms. Floyd and Dr. Vandyke conducted a site visit at XXXXXXXX XXXXXXXX to review the student's record and interviewed Mr. XXXXXXXX, Special Education Case Manager during the 2015-2016 school year. Dr. Vandyke provided the MSDE with additional documentation for consideration during this visit.
9. On June 2, 2017, Ms. Floyd conducted a telephone interview with Mr. Brian Nettey, Attorney, Public Defender's Office, at the complainant's request, to discuss the allegation being investigated.
10. On June 2, 2017, Ms. Floyd requested documents from Ms. Tracia Roundtree, Pupil Personnel Worker, PGCPS, which were provided on June 5, 2017.
11. On June 5, 2017, Ms. Floyd requested documents from Ms. Katrina Anderson Smallwood, Pupil Personnel Worker, PGCPS which were provided on June 5, 2017.
12. On June 6, 2017, the PGCPS provided the MSDE with additional documentation for consideration.
13. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated February 11, 2016;
 - b. IEP team summary, dated March 8, 2016;
 - c. Reports of the Functional Behavioral Assessment (FBA) and the Behavioral Intervention Plan (BIP), dated January 23, 2015;

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- d. Correspondence from the PGCPS to the complainant, dated April 6, 2016;
- e. Report of the student's attendance by class period, dated August 23, 2016 through January 19, 2017 and August 25, 2015 through January 19, 2017;
- f. Report of the student's school enrollment history;
- g. The student's transcript and report cards, dated since the 2013-2014 school year;
- h. The PGCPS Administrative Procedure #5113, *Student Attendance, Absence and Truancy*, dated July 1, 2016;
- i. Correspondence from the PGCPS pupil personnel worker to the complainant, dated September 23, 2016 and November 4, 2016;
- j. Correspondence from the PGCPS chief hearing officer to the complainant, dated January 18, 2017;
- k. IEP team summary of the February 11, 2016 IEP team meeting;
- l. Notes from the PGCPS counseling staff and pupil personnel staff, dated January 13, 2017 through January 25, 2016;
- m. Notifications of the student's suspensions, dated since March 2016;
- n. Log of parent contacts, dated since August 24, 2016; and
- o. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on March 16, 2017.

BACKGROUND:

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

From March 2016 to April 19, 2016, the student attended XXXXXXXXXXXX. From April 19, 2016 to January 23, 2017, the student was placed by the PGCPS at XXXXXXXXXXXXXX, an interim alternative educational setting. Since January 23, 2017, the student has not attended school (Docs. a, b, d, e, g, i, and j).

FINDINGS OF FACTS:

XXXXXXXXXXXX: March 16, 2016 - April 19, 2016

1. The IEP, dated February 11, 2016, states that the student requires "intensive special education" for reading, writing, math, science and social studies to be provided in a separate special education class by a special education teacher for 18 hours and 45 minutes each week (Doc. a).
2. On March 8, 2016, the IEP team convened to determine whether behavior displayed by the student, while he was attending XXXXXXXXXXXXXXX, was a manifestation of his disability. The IEP team determined that the behavior was not a manifestation of the student's disability (Doc. b).
3. On March 8, 2016, the IEP team documented the student had been disciplinarily removed from school for 26 non-consecutive days, thus far, during the 2015-2016 school year.

The IEP team also determined that the current incident, involving assault, was not similar to previous behavioral incidents, that included thefts, drug possession, use of counterfeit money, disruptions of classes, and threats (Doc. b).

4. Also on March 8, 2016, teacher's reports indicated that although the student had a Behavior Intervention Plan (BIP) that addressed his lack of school attendance, the student "does not attend classes even when he attends school." The complainant expressed concerns about "school procedures that allow students to skip classes while congregating in the hallways." The IEP team summary documented that the IEP team recommended that the student's BIP needed to be reviewed and revised to address the student's behaviors of not attending school. However, there is no documentation that the BIP was reviewed and revised and that the complainant's concerns were addressed (Docs. b and c).
5. The PGCPS pupil personnel worker reported that the following interventions were provided to assist the student with improvement of his behavior, attendance, and academic achievement including meetings with the student, a referral to Concentric¹ which conducted 5 home visits, scheduled meetings with the complainant and the administration, a meeting with the Interagency Council/Truancy Reduction Court Referral² team, additional hall monitoring and escorts to class, a referral to the Student Intervention Team (SIT) and daily monitoring of his attendance per class period (Doc. l).
6. There is no documentation of the meetings held with the student and complainant, the outcome of the home visits, SIT team meeting, results of the escorts to class and hall monitoring, and the daily monitoring of the student's attendance in every class (Interviews with school staff).
7. On April 6, 2016, the school system sent correspondence to the complainant, notifying her that the student was being expelled from school. The correspondence further states that the student would be readmitted to school in January 2017, and that, during the period of expulsion, the student was to be assigned to XXXXXXXXXXXXXXXX (Docs. d and m).
8. A report of the student's attendance reflects that during the 2015-2016 school year, the student was absent 88 days (Doc. e).
9. The PGCPS report of the student's enrollment history indicates the student began the ninth grade in the PGCPS in 2014. The student is currently a ninth grade student and has earned one (1) credit towards his high school diploma (Doc. f).

¹ Concentric Educational Solutions provides evidence-based solutions that assist schools in building their capacity for student support services (<http://www.concentriced.org/>).

² The Interagency Council/Truancy Reduction Court Referral process is a referral to Court for violation of the compulsory attendance law (parental sanctions) or to the Maryland Department of Juvenile Services (DJS) for intake services (student sanctions).

XXXXXXXXXXXXX: April 19, 2016 - January 23, 2017

10. A report of the student's attendance at XXXXXXXXXXXXXXXX between August 23, 2016 to January 19, 2017, indicates that the student had been absent 50 days out of 90 instructional days during the 2016-2017 school year (Doc. d).
11. On September 20, 2016, while placed at the XXXXXXXXXXXXXXXX by the PGCPS, the student's IEP was changed without convening the IEP team to reflect that the student would receive 33 hours and 20 minutes a week in a general education classroom (Doc. a).
12. There is no documentation that the complainant and the school system agreed to the September 20, 2016 changes to the student's IEP without convening an IEP team (Doc. k).
13. On November 28, 2016 and January 19, 2017, reports of the student's progress towards achieving the IEP goals indicates that the student was making sufficient progress to meet the goals except in written language, despite the lack of school attendance (Doc. a).
14. However, while his teachers reported that the student was making sufficient progress on his IEP goals, they also indicated that he has difficulty focusing, is easily distracted, will not read unfamiliar words and is selective when participating in class. Teachers also reported that "the student struggles with putting his thoughts in writing, does not provide sufficient details when writing, and leaves out key details that support claims" (Doc. a).
15. The student's attendance and the teachers reports are inconsistent with the IEP progress reports which reflect that the student is making sufficient progress to meet his IEP goals (Docs. a and d).
16. On January 18, 2017, the complainant received correspondence from the PGCPS that the student's expulsion was being rescinded conditioned upon his administrative transfer to Suitland High School for the remainder of the 2016-2017 school year. There is no documentation that the complainant agreed to the change in educational placement or that the IEP team determined that it was required (Doc. j).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student between the ages of 3 and 21, with a disability is provided with a Free Appropriate Public Education (FAPE) through an IEP that addresses all of the student's special education and related service needs. This FAPE obligation continues during periods of expulsion and any other periods of time that the student is disciplinarily removed from school in excess of ten days during a school year (Md. Code Ann., Educ. §7-305 and 13A.08.01.11).

In order for the public agency to ensure that a student with a disability receives a FAPE, the student must be attending school and receiving the special education and related services

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required by the IEP (34 CFR §300.323). Each public agency is required to develop a student attendance policy that includes procedures for verifying absences and penalties for not meeting standards for regular attendance. The procedures must also include an attendance monitoring procedure and intervention strategies for dealing with absenteeism (COMAR 13A.08.01.05).

The PGCPS Administrative Procedure #5113 states that all students are expected to attend school regularly in accordance with state laws and regulations. Each child who turns 17 on or after July 1, 2016 (School Year 2016-2017), and any child who turns 18 on or after July 1, 2017 (School Year 2017-2018) shall attend a public school regularly doing the entire school year unless the child is otherwise receiving regular, thorough instruction during the school year in the studies usually taught in public schools to children of the same age, or is exempted by law.

The PGCPS requires that students who demonstrate a pattern of excessive absences be referred to the school team, including the pupil personnel worker, for intensive interventions designed to increase regular attendance. The PGCPS Administrative Procedure #5113 also indicates that upon the withdrawal of a special education student, an IEP team meeting is to be convened.

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. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team is required to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §300.324).

In making changes to an IEP, the parent and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the IEP. Otherwise, any revisions made to the IEP must be made through the IEP team process (34 CFR §300.324).

Based on the Findings of Facts #1 - #6, #8 - #15, the MSDE finds that the student was not provided with the special education and related services required by the IEP because the IEP team did not address his lack of regular school and class attendance and because the PGCPS did not follow its procedures for enforcing compulsory school attendance.

In addition, based on the Findings of Facts #7 and #16, the MSDE finds that the PGCPS did not follow proper procedures when unilaterally changing the student's education program and when unilaterally changing his educational placement upon rescission of the expulsion.

For these reasons, the MSDE finds that violations occurred and that the PGCPS has not offered the student a FAPE since March 16, 2016.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by the start of the 2017-2018 school year that the IEP team has convened, and that appropriate steps were taken to ensure the participation of the complainant and the student in the meeting. At the meeting, the IEP team must do the following:

- a. Consider positive behavioral interventions to address the student's lack of class and school attendance;
- b. Determine an appropriate program and placement for the student including counseling and behavioral supports; and
- c. Determine the compensatory services for the loss of a FAPE, to be provided if the student returns to school, or determine another remedy, which may include the provision of transition services to assist the student with transition to post-secondary school activities, to be provided if the student does not return to school.

School/System-Based

As a result of the investigation of State complaint #17-123, which was completed on March 23, 2017, the MSDE has required the PGCPS to take corrective action to ensure the following:

- a. Students with disabilities who are expelled are provided with an educational placement in which the IEP can be implemented, as determined by the IEP team or agreement of the school system staff and the parents.
- b. IEP teams consider positive behavioral interventions to address interfering behaviors such as inconsistent school attendance, including during the disciplinary removal of students with disabilities.
- c. Compulsory school attendance laws be enforced, including during periods of time that students with disabilities are disciplinarly removed from school.
- d. Changes in educational placements for students with disabilities returning from expulsion are made either through an IEP team or agreement between the school system and the parent.

Therefore, no additional system-based corrective action is required.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the PGCPS by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-0255.

Please be advised that 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.

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 consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions 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 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/sf

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