



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

June 7, 2018

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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: XXXXX
Reference: #18-138

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 April 9, 2018, the MSDE received a complaint from Ms. Debrah Martin, hereafter, “the complainant,” on behalf of the above-referenced student and her mother, Ms. XXXXXXXXXXXX. 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.

On May 4, 2018, the MSDE informed the complainant we must receive written confirmation from the student’s parent that states that we may release information about the student to her in order to share with her the results of the investigation. To date, the MSDE has not received such written notification. Therefore, the results of this investigation are being reported directly to the school system and the student’s mother.

The MSDE investigated the following allegations:

1. The PGCPS did not follow proper procedures, from April 9, 2017¹ to May 2017, to ensure that the student was evaluated and identified as a student with a disability under the IDEA, in accordance with 34 CFR §§300.8, .111, .301, .503 and COMAR 13A05.02.13.
2. The PGCPS did not ensure that the parent was provided with a copy of a psychological assessment that the Individualized Education Program (IEP) team discussed at the June 6, 2017 IEP team meeting, at least five (5) business days prior to the scheduled meeting, in accordance with COMAR 13A.05.01.07.
3. The PGCPS has not ensured that the IEP has addressed the student's behavioral needs, since the start of the 2017 - 2018 school year, in accordance with 34 CFR §§300.101 and .324.
4. The PGCPS has not ensured that the supplementary supports, accommodations, and Behavioral Intervention Plan (BIP) required by the IEP have been consistently provided to the student, since the start of the 2107 - 2018 school year, in accordance with 34 CFR §§300.101 and .323.
5. The PGCPS has not followed proper procedures when disciplinarily removing the student from school during the 2017 - 2018 school year, in accordance with 34 CFR §§300.530 - .536 and COMAR 13A.05.01.07 and .08.01.11.

BACKGROUND:

The student is sixteen (16) years old, is identified as a student with an Other Health Impairment (OHI) under the IDEA, related to Attention Deficit Hyperactivity Disorder (ADHD), which impacts her self-management abilities, and social/emotional functioning. She has an IEP that requires the provision of special education instruction and related services.

At the start of the 2017-2018 school year, the student had an Accommodations Plan under Section 504 of the Rehabilitation Act of 1973 (504 Plan). On June 8, 2017, the IEP team identified the student with a disability under the IDEA.

The student attended XXXXXXXXXXXXXXX until March 19, 2018, when she was administratively transferred to XXXXXXXXXXXXXXXXXXXXXXXXXXXX by the PGCPS.

¹ The complainant indicated that the violation occurred since January 2017. She was informed in writing that, only allegations of violations that occurred within one year of the filing of a State complaint can be addressed through State complaint investigation procedure (34 CFR §300.153).

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ALLEGATIONS #1 - #3 AND #5: EVALUATION, IEP DEVELOPMENT, AND DISCIPLINARY PROCEDURES

Findings of Facts:

1. Effective on April 9, 2017, the student had a 504 Plan related to ADHD that was being implemented in the general education program, and included accommodations to support her inattentiveness while in class.
2. On May 11, 2017, the 504 Plan team convened for a reevaluation. At that meeting, the student's mother requested that the student be evaluated under the IDEA because she had concerns about the student's display of frustration and anger at home. There is documentation indicating that the student was referred to the "anger management program" at school during the 2016-2017 and 2017-2018 school years, due to behaviors that included walking out of the classroom without permission and verbal outbursts. However, there is no documentation that the effectiveness of these interventions in the general education program were monitored.
3. On May 15, 2017, the IEP team convened to discuss the request by the mother that the student be evaluated under the IDEA. The referral indicates that the student's mother expressed concerns in the areas of health, social/emotional/behavior, and academics. The team determined that educational and psychological assessments would be conducted and the student's mother provided consent for assessments at the meeting.
4. On June 7, 2017, the student's mother was provided with a copy of the psychological assessment that was to be reviewed at the IEP team meeting scheduled for June 8, 2017.
5. On June 8, 2017, the IEP team convened to review assessment results. The psychological assessment reflects that the student demonstrated behaviors of inattentiveness, in addition to "acting out, quick anger, and frustration" during instruction. The assessment included recommendations that the student be provided with reduced distractions, a resource class to improve her organization and time management, monitoring work completion. The IEP team also recommended conducting a Functional Behavioral Assessment (FBA) and BIP to address behaviors, such as "acting out and anger." The educational assessment reflects that the student would benefit from strategies to assist her in the area of calculation and concentration. The assessment included recommendations for use of a calculator, reduced number of problems to demonstrate skill mastery, math vocabulary, and increased modeling of calculation assignments. Based on the results, the IEP team determined that the student met the criteria for identification as a student with an OHI under the IDEA and that she required specialized instruction in order to access the general education curriculum.
6. On July 6, 2017, the IEP team convened to develop the student's IEP. The meeting summary reflects that teachers reported that the student demonstrates behaviors that

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manifest in the form of missing assignments, excessive conversation, and noncompliance with following staff directions. The present levels of performance in social emotional/behavior and self-management reflect that the student often engages in unstructured conversations and is disorganized. The team developed behavior goals that include following classroom and school policies, demonstrating appropriate behaviors with staff and peers, and following a schedule in order to completing assignments on time. The team decided that the student's progress on the goals would be reviewed thirty (30) days after the start of the 2017-2018 school year.

7. At the July 6, 2017 IEP team meeting, the IEP team also determined that when the student returned to school from summer break, a FBA would be conducted and based on the results, a BIP would be developed. The student's mother provided consent for the assessment at the meeting.
8. On September 29, 2017, the student was disciplinarily removed from school for a period of two (2) days as a result of being "disrespectful" toward staff and another student.
9. On October 17, 2017, the IEP team convened for the thirty (30) day review of the student's progress. Based on information from the student's teacher that there were no significant behaviors that were observed that impeded the student learning, the school staff decided not to conduct a FBA that had been determined necessary by the IEP team. However, the team again decided that the FBA was needed based on concerns by the student's mother about addressing the behavior that resulted in the disciplinary removal.
10. On October 31, 2017, the IEP team reconvened to review the results of the FBA. The meeting summary reflects that the school-based members of the IEP team decided that a BIP was not warranted because the FBA did not identify behaviors that interfered with the student "learning, social relationships, and/or participation in school." However, the student's mother expressed concern that a BIP was necessary for the student in the event that the student was unable to control her emotions. Therefore, the IEP team decided to develop a BIP.
11. On November 14, 2017, the IEP team reconvened to develop a BIP for the student. Based on the FBA and the student's disciplinary removal on September 29, 2017, the team identified behaviors of noncompliance with following staff direction and managing her behavior when interacting with peers. The response strategies developed include adults using positive language when repeating directions, allowing the student time to process directives before repeating the request, redirection, requesting staff support, and reminders to utilize breathing techniques when upset.
12. On March 19, 2018, the student was disciplinarily removed from school for a period of ten (10) days as a result of a "physical attack" by the student on another student. This second disciplinary removal during the 2017-2018 school year resulted in her disciplinary removal from school in excess of ten (10) days during the 2017-2018 school year.

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13. On March 20, 2018, the IEP team documented its decision that the behavior was not caused by, or had a direct and substantial relationship to the student's disability. However, when documenting the basis for the decision, the team merely restated its determination but did not indicate that there was a lack of relationship between the behavior that resulted in the disciplinary removal and the manner in which the disability impacts the student.
14. The IEP team documented its decision that the behavior was not a direct result of the school's failure to implement the IEP. However, there is no documentation that the BIP was being implemented at the time that the behavior was exhibited that resulted in the removal.

CONCLUSIONS:

Allegation #1: Child Find

The PGCPs *Administrative Procedure #5124* describes a multi-tiered system of support designed to identify and assist student who may need support for school success. This Procedure states that interventions and strategies in the general education program are identified and implemented, and that student progress is monitored and documented in order to assist struggling students academically and behaviorally at the earliest signs of difficulty. If sufficient progress is not achieved, additional interventions and supports may be considered prior to referral for evaluation if a disability is not suspected.

In this case, the complainant alleges that the student was struggling behaviorally for a long period of time, and that while a 504 Plan was developed to address some of her behaviors, it was not sufficient to ensure the student's access to instruction. The complainant alleges that the IEP team should have been convened to consider the lack of progress with interventions in the general education program prior to the referral for evaluation that she made.

Based on the Findings of Facts #1 - #5, the MSDE finds that there is no documentation that the PGCPs followed its procedures for monitoring the success of the interventions being provided in the general education program, and therefore, did not ensure that the provision of those interventions were not used to delay the evaluation of the student under the IDEA, in accordance with 34 CFR §300.111. Therefore, this office finds that a violation occurred from April 9, 2017 to May 15, 2017, when the IEP team convened to conduct an IDEA evaluation.

Allegation #2: Provision of Documentation Prior to an IEP Team Meeting

Based on the Findings of Facts #3 - #5, the MSDE finds that the parent was not provided with the required documentation prior to an IEP team meeting, at least five (5) business days prior to the scheduled meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #3: IEP that Meets the Student's Behavioral Needs

Based on the Findings of Facts #6 - #11, the MSDE finds that the IEP did not address the student's behavioral needs from the start of the 2017-2018 school year until November 3, 2017, when the FBA had been reviewed and the BIP was developed, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Allegation #5: Disciplinary Procedures

In this case, the complainant alleges that the IEP team did not follow proper procedures when making the manifestation determination.

Based on the Findings of Facts #12 - #14, the MSDE finds that the IEP team did not document the basis for its determination that the student's behavior was not caused by, or had a direct and substantial relationship to the student's disability, in accordance with 34 CFR §300.530.

Therefore, this office finds that there is no documentation that the decision was consistent with the data.

Further, based on the Findings of Facts #12 - #14, the MSDE finds that, because the BIP was not being implemented at the time of the student's behavior, there is no data to support the IEP team's decision that the behavior was not a direct result of the school's failure to implement the IEP, in accordance with 34 CFR §300.530. Therefore, this office finds that violations occurred.

ALLEGATION #4: PROVISION OF SUPPORTS, ACCOMMODATIONS, AND A BIP

Findings of Facts:

15. The student's IEP requires the provision of supports and accommodations to assist her in progressing through the general education curriculum. However, there is no documentation that the student was consistently provided with all the supplementary supports and accommodations required by the IEP.
16. On March 19, 2018, the student was involved in a peer altercation that resulted in her being disciplinarily removed from school. However, there is no documentation that the support strategies in the BIP were utilized prior to the altercation.

Conclusion:

Based on the Findings of Facts #15 and #16, the MSDE finds that there is no documentation that supplementary supports and accommodations were consistently provided to the student, as required by the IEP. Further, based on the Finding of Fact #16, the MSDE finds that there is no documentation that the BIP was implemented, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by the start of the 2018 - 2019 school year that the IEP team has determined the compensatory services to be provided in order to remediate the violations identified in this investigation. The PGCPS must provide documentation within one (1) year of the date of this Letter of Findings that the compensatory services have been provided.

School-Based

The PGCPS must also provide documentation by the start of the 2018 - 2019 school year of the steps taken to ensure that the XXXXXXXXXXXXXXX staff properly implements the requirements for the following:

- a. Monitoring student progress with the provision of interventions in the general education program to ensure that the provision of those interventions does not result in a delay in conducting IDEA evaluations;
- b. Providing parents with documents to be considered by the IEP team no later than five (5) business days before the meeting in which they will be considered;
- c. Ensuring that assessments determined necessary by the IEP team are conducted and the results considered by the IEP team in a timely manner;
- d. Ensuring that IEP supports are consistently provided as required by each student's IEP; and
- e. Ensuring that the IEP team basis for manifestation determinations is properly documented and supported by the data.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, 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

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 Special Education/Early Intervention Services

MEF:ac

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