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July 21, 2017

Ms. Jessica Williams
Education Due Process Solutions, LLC
711 Bain Drive #205
Hyattsville, Maryland 20785

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

RE: XXXXX
Reference: #17-120

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.

ALLEGATIONS:

The MSDE investigated a complaint received from Ms. Jessica Williams, hereafter, “the complainant,” on behalf of the above-referenced student and his mother. Ms. XXXXXXXXXXX. 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 following allegations:

1. The PGCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s social, emotional and behavior needs, fine motor and sensory needs, and speech and language needs, since the start of the 2016 – 2017 school year, in accordance with 34 CFR §§300.101, .320 and .324.
2. The PGCPS has not ensured that proper procedures were consistently followed when disciplinarily removing the student from school, since the start of the 2016 – 2017 school

year, in accordance with 34 CFR §§300.530 - .536, COMAR 13A.08.03 and .04, and COMAR 13A.05.01.10.

3. The PGCPS has not ensured that the student was consistently provided with the support of a dedicated aide required by the IEP, since January 2017, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On March 16, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS and Ms. Deborah Anzelone, Special Education Instructional Specialist, PGCPS.
2. On April 3, 2017, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On April 4, 2017, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
4. On April 28, 2017, and May 3, 25 and 26, 2017, and July 11, 2017, Ms. Austin requested the PGCPS to provide documentation for consideration.
5. On April 4 and 12, 2017, and May 16, 2017, the complainant provided documents to the MSDE for consideration.
6. On May 3 and 15, 2017, and June 8, 2017, the PGCPS provided the MSDE with documentation for consideration.
7. On May 3, 2017, Ms. Austin and Ms. Janet Zimmerman, Compliance Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX) and interviewed the following school system staff:
 - a. Ms. Donna Jeter, Compliance, PGCPS;
 - b. Ms. XXXXXXXXXXX, Behavior Specialist, XXXXXXX;
 - c. Ms. XXXXXXX, Intervention Teacher, XXXXXXX;
 - d. Ms. XXXXXXXXXXX; Special Education Coordinator,XXXX;
 - e. Ms. XXXXXXXXXXX, Assistant Principal and Academic Facilitator, XXXXXXX;
and
 - f. Ms. XXXX, General Educator, XXXXXXX.

Ms. Jodi Kaseff, Office of Special Education, Compliance, PGCPS, participated in the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.

8. On June 20, 2017, the MSDE requested the PGCPS to provide clarification of documentation.
9. On July 8 and 10, 2017, Ms. Austin was unsuccessful in her attempts to contact the PGCPS for clarification of documentation.
10. On July 11, 2017, Ms. Austin discussed the need for clarification of documentation with Ms. Kaseff. On the same date, Ms. Austin requested the PGCPS to provide additional documentation.
11. On July 19, 2017, Ms. Austin conducted a telephone interview with the parent.
12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEPs, dated April 11, 2016, December 13, 2016, January 17, 2017, and Amended IEP dated April 24, 2017;
 - b. Prior Written Notices, dated September 27, 2016, November 16 and 22, 2016, December 14, 2016, January 18, 2017, and March 28, 2017;
 - c. The request for consultation, undated;
 - d. The sign-in sheets of support staff, dated January 2017 to April 2017;
 - e. Daily schedules of the school staff, undated;
 - f. Functional Behavior Assessment, dated November 15, 2016;
 - g. Behavioral Intervention Plan, dated November 16, 2016;
 - h. The PGCPS Suspension notifications, dated November 30, 2016, December 21, 2016, February 7, 2017, and March 15, 2017;
 - i. Evaluation Report, dated December 12, 2017;
 - j. Notice of IEP team meetings scheduled on November 15 and 22, 2016, December 13, 2016, January 17, 2017, and March 28, 2017;
 - k. The parent's consent for initiation of special education services, signed on December 13, 2016;
 - l. Reports of the student's progress towards achievement of the IEP goals, dated November 11, 2016;
 - m. Notice and Consent for an evaluation of the student's social, emotional and behavioral skills, signed by the parent on September 27, 2016;
 - n. Documentation of office referrals during the 2016 - 2017 school year;
 - o. The school staff's behavior data collections, from August 23, 2016 to April 13, 2017;

- p. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on March 16, 2016; and
- q. Evaluation Report and Determination of Initial Eligibility, dated March 8, 2016.

BACKGROUND:

The student is seven (7) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services. He is currently attending XXXXXXXXXXXXXXXXXXXXXXXX. However, at the start of the investigation period, the student was attending XXXXXXXXXXXXXXXXXXXXXXXX at parent choice due to a PGCPS lottery selection (Docs. a and b).

During the period of time addressed by this investigation, the parent participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. a).

ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT’S SOCIAL, EMOTIONAL AND BEHAVIORAL NEEDS, FINE MOTOR AND SENSORY NEEDS, AND SPEECH AND LANGUAGE NEEDS

FINDINGS OF FACTS:

1. At the start of the 2016 - 2017 school year, the school staff were implementing an initial IEP that was developed on April 11, 2016. The IEP was developed following the IEP team’s determination, on March 8, 2016, of the student’s initial eligibility based on the primary disability of a developmental delay. There is documentation that the parent provided written consent on April 11, 2016 for the initiation of special education services (Docs. a and q).
2. The IEP reflects that the student was referred for an IDEA evaluation due to “ongoing teacher and staff concerns regarding his behavior.” It reflects that the student’s behaviors of inattentiveness, impulsivity, noncompliance and disruption to the classroom environment was “impeding his ability to learn” (Doc. a).
3. The IEP indicates that the student’s disability affects his social interaction and self-management. It states that the student has difficulty following all classroom rules, staying safe with his peers, and interacting with peers and adults appropriately, which impacts his ability to remain in the classroom to receive instruction, and without becoming a distraction to his peers (Doc. a).
4. The IEP includes information about the student’s “physical well being and motor development.” It reflects that the student, who was almost 6 years old at the time, was functioning at the equivalent of a 4 and ½ year old in his fine motor development and perceptual skills.

However, the IEP states that the student meets age expectations and that his functioning in these areas does not impact his academic achievement or functional performance (Doc. a).

5. The IEP does not indicate that speech/language needs have been identified for the student (Doc. a).
6. The IEP reflects that the parent believes the student requires a “one on one” (Doc. a).
7. The IEP includes goals requiring the student to improve his social understanding skills, social interaction skills, and his self-management behavioral skills. To assist the student with achieving the goals, the IEP also requires instructional and testing accommodations, as well as numerous supplementary supports. These include the provision of visual cues, extended time, frequent breaks, reduced distractions, monitoring of independent work, positive reinforcers, strategies to initiate and sustain attention, and crisis intervention. The IEP also requires five (5) hours per week of specialized instruction in the general education classroom, and social skills training one (1) hour per week in a separate special education classroom (Doc. a).
8. The IEP reflects that the student also requires the supplementary support of adjustments to sensory input, such as light and sound. It also clarifies that the student requires objects such as crayons or pencils, in his hand in order to complete tasks (Doc. a).
9. The IEP does not include services or supports to address the student’s fine motor skills tasks (Doc. a).
10. The IEP states that a Functional Behavior Assessment (FBA) would be conducted in order to develop a Behavior Intervention Plan (BIP) to assist the student with remaining in the classroom and access to the curriculum. The parent provided written consent the same date of the April 11, 2016 IEP team meeting (Doc. a).
11. Beginning on August 23, 2016, the school staff began collecting data on the student’s behavior each day for use in completing a FBA (Docs. a, b and o).
12. On September 27, 2016, the IEP team convened. The school staff reported that the student is “very easily distracted and unfocused,” and has difficulty remaining in his seat and completing tasks “without one-one support.” The parent reported that the student is exhibiting difficulty with noise tolerance and being in groups of people, and that he gets upset and “lashes out.” She also reported that she is working with the student on coping strategies, and that he is seeing a therapist. The IEP team determined that additional information was needed about the student’s social, emotional and behavioral functioning. The parent consented to an assessment of the student’s social, emotional and behavioral skills (Docs. b and m).

13. On November 11, 2016, the school staff developed reports on the student's progress towards mastery of the IEP goals. The reports document the following:
 - The student is not making sufficient progress towards mastery of the self-management goal requiring him to increase his safety awareness by remaining with adult supervision and avoiding eloping. The progress report states that the student "consistently runs out of the classroom without permission," and noted difficulty in identifying the trigger for his behavior.
 - The student is not making sufficient progress towards mastery of the social foundations goal addressing his social interaction with peers. The progress report states that the student "struggles to engage in instruction and cooperative play with his peers."
 - The student is making sufficient progress towards mastery of the self-management goal requiring him to remain on task in the classroom during instruction and independent work. However, the progress report states that the student cannot complete "any" class assignments independently, and that he requires adult support, prompts and frequent breaks to complete assignments (Doc. l).
14. On November 15, 2016, the IEP team convened. The IEP team discussed that the student's "aggressive and disruptive behaviors" are having an impact on his learning and school life, and while the school staff have been providing him with interventions, including small group teaching, a reward system, a behavior chart, and breaks in an attempt to reduce his interfering behavior, there has been no improvement. The school staff reported that, since the start of the 2016 – 2017 school year, the student has displayed positive behavior 55% of the school day and negative behaviors 45% of the school day (Docs. b, f and j).
15. The IEP team considered the results of the FBA that was first recommended when the student's initial IEP was developed in April 2016. The FBA identifies two (2) specific behaviors of concern: running from school staff and striking others (Docs. b and f).
16. The FBA identifies that the function of the student behavior of running away from teachers and school staff is to avoid or escape participating in a non-preferred activity, and is likely to occur during transitions. It also identifies that the function of the student's hitting behavior is to gain or obtain adult attention, access to an activity, or to escape an activity, and is likely to occur when he is not allowed a preferred activity, and when given a consequence for not following directions or "misbehaving" (Docs. b and f).
17. The FBA also identifies that the student's behavior is less likely to occur during one-on-one instruction, small group instruction with the presence of a special educator, and when playing with small objects such as markers or crayons (Doc. f).

18. The FBA includes several recommendations for supports to address the identified behaviors of concern, including the use of breaks, a token board, a visual timer, a peer model, opportunities for movements, reminders to stay in assigned area before the start of an activity, and social stories (Doc. f).
19. The IEP team discussed that a BIP was never developed and that one was required (Doc. b).
20. On November 22, 2016, the IEP team convened. They reviewed a proposed BIP identifying specific teaching strategies and response strategies for the school staff to implement in order to assist the student with developing behaviors to replace his interfering behaviors. The IEP team agreed to implement the BIP (Docs. b and g).
21. The IEP team also reviewed assessment results indicating that the student's nonverbal cognitive ability falls with the "average" range, and that he is functioning in the "moderate to severe range" for Autism. The IEP team proposed to change the student's primary disability to Autism, but was unable to complete the review of the IEP on that date (Docs. b).
22. On December 13, 2016, the IEP team reconvened to continue the meeting that began on November 22, 2016. The IEP team discussed the school staff's ongoing concerns that the student is inattentive, impulsive, noncompliant and disruptive to the classroom. They documented that, when focused and working one-on-one with a teacher, the student works well on academics (Docs. a and b).
23. Based on a review of all the data, the IEP team revised the IEP to reflect Autism as the student's primary disability. The IEP team also increased the student's specialized instruction to eight (8) hours per week in the general education classroom, and increased the social skills training to four (4) hours per week in a separate special education classroom (Doc. a).
24. The IEP team did not revise the IEP to reflect that an FBA was conducted in November 2016, nor does it reflect the BIP that the IEP team agreed to implement at the November 2016 IEP team meeting (Docs. a, b, f and g).
25. The December 13, 2016 IEP does not indicate that speech/language needs have been identified for the student (Docs. a and b).
26. The December 13, 2016 IEP indicates that the IEP team discussed that the student has "weak fine motor skills," and notes that he cannot write his name. However, the IEP was not revised to include any supports or services to address these skills (Doc. a).

27. On January 17, 2017, the IEP team convened. They discussed the student's continued running and striking behaviors are disruptive to his learning, his peers, and the classroom environment. The IEP team revised the IEP to require daily adult support in the classroom (Docs. a and b).
28. There is documentation that, between October 2016 and March 2017, the student was referred to the office thirty-one (31) times due to disruptive behaviors (Doc. n).
29. The daily behavior data collection maintained by the school staff documents that the student's behavior regularly interfered with his learning since the start of the 2016 - 2017 school year (Doc. o).
30. On March 28, 2017, the IEP team convened to consider the parent's concerns and placement. They discussed that the student has not displayed safe behaviors to himself and others, and that he has regressed in his academics. The IEP team reviewed the most recent psychological assessment, FBA and BIP, the behavior data collection, as well as classroom observations conducted by the PGCPS Central Office staff. They determined that the student still requires adult support for his safety and the safety of others, and that he also requires a less stimulating environment, and a smaller placement with the support of school staff training in working with students with Autism. The IEP team revised the student's IEP to require 30 hours per week of specialized instruction in a separate special education classroom and identified XXXXXXXXXXXXXXXXXXXXXXX as the location for his placement (Docs. a and b).

DISCUSSION/CONCLUSION

A Free Appropriate Public Education (FAPE) means special education and related services that are provided in conformity with an IEP at public expense, under public supervision and direction, and without charge to the parent (34 CFR §§300.17, .101 and .323).

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses 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 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. If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

Social, Emotional and Behavioral Needs

Based on the Findings of Facts #1 - #4, #7, and #10, the MSDE finds that the IEP team agreed to conduct an FBA to develop a BIP in April 2016. Based on the Findings of Facts #1 - #24, and #27 - #30, the MSDE finds that the FBA was not conducted and considered by the IEP team until November 15, 2016, and that the BIP was not developed until November 22, 2016. Therefore, the MSDE finds that there was a delay from April 2016 to November 2016 in the development of an IEP that addresses the student's social, emotional and behavioral needs, and that a violation occurred with respect to this aspect of the allegation.

Fine Motor Needs

Based on the Findings of Facts #1, #4, #9 and #26, the MSDE finds that, while the IEP includes information that the student is functioning more than one (1) year below his chronological age in the area of fine motor development and perceptual skills, the IEP team determined that the student is functioning at age level expectations and that his functioning in these area does not impact his academic or functional performance. Based on the same Findings of Facts, the MSDE finds that the data does not support the IEP team's decision about the student's fine motor needs. Therefore, this office finds a violation occurred with respect to this aspect of the allegation.

Sensory Needs

Based on the Findings of Facts #1 and #8, the MSDE finds that the IEP includes supports to address the student's sensory needs. Therefore the MSDE does not find a violation with respect to this aspect of the allegation.

Speech/Language Needs

Based on the Findings of Facts #1, #5 and #25, the MSDE finds that there is no documentation indicating that the student has needs in the area of speech/language. Therefore, this office does not find a violation with respect to this aspect of the allegation.

ALLEGATION #2: PROPER PROCEDURES WHEN DISCIPLINARILY REMOVING THE STUDENT

FINDINGS OF FACTS:

31. There is documentation that the student was disciplinarilly removed from school for a total of eight (8) days (Doc. h).

32. There is no documentation that the school staff contacted the parent to request that he be removed from school due to his behavior¹ (Review of the student's educational record and the sign-out sheets, and interview with the school staff).

DISCUSSION/CONCLUSION

The IDEA provides protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year. When a student has been disciplinarily removed from school in excess of ten (10) school days in a school year, the IEP team must convene to determine whether the student's behavior was a manifestation of the student's disability. If the IEP team determines that the student's behavior was a manifestation of his or her disability, a behavioral intervention plan must be developed (34 CFR §300.530).

In this case, the complainant alleges that the student was "habitually suspended" due to his behavior (Doc. p).

Based on the Findings of Facts #31 and #32, the MSDE finds that because the student was not disciplinarily removed from school in excess of ten (10) days during the 2016-2017 school year, the disciplinary protections do not apply. Therefore, this office does not find that a violation occurred.

ALLEGATION #3: PROVISION OF THE SUPPORT OF A DEDICATED AIDE SINCE JANUARY 2017

FINDINGS OF FACTS:

33. On January 17, 2017, the IEP team determined that the student requires additional adult support. The team revised the IEP to require additional adult support on a daily basis in the classroom. The IEP identifies the primary provider as "other service provider - additional adult support," and also identifies the special education classroom teacher, the general education classroom teacher, and the instruction assistant as other providers of the support. However, the parent and the school staff report that the intent of the IEP team's decision was for the additional adult individual to be a dedicated aide to the student only (Docs. a and b, interview with the parent, and interview with the school staff).
34. The school staff and the parent agree that two (2) specific individuals were assigned to provide support, as a dedicated aide, to the student. The school staff report that the first individual provided support to the student from January 2017 to February 28, 2017, at

¹ The school staff report that the parent was called, at times, in order to assist with the deescalation of the student's behavior (Interview with the school staff).

which time the second individual began providing support to the student for the duration of the student's attendance (Interview with the parent and interview with the school staff).

35. A review of the attendance sheets reflects that the first dedicated aide reportedly assigned to the student began providing support in January 2017. However, the attendance sheets indicate that this individual was not present on two (2) dates in January, and on ten (10) dates in February 2017. The attendance records also document that the second dedicated aide reportedly assigned to the student began providing support on February 28, 2017. However the attendance sheets also reflect that this individual was not present on eight (8) dates in March 2017 (Doc. d).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students are provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

Based on the Finding of Fact #33, the MSDE finds that, while the IEP does not reflect that the additional adult support is required by a dedicated aide, the school staff and the parent agree that the IEP team intended that the additional adult support would be provided by a dedicated aide to the student only.

Based on the Findings of Facts #34 and #35, the MSDE finds that, while the student was provided with the support of a dedicated aide at times from January 2017 through March 2017, he was not consistently provided the support of a dedicated aid, as required by the IEP. Therefore, the MSDE finds a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by September 15, 2017, that the IEP team has convened and taken the following actions:

- a. Reviewed the IEP to ensure that the IEP address all of the student's identified needs.
- b. Determined the student's fine motor skills needs, which decision shall be consistent with the data.
- c. Revised the IEP to accurately reflect the IEP team's November 22, 2016 decision to implement the BIP based on the FBA reviewed by the IEP team on November 15, 2016.
- d. Revised the IEP to accurately reflect the IEP team's decision that the additional adult support is to be provided only to the student.

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- e. Determined the amount and nature of compensatory services or other remedy to redress the delay in addressing the student's social emotional and behavioral needs, his fine motor skills needs, and the inconsistent provision of the support of a dedicated aide. The IEP shall also have developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the PGCPS to provide documentation by September 30, 2017, of the steps it has taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXXX staff properly implement the requirements relating to the violations identified in this Letter of Findings. The documentation must include a description of how the PGCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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.

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 requirement as 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 PGCPS maintain the right to request mediation or to file a due process complaint, if they disagree with the identification,

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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

c: XXXXXXXXXX
 Kevin Maxwell
 Gwendolyn Mason
 Deborah Anzelone
 LaRhonda Owens
 XXXXXXX
 XXXXXXXXXX
 Dori Wilson
 Anita Mandis
 K. Sabrina Austin
 Bonnie Preis