



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

December 4, 2019



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

RE: [REDACTED]
Reference: #20-035

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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:

The MSDE received a complaint from Mr. [REDACTED] and Mrs. [REDACTED] hereafter “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants 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 has been offered an appropriate program and placement that addresses her social, emotional needs, since April 12, 2019, in accordance with 34 CFR §§300.101, .114 - .116, .320 and .324.

BACKGROUND:

The student is fourteen (14) years old and is identified as a student with an Emotional Disability under the IDEA. She has an IEP that requires the provision of special education and related services. The student attends the [REDACTED] of Montgomery County (The [REDACTED] a nonpublic separate special education school, where she has been placed by the PGCPS.

FINDINGS OF FACTS:

1. The student has been attending The [REDACTED] since January 2018. The [REDACTED] serves students in grades six (6) to twelve (12) with emotional disabilities, learning disabilities, and other behavioral health impairments, and provides educational, clinical, and behavioral services to students in a therapeutic learning community ([Adventis Healthcare Locations](#)). The parties report that the [REDACTED] is a locked facility.

2. On April 12, 2019, the IEP team convened to conduct an annual review of the student's education program. The IEP developed on April 12, 2019 states the following:

The student's "inability to manage her emotions at time[s] of anger, frustration, and anxiety impacts her behavior in the educational environment. [The student] displays defiant/aggressive behaviors, which include being argumentative, noncompliance with adult requests; poor anger control; physical/verbal aggression; and destructive tendencies. These behaviors result in [her] removal from the classroom and impact her ability to complete assignments. These behaviors impact [the student] in all settings across the educational environment. While [the student] is able to access the general education curriculum, her behaviors and interactions with her peers make it difficult to stay in the class environment."

3. The IEP revised on April 12, 2019 includes the same behavioral goals that were in effect the previous year. The IEP requires special education instruction, weekly counseling, and some of the behavioral supports that were in effect the previous year. However, other behavior supports, including the use of modeling and cuing, and daily check-ins to gauge the student's mood, were discontinued without explanation in either the IEP or the Prior Written Notice (PWN) document that was generated following the meeting.

4. The PWN document states, "after a discussion of [the student's] needs, the team agreed that a change of placement would benefit [the student]." It further states that the team rejected the option of continuing to place the student at the [REDACTED] because " [REDACTED] team feels that [the student] has reached maximum benefit from the program at [REDACTED] [REDACTED] While the complainants requested placement in a Residential Treatment Center (RTC), the PWN document reflects that the team decided that the Least Restrictive Environment (LRE) in which the IEP can be implemented continues to be a nonpublic separate special education school. However, the team decided that the appropriate placement is at the [REDACTED] ([REDACTED])

5. The PWN of the April 12, 2019 meeting reflects that, at that meeting, the team recommended an updated assessment of the student's cognitive functioning as well as her social and emotional behavior skills functioning.

6. On May 13, 2019, the IEP team convened and considered the results of a psychological assessment conducted on April 29, 2019 in which the student “agreed to participate but gave up easily.” Due to the student’s approach to testing and her “lack of engagement during the session,” the report reflects that the evaluator did not provide scores for her cognitive functioning.¹ The IEP team considered the following information from the report of the psychological assessment:
 - The student has a “history of emotional and behavioral difficulties within the school, home and community settings” and “has made inconsistent progress” at The [REDACTED]
 - The student “displays a highly reactive nature when she faces interpersonal stresses, especially negative judgments/interactions from others.”
 - The student has made “some progress in therapy” with identifying problem-solving strategies and coping skills, but has difficulty using them when facing challenging situations when she may respond with “noncompliance and with verbally demeaning and aggressive statements.”
 - The student has “at times engaged in self-harm,” and was hospitalized for “mental health needs” once during the 2018 – 2019 school year.
7. The report of the psychological assessment recommends that the student develop, with adult support, a daily plan “that anticipates both positive moments that she can enjoy and perform well, as well as potentially difficult/challenging moments especially of an interpersonal nature.” It also recommends practicing pro-social responses with the student using role playing scripts with both adults and peers.
8. In addition, the report of the psychological assessment states that the student’s “school program, especially at the high school level, should seek to build on her strengths and interests whenever possible. Participating in preferred hands-on activities, incorporating topics of interest into academic tasks, and providing opportunities for educational leadership (e.g. teaching part of a lesson, helping her peers) would support positive engagement in her educational process.”
9. Based on the results of the psychological assessment, the IEP team determined the student’s continued eligibility for special education services as a student with an Emotional Disability.
10. The PWN of the May 13, 2019 IEP meeting documents the teams’ discussion that the student was “refusing to attend” English class, and that the complainants had not provided consent to complete the student’s referral to XX. In addition, the IEP team agreed to the

¹ The evaluator noted that the student’s performance on a neuropsychological evaluation conducted in April 2015 indicated cognitive and academic functioning in the “average range.”

complainants' request to refer the student to the [REDACTED] School
[REDACTED]

11. The June 14, 2019 entry in the Parent Contact Log documents that the complainants informed the school staff that the student was hospitalized² and that the hospital staff was recommending discharge to an RTC. The complainants also informed the school staff at that time that they would not agree to placement at [REDACTED] because of the RTC recommendation.
12. On June 21, 2019, the school staff reported that the student's progress towards mastery of the IEP goals was "not measurable." The documentation states that there was "not enough data to track progress at this time" on the goals due to the student's "limited attendance" during the reporting period.
13. On July 12, 2019, the school staff and the PGCPS staff participated in a meeting of the student's Local Care Team (LCT).³ The LCT discussed the recommendation by the Sheppard Pratt staff that the student be placed in an RTC to address her behavioral health needs, as well as the continuum of education placement decisions that are made through the IEP team process. The LTC recommended that the complainants contact the Prince George's County Health Department/Behavioral Health about an RTC referral, and that they explore the educational program at the [REDACTED]
14. Also on July 12, 2019, the [REDACTED] sent correspondence to the PGCPS stating "The admissions team reviewed the submitted record and concluded that our program would not be an appropriate placement for this student at this time."
15. On August 23, 2019, the IEP team convened. The PWN documents that the IEP team discussed that the student "has been refusing to attend class and has difficulty engaging in the program" at The [REDACTED]. The PWN further documents that the IEP team discussed that "other school placement options were recommended in hopes that [the student] would have some buy-in at those programs," but that she was not accepted to one (1) school and that the complainants were not in agreement with a second (2nd) school. The PWN states that "the team proposed a change in placement for the 2019 - 2020 school year" and that, "as an additional option, The [REDACTED] School is being offered as the team feels she needs a new environment to start over."

² The student was admitted to the Sheppard Pratt Health System (Sheppard Pratt) on June 3, 2019 for inpatient stabilization due to "relapse of illness and danger to self/others." She was discharged on June 20, 2019.

³ The Local Care Team "is a collaborative body of representatives from child serving agencies and a parent advocate, that meet biweekly, in collaboration with the lead agency, to review and implement the plan of care for youth with special or intensive needs. The youth may require a residential placement or alternative to residential placement due to behavioral, education, developmental, or mental health disabilities"
<https://www.princegeorgescountymd.gov/1664/Other-Programs-Initiatives>.

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16. The complainants disagreed with the proposed placement at the [REDACTED] School and again requested an RTC. The PWN reflects the basis for the request was concern about the student's unsafe behavior in the home and the community.
17. The PWN states that "the [REDACTED] IEP team believes they can implement [the student's] IEP, although she is having difficulty engaging in the program." It also states that "the [REDACTED] will remain the program of record."
18. The IEP team agreed to conduct an updated Functional Behavior Assessment (FBA) and to revise the BIP.
19. On September 5, 2019, The [REDACTED] staff sent correspondence to the complainants explaining that the student was struggling "considerably," and that "keeping [her] at The [REDACTED] where she seems to be involved in a cycle of failure does not seem to be in her best interest." The school staff suggested that the complainants reconsider the recommendation to place the student at another nonpublic separate special education school.
20. On October 8, 2019 the IEP team reconvened to review the results of a Diagnostic Assessment that was conducted on August 1, 2019, by a private licensed certified professional counselor. The complainants reported that the student underwent a recent psychological assessment by a private provider, and agreed to provide a copy of the report to the team.
21. On October 25, 2019, the IEP team reconvened. The IEP team reviewed the results of the updated FBA that included a newly identified targeted behavior of using "excessive profanity and verbally aggressive language towards staff and peers." Based on the data, made revisions to the BIP prevention strategies, teaching strategies, and response strategies, including giving the student a job in the classroom. The IEP team discussed that they had not yet received the report of the private psychological assessment that the complainants referenced at the October 8, 2019 meeting. The complainants agreed to provide it the following week, and the IEP team agreed to reconvene once the report is received.
22. The PWN documents the team's decision that "the IEP continues to be appropriate" and that "The [REDACTED] continues to be the school of record and [the student] continues to require a private separate day school for the implementation of her IEP." In addition, the PWN states that "the team reiterated that with the new BIP in place that the LRE of private separate day school setting remains the appropriate least restrictive environment for [the student] and that her social/emotional, behavioral and educational needs are able to be met by a separate private day school." The PWN further states that the "[REDACTED] remains her current and appropriate placement."

DISCUSSION/CONCLUSIONS:

In this case, the complainants allege that the student requires an education program that is only available in an RTC placement. Based on the Findings of Facts #1 - #22, the MSDE finds that there is no documentation to support a finding that the student requires an RTC for educational purposes.

However, based on the Findings of Facts #2 - #22, the MSDE finds that there is no documentation that the discontinuation of behavioral supports since April 12, 2019, while continuing behavioral goals that had not been achieved during the previous year, was based on data regarding the student's needs, including recommendations in the May 2019 report of a psychological assessment, in accordance with 34 CFR §300.324. Therefore, this office finds a violation occurred.

CORRECTIVE ACTIONS/TIMEFRAMES:


The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner. This office will follow up with the public agency to support it in working toward completion of required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.


If the public agency anticipates that any of the timeframes below may not be met, or if either party seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the PGCPS to provide documentation by February 1, 2020, that the IEP team has convened, with the participation of an independent Board Certified Behavior Analyst (BCBA). At that meeting, the IEP team must consider all data, including the results of the May 2019 report of a psychological assessment, whether the student is improving her access to instruction, and whether she is expected to achieve the social, emotional, behavioral goals by April 2020. The IEP team must determine whether the supports that were recommended and were discontinued since April 12, 2019 are required consistent with the data. If the IEP team decides that additional supports are required, it must also review and revise the IEP, as appropriate, to accelerate the student's social, emotional, behavioral functioning.


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System-Based

The MSDE requires the PGCPS to provide documentation by February 1, 2020 of the steps taken to ensure that PGCPS students placed at The  have an IEP that is developed consistent with the data regarding each students' needs.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.


As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timeframes reported in this Letter of Findings.

The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Early Intervention
and Special Education Services

MEF/ksa

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