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State Superintendent of Schools

March 24, 2021

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Associate Superintendent-Special Education
Prince George's County Public Schools
1400 Nalley Terrace
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RE: [REDACTED]
Reference: #21-024

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education 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 October 9, 2020, the MSDE received a complaint from Megan Berger, Esq., Michelle Hall, Esq., Renuka Rege, Esq., and Megan Marie Collins, Esq., hereafter, "the complainants," on behalf of the above-referenced student and her legal guardian and aunt, Ms. [REDACTED]. 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 above-referenced student.

While there is a sixty (60) day timeline for completing the investigation process, the parties were notified on December 3, 2020, that the timeline for completion of this Letter of Findings was extended in order to obtain documents that were not accessible, as a result of the Statewide closure of school buildings due to the COVID-19 pandemic. This correspondence is the report of the final results of our investigation.

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The MSDE investigated the following allegations:

1. The PGCPS did not ensure that an IDEA evaluation that began on October 1, 2019 was completed within the required timelines, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06.
2. The PGCPS did not ensure that all of the data was considered when conducting the IDEA evaluation that would demonstrate that the student meets the characteristics of a student with an Emotional Disability and a Specific Learning Disability (SLD), in accordance with 34 CFR §§300.301-.311.

BACKGROUND:

The student is fourteen (14) years old, has not been identified as a student with a disability under the IDEA, and attends [REDACTED]

FINDINGS OF FACTS:

1. On September 5, 2019, the student's aunt, who is her legal guardian, made a referral for the student to be evaluated for special education services under the IDEA. The referral identified concerns in the areas of intellectual functioning and social-emotional behavioral development.
2. On October 1, 2019, the Individualized Education Program (IEP) team convened. At the meeting, the student's aunt reported that the student had "excessive" suspensions during the 2018 - 2019 school year, "poor" grades, previously attempted to harm herself resulting in a hospitalization, and that she had previously been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) by her doctor. The student's teachers reported that the student requires intervention because she escalates quickly, has outbursts, yells at peers, is talkative, and easily influenced by peers. The documentation reflects that the student had twenty (20) disciplinary actions during the 2019 - 2020 school year, and had "poor" grades due to missed assignments.
3. The written summary of the IEP meeting reflects that the team recommended psychological, educational, and behavioral assessments, as well as a classroom observation. The student's aunt provided consent for assessments at the meeting.
4. On January 14, 2020, the IEP team reconvened to review assessment results and to determine eligibility for the student. The psychological report reflects that the student's Verbal Intelligence Index, Nonverbal Intelligence Index, and Composite Intelligence Index was within the "moderately below average" range, and Composite Memory Index was within the "average" range.

5. The behavior portion of the psychological report, reflected that the student's behavior "varies and is seen as falling within the at-risk and clinically significant level." The student's scores indicate that she has a "negative view on life, struggles with personal relationships with her biological parents, is receiving therapy for trauma related events, and that her personal struggles may be beginning to impact her adjustment in middle school." The report indicates that the student's "possible hyper desire to be liked has resulted in her developing association with peers who are involved in delinquent activities and are influencing her behaviors at school." The report also reflects that the student's teachers reported that, at the beginning of the school year, she presented as a "diligent hard working student who desired to please her teachers, as evidenced in her first quarter progress grade. However, as the year progressed, the [student] has become defiant, skips class, is constantly on her cell phone, and is often tardy" to class.
6. The psychological report also reflects the following determination and recommendations:

The "[student] has not demonstrated over a significant period of time 1) an inability to make educational progress (that cannot be explained by intellectual, sensory, health factors or poor attendance); 2) she has demonstrated an ability to build and maintain satisfactory interpersonal relationships with peers and teachers; 3) and given the personal trauma she has reportedly experienced, inappropriate behaviors and feelings would be expected. Additionally, the [student] appears to be unwilling to comply with teacher requests; dislikes school, except as a social outlet; rebels against rules and structure; misses school or cuts class due to choice; is accepted by a same socio-cultural subgroup and has relations within a select peer group; and often blames others. Socially maladjusted may be a more appropriate descriptor of her current behavioral functioning. Therefore an identification of Emotional Disability may be premature at this time."

The report includes recommendations for a consequence based system, parental and teacher modeling of appropriate emotional responses to behavior, response delay techniques related to potential ramifications of her behavior, and consultation with the Pupil Personnel Worker to improve attendance and tardiness in class.

7. The educational report reflects that the student demonstrates strengths in the areas of writing, problem solving, and comprehension. However, she was within the "low" range in reading, "low average" range in broad written language, and comprehension and applied problem solving skills, and "very low" in math and fluency. The report further reflects that, in order for the student to access the curriculum, academic and behavioral supports are recommended along with "universal" accommodations, and she requires additional time to complete classroom assignments compared to her same age/grade peers. The report includes recommended accommodations to support the student in the

areas of math, reading, across content curriculum, and her behavior.

8. There is no documentation that a classroom observation was conducted as determined by the IEP team at the IEP meeting on October 1, 2019.
9. The written summary of the IEP team meeting reflects that, based on this review of the student's formal assessments, grades, attendance, and input from the student's teachers, counselor, and aunt, the team determined that the student did not qualify as a student with an Emotional Disability because she has "not demonstrated any of the qualifying criteria for a prolonged period of time."
10. Based on this review of the student's formal assessments, grades, attendance, and input from the student's teachers, counselor, and aunt, the team further determined that the student does not meet the criteria for identification as a student with a SLD based on evidence of severe discrepancy between her cognitive ability and academic performance, or evidence of lack of response to intervention. The team documented that conversely, reports indicate that the student has historically shown improvement when provided with reading interventions.
11. The written summary of the IEP team meeting reflects that, while the aunt previously reported that the student was diagnosed with ADHD at the October 1, 2019 meeting, at the January 14, 2020 meeting, she reported that the diagnosis was subsequently determined to be inaccurate. Based on this information, the team found no data to support identification of the student with an Other Health Impairment under the IDEA.

DISCUSSIONS/CONCLUSIONS:

An Emotional Disability is defined by the IDEA as a condition exhibiting one or more of a list of characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance. These characteristics include an inability to learn that cannot be explained by intellectual, sensory or health factors, an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, inappropriate types of behavior or feelings under normal circumstances, and a tendency to develop physical symptoms or fears associated with personal or school problems. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under the definition (34 CFR §300.8).

An Other Health Impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to problems including ADHD (34 CFR §300.8).

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A SLD means a disorder in one of more of the basic psychological processes involved in understanding or in using language, spoken or written, that manifests itself in the imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations (34 CFR §300.8). When a student is suspected of having a SLD, the IEP team must ensure that the student is observed in the student's learning environment to document the academic performance and behavior in the areas of difficulty (34 CFR §300.310).

In order to identify a student with a SLD, the IEP team must find that the student does not achieve adequately for the student's age or to meet State approved grade-level standards when using a process based on the student's response to scientific, research-based interventions, or that the student exhibits a pattern of strengths and weaknesses relative to age, State-approved grade level standards, or intellectual development using appropriate assessments (34 CFR §300.309).

Allegation #1: IDEA Evaluation Timeline

Based on the Findings of Facts #1 - #11, the MSDE finds that the PGCPS did not complete the evaluation in response to the September 5, 2019 referral within the required timelines, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #2: Proper Procedures when Conducting an Evaluation for an ED and SLD

Based on the Findings of Facts #1 - #11, the MSDE finds that there was no data to support the student's identification as a student with a disability under the IDEA, in accordance with 34 CFR §§300.8 and .309.

However, based on the Finding of Fact #8, the MSDE finds that the PGCPS did not ensure that the decision regarding her eligibility as a student with a SLD was based on all required data; specifically, that the team did not consider the results of a classroom observation, as required, in accordance with 34 CFR §§300.307 - .310. Therefore, this office finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

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.

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The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames 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.² Dr. Birenbaum can be reached at (410) 767-7770 or by email at Nancy.birenbaum@maryland.gov.

Student Specific

The MSDE requires the PGCPS to provide documentation that it has conducted an evaluation of the student's eligibility as a student with a SLD under the IDEA with information from a classroom observation. If the student is identified as a student with a SLD, the PGCPS must provide documentation that the IEP team has developed an IEP and determined the compensatory services for the delay in the provision of Free Appropriate Public Education (FAPE).

School Based

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that the violations do not recur at [REDACTED]

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 timelines reported in this Letter of Findings.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.


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The PGCPS and student's parent 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 Early Intervention/Special Education Services

MEF:ac

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