



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

June 8, 2021

Ms. Debrah B. Martin
Best Solutions Educational Service
1300 Mercantile Lane Suite 129-5
Largo, Maryland 20774

Ms. Trinell M. Bowman
Associate Superintendent
for Special Education
Prince George's County Public Schools
John Carroll Administration Building
1400 Nalley Terrace
Landover, Maryland 20785

RE: [REDACTED]
Reference: #21-082

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.

ALLEGATIONS:

On April 9, 2021, the MSDE received a complaint from Ms. Debrah B. Martin, hereafter, “the complainant,” on behalf of Ms. [REDACTED] and 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.

Based on your correspondence, we investigated the following allegations:

1. The PGCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified need for Assistive Technology (AT) and Music Therapy and has not revised the IEP to address the lack of progress towards achievement of the pre-academic goals, since April 9, 2020, in accordance with 34 CFR §§300.324.
2. The PGCPS has not ensured that the student has been provided with a behavioral observation and consultation, Adapted Physical Education (APE), Speech/Language (S/L) services, feeding support, and Occupational Therapy (OT) services required by the IEP since April 9, 2020, in accordance with 34 CFR §§300.101 and .323.

3. The PGCPS has not ensured that the decisions made by the IEP teams on May 29, 2020 and July 23, 2020, to review the student's progress within thirty (30) days and after the first quarter were implemented, in accordance with 34 CFR §300.101.

BACKGROUND:

The student is six (6) years old, is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education services.

He attended [REDACTED] until the March 16, 2020 Statewide closure of school buildings and initiation of virtual learning as a result of the COVID-19 pandemic.

Since the start of the 2020-2021 school year, the student has been enrolled at [REDACTED] and on March 1, 2021, the student began receiving instruction both in school and virtually.

FINDINGS OF FACTS:

1. The IEP in effect on April 9, 2020, identifies speech/language, behavior, OT, and adaptive physical education (APE) as areas of need that are affected by the student's disability. The IEP describes the student as nonverbal, requiring the use of a communication device. The IEP includes goals to improve his skills in each area of need and numerous accommodations and supplementary aids and services to assist with accessing instruction. The IEP requires the use of a Behavioral Intervention Plan (BIP) to address aggressive behaviors such as screaming, scratching, and self-injury.
2. The IEP also documents the need for a trial of an assistive technology (AT) device and a music therapy assessment due to the student's positive behavioral reactions to music. However, there is no documentation that the music therapy assessment or the provision of the AT device was ever done.
3. On April 2, 2020, an amendment to the IEP was made, with parent agreement, to identify the student's services while on virtual instruction. The IEP included five (5) hours and forty-five (45) minutes of special education instruction per week, one (1) hour of APE per week, one (1) hour of OT per month, and two (2) hours of speech/language services per month.
4. The PGCPS acknowledges and documented that that the services required for APE, OT, AT, and speech/language were not provided, as required, since April 2020.
5. On May 29, 2020, the IEP team met and accepted a recommendation by the school psychologist to ensure implementation of the BIP would be implemented at the start of the 2020-2021 school year, a behavioral observation and "check-ins" by the school psychologist or counselor would occur, an IEP meeting would be held within thirty (30) days to determine the impact of distance learning, and in July 2020 a meeting will be held to determine placement. In response to the parent's concern about the student's

communication, the IEP team agreed to provide direct teletherapy sessions for up to thirty (30) minutes per session to include support for the student and coaching for the parent, in addition to the two (2) hours of speech/language services required.

6. On July 23, 2020, the IEP team met to review the student's progress during ESY services and determine placement for kindergarten. The IEP progress report stated that the student was not making sufficient progress on the goals. The IEP team determined placement and services for when the schools reopened during the 2020-2021 school year. The team decided to convene a meeting during the first quarter of the school year to review the student's progress.
7. The IEP team did not reconvene until March 16, 2021. In a review of the student's progress, the team from Bradbury Heights Elementary School acknowledged that the student did not receive the services required by the IEP in all areas. The IEP progress reports indicate that the student was not making sufficient progress.
8. The PGCPS acknowledges that the IEP was not revised to address the lack of progress. The IEP team was to meet again to address the lack of services provided but there is no documentation, to this date, that a meeting occurred.
9. An IEP meeting is scheduled for June 10, 2021, to consider whether the student requires compensatory education/recovery services since the beginning of virtual learning and to discuss the State complaint allegations.

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP Development

Based on the Findings of Facts #1, #2, and #4, the MSDE finds that the student's AT needs have not been addressed as required, since April 9, 2020, in accordance with 34 CFR §300.324. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #2 and #4, the MSDE finds the IEP did not assess the need for music therapy since April 9, 2020, in accordance with 34 CFR §300.324. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #6, #7, #8 and #9, the MSDE finds that the IEP team has not addressed the student's lack of progress towards achievement of the annual goals, since April 9, 2020, in accordance with 34 CFR §300.324. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Allegation #2: IEP Implementation

Based on the Findings of Facts #1, #3, #4, #5 and #7, the MSDE finds that the PGCPS did not ensure that the behavioral observation and consultation, APE services, speech/language services, and OT services that were required were provided to the student since April 9, 2020, in

accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

Allegation #3: IEP Team Decisions May 29, 2020 and July 23, 2020

Based on the Findings of Facts #5, #6, and #7, the MSDE finds that the PGCPS did not ensure that the IEP team met to review the student's progress consistent with the IEP team's decisions, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

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.¹

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that the timeframe below may not be met, or if any of the parties 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 and nancy.birenbaum@maryland.gov.

Student Specific:

The MSDE requires the PGCPS to provide documentation that the IEP team has completed the following:

- a. Conducted a trial of an AT device, a music therapy assessment, a behavioral observation, and consultation with the staff;
- b. Revised the IEP based on the results of assessments and consistent with the data;

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must 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 Directors of Special Education of any corrective action that has not been completed within the required timelines.

- c. Determined the compensatory services or other remedy to redress the violations identified in this State complaint; and

The MSDE also requires the PGCPs to provide documentation that the IEP is being implemented.

School Based:

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

Documentation of completion of the 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.

Questions regarding the findings and conclusions 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 Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

Sincerely,

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

MEF/sf

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|----|-----------------|-----------------|
| c: | Sheila Izebere | Anita Mandis |
| | Barbara Vandyke | Dori Wilson |
| | [REDACTED] | Sharone Floyd |
| | Monica Goldson | Nancy Birenbaum |
| | [REDACTED] | |