



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

Ms. Ronetta Stanley  
Loud Voices Together  
Educational Advocacy Group  
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Ms. Trinell Bowman  
Associate Superintendent - Special Education  
Prince George's County Public Schools  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: [REDACTED]  
Reference: #21-006

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 August 13, 2020, the MSDE received a complaint from Ms. Ronetta Stanley, hereafter “the complainant,” on behalf of the above-referenced student and his mother, Ms. [REDACTED]. 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 did not ensure that the strategies required by the Behavior Intervention Plan (BIP) were consistently used with the student to address his behavior, from November 2019 to January 2020, in accordance with 34 CFR §§300.101 and .323.
2. The PGCPS did not ensure that the student was consistently provided with the additional adult support required by the Individualized Education Program (IEP), from November 2019 to January 2020, in accordance with 34 CFR §§300.101 and .323.

3. The PGCPS did not ensure that the IEP document was provided to the parent within five (5) business days of the January 15, 2020 IEP team meeting, in accordance with COMAR 13A.05.01.07.
4. The PGCPS did not ensure that the student's IEP was reviewed at least annually, in accordance with 34 CFR §300.324.
5. The PGCPS did not ensure that the IEP team determined the student's eligibility for Extended School Year (ESY) services during the summer of 2020, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08.

### **BACKGROUND:**

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

The student attended the [REDACTED] ([REDACTED] [REDACTED] ES) until the March 16, 2020 closure of all schools, as a result of the national COVID-19 pandemic.

### **ALLEGATIONS #1 AND #2**

### **PROVISION OF BIP STRATEGIES AND ADDITIONAL ADULT SUPPORT**

### **FINDINGS OF FACTS:**

#### **IEP and BIP Requirements**

1. The IEP in effect from November 2019 to January 2020 identified needs for the student related to physical aggression towards peers and not following directives of the school staff. It included goals for the student to improve his functioning in these areas and required the provision of additional adult support in the classroom in order to participate in all classroom activities due to his social, emotional, and behavioral needs.
2. The IEP included a BIP that was developed on January 28, 2019. The BIP required the following prevention strategies:
  - Providing the student with as many high-interest activities as possible to prevent him from becoming physically aggressive;
  - "Maintaining maximum supervision;"
  - Restating classroom rules before beginning an activity;
  - Having the student participate in activities with other students who model appropriate behavior;

- Providing “optional courses of action” to prevent the student from totally refusing to follow adult directives; and
  - Giving a stated incentive when directing the student to do something.
3. The January 2019 BIP also required the following teaching strategies:
    - Presenting demands in the form of directives;
    - Using short and simple demands that are delivered in a quiet tone of voice;
    - Breaking down tasks before giving a demand;
    - Giving the student at least five (5) seconds to respond to a demand;
    - Allowing a thirty (30) minute nap or quiet time in the afternoon; and
    - Praising the student praise when he complies with a demand.
  4. As a replacement behavior, the January 2019 BIP requires the student to express anger and frustration using words that are non-threatening and non-offensive, through conflict resolution skills. A second (2nd) replacement behavior requires the student to engage in a response within ten (10) seconds that matches a given instruction, and to complete the request.
  5. The January 2019 BIP documents that success is achieved when the student is able to “follow adult directions with little or no resistance in 4 out of 5 trials,” and “use age-appropriate coping skills (using words and choosing solutions) when experiencing minor distress or difficulty with activities or peers with adult guidance as needed.”
  6. A review of the documentation and audio recording of the October 2019 meeting, reflects that the IEP team discussed that the January 2019 BIP was developed prior to the student’s arrival at ██████ ES. The IEP team also discussed that the student was currently demonstrating an additional interfering behavior of not remaining in a designated area. At the complainant’s request, the school-based members of the team agreed to draft a proposed revised BIP to include the new behavior for the parent’s consideration.
  7. On January 15, 2020, the IEP team revised the BIP.

#### Implementation of the IEP and BIP

8. While there is documentation of the provision of supports required by the BIP in effect from November 2019 to January 2020, there is no documentation that the student was consistently provided with those supports.
9. In order to monitor the effectiveness of the BIP, the school staff collected daily data from November 4, 2019 to January 8, 2020 on the student’s behavior. The data reflects that, during this time period, the student improved his ability to refrain from “any major outburst” by 5%, and that he improved his ability to comply with adult requests by 5%.

The outcome data further reflects that the student improved his ability to remain in a designated area by 6%.

10. While there is documentation that a specific staff member was assigned to provide additional adult support in the student's classroom, there is no documentation that such support was provided on the days when that staff member was absent from school.

#### Student's Ability to Benefit from the Education Program

11. On December 11, 2019, the student received a two (2) day in-school suspension for "physical attack, continued class disruption, and disrespect."
12. A review of the BIP outcome data reflects that, during two (2) one (1) week time periods when the staff member assigned to provide additional adult support was absent from school, the student's rate of compliance was at its lowest. However, there is no documentation that the student was unable to access instruction when the additional adult support was not provided.
13. The reports of progress towards achievement of the IEP social, emotional, and behavioral goals reflect that the student made sufficient progress towards achievement of the goals from November 2019 to January 2020.
14. The student's report card reflects that he matriculated to the next grade following the 2019-2020 school year.

#### CONCLUSIONS:

##### **Allegation #1**

##### **Consistent Implementation of BIP Strategies**

Based on the Findings of Facts #1 - #9, #11 and #13, the MSDE finds that there is no documentation that the student was consistently provided with the supports required by the January 2019 BIP that was in effect during the time period covered by the investigation, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds a violation with respect to this allegation.

##### **Allegation #2**

##### **Consistent Provision of Additional Adult Support**

Based on the Findings of Facts #1 - #10, #12 and #14, the MSDE finds that there is no documentation that the student was consistently provided with the support of an additional adult that was required, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds a violation with respect to this allegation.

**ALLEGATION #3                      PROVISION OF IEP DOCUMENT FOLLOWING THE  
JANUARY 2020 MEETING**

15. On January 15, 2020 the IEP team convened. A review of the audio recording of the meeting documents the IEP team's lengthy discussion about the student's current academic and behavioral progress. The IEP team also considered the results of an occupational therapy (OT) observation.
16. Based on the data and team input, including input from the student's private behavior therapist, the IEP team decided that the student requires direct OT services twice a month. The IEP team also revised the student's BIP at the January 2020 meeting. However, there is no documentation that the school staff developed an IEP document to reflect the team's decisions about these changes in the student's program.
17. There is documentation that, on September 9, 2020, the IEP was revised to reflect the requirement of direct OT services twice a month, and to reflect the updated BIP that was developed by the team at the January 2020 IEP meeting.
18. There is documentation that on September 16, 2020, the school staff provided the parent with a copy of the September 9, 2020 IEP.

**CONCLUSION:**

Based on the Findings of Facts #15 - #18, the MSDE finds that, while the IEP team agreed to changes to the student's education program at the January 2020 IEP meeting, the school staff did not document the revisions until the IEP was revised on September 9, 2020, in accordance with COMAR 13A.05.01.07. Therefore, the MSDE finds a violation with respect to this allegation.

**ALLEGATIONS #4 AND #5                      ANNUAL REVIEW OF IEP AND ESY DECISION**

19. On May 9, 2019, the IEP team conducted the annual review of the student's educational program and determined the student's eligibility for ESY services for summer 2019. The May 2019 IEP identifies May 8, 2020 as the projected annual review date.
20. The IEP team met next on September 18, 2019 and October 29, 2019. The invitation notices document that the purpose of these meetings was to review and, if appropriate, revise the IEP.
21. The IEP was revised to add speech/language therapy at the September 2019 IEP team meeting and to add counseling services at the October 2019 IEP team meeting. However, the information about the student's present levels of development was not updated at either of those meetings, and the IEP continued to state that the annual goals would be achieved by the annual review date of May 8, 2020.

22. On January 15, 2020, the IEP team convened to review and, if appropriate, revise the IEP. The audio recording of the January 2020 meeting documents that the IEP team added occupational therapy services, revised the BIP, and decided to reconvene on April 22, 2020 to conduct the annual review of the student's program.
23. On February 5, 2020, the school staff sent the parent an email invitation to an IEP team meeting scheduled for April 22, 2020. The invitation notice states that the purpose of the meeting was to review, and if appropriate, revise the IEP, and to consider the student's eligibility for ESY services.
24. On March 16, 2020, all Maryland schools were closed as a result of the national COVID-19 pandemic, and the IEP team did not convene on April 22, 2020, as expected.
25. The parent contact log reflects that, on May 14, 2020, the school staff contacted the parent by telephone to discuss that the IEP team did not have sufficient data to conduct the annual review and make a decision about the student's eligibility for ESY services for the summer of 2020. The log documents that the parent "stated that she understood and that she was fine with not proceeding with the IEP meeting until we returned to school."
26. The parent contact log reflects that, on August 20, 2020, via email exchanges, the school staff and the parent agreed to convene a meeting on September 9, 2020. The invitation notice, which was emailed to the parent on August 31, 2020, states that the purpose of the meeting was to review and, if appropriate, revise the IEP, and to consider ESY services.
27. On September 9, 2020, the IEP team convened and conducted the annual review of the student's program. The IEP team updated the student's present levels of development, and revised the annual goals. They added accommodations of extended time and time of day selection for test taking. The IEP team also added supplementary supports to the IEP that include self-regulation strategies, a picture schedule, breaking down assignments into smaller parts, and a daily behavior chart.
28. Also at the September 2020 IEP meeting, the team reviewed data on the student's behavior since November 2019. The IEP team determined that there is no data to support the student's likely chance of substantial regression of critical life skills caused by a normal school break, and decided that he does not qualify for ESY services. The prior written notice of the meeting documents the parent's disagreement with the decision, and the team's agreement to reconvene later in the school year to review the ESY decision based on additional data that may become available.

### **CONCLUSIONS:**

Based on the Findings of Facts #19 - #26, the MSDE finds that the annual IEP team review and ESY determination were not held within required timelines by agreement of the parties that there

was not sufficient data available virtually to do so, in accordance with 34 CFR §§300.106 and .324 and COMAR 13A.05.01.08. Therefore, this office must find that violations occurred with respect to Allegations #4 and #5.

Notwithstanding the violations, based on the Findings of Facts #27 and #28, the MSDE finds that the PGCPS ensured that the IEP team convened to conduct these activities as soon as data was available virtually.

### **CORRECTIVE ACTION/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.<sup>1</sup> 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 action will not be completed within the timeframe indicated, 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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770.

### **Student-Specific**

The MSDE requires the PGCPS to provide documentation that the IEP team has convened and determined whether the violations negatively impacted the student's ability to benefit from the education program, and if so, the compensatory services or other remedy needed to remediate the violations.

### **School-Based**

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

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<sup>1</sup> 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.

<sup>2</sup> 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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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 timelines 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

c: [REDACTED]  
Monica Goldson  
Barbara Vandyke  
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Dori Wilson  
Anita Mandis  
K. Sabrina Austin  
Nancy Birenbaum