



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

November 10, 2020

Megan Berger, Esq.
Megan Marie Collins, Esq.
Disability Rights Maryland
1500 Union Avenue, Suite 2000
Baltimore, Maryland 21211

Michelle Hall, Esq.
Maryland Office of the Public Defender
6 St. Paul Street, Suite 1400
Baltimore, Maryland 21202

Renuka Rege, Esq.
Public Justice Center
1 North Charles Street, Suite 200
Baltimore, Maryland 21201

Ms. Trinell Bowman
Associate Superintendent – Special Education
Prince Georges County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: [REDACTED]
Reference: #21-015

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 September 11, 2020, the MSDE received a complaint from Megan Berger, Esq., Megan Collins, Esq., Renuka Rege, Esq. and Michele Hall, Esq., hereafter, “the complainants,” on behalf of 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 above-referenced student.

Megan Berger, Esq.
Megan Marie Collins, Esq.
Renuka Rege, Esq.
Michele Hall, Esq.
Ms. Trinell Bowman
November 10, 2020
Page 2

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that the student's Individualized Education Program (IEP) was obtained when she transferred to the school system from the District of Columbia, and, as a result, the IEP was not implemented during the 2019-2020 school year, in accordance with 34 CFR §§300.101, .103, and .323, COMAR 13A.08.02, and the *Maryland Student Records Manual*.
2. The PGCPS did not ensure that its administrative procedures were followed to respond to the student's truancy and other behaviors, in order for the school staff to suspect that the student is a student with a disability under the IDEA from September 11, 2019 until the school staff were informed that she was identified with a disability in January 2020, in accordance with 34 CFR §300.111.

BACKGROUND:

The student is eighteen (18) years old and is identified as a student with Other Health Impairment related to Attention Deficit Disorder under the IDEA. She has an IEP that requires the provision of special education instruction.

During the 2019-2020 school year, she attended the [REDACTED] until the March 16, 2020 Statewide closure of all school buildings as the result of the national COVID-19 pandemic.

ALLEGATION #1 IEP IMPLEMENTATION

FINDINGS OF FACTS:

1. On August 28, 2018, the student transferred to the PGCPS from the District of Columbia Public Schools (DCPS). The registration indicated that the student had an IEP at the time of transfer (DC IEP).
2. On that same date, the PGCPS completed a form requesting the student's documents, including the IEP from the DCPS. However, there is no documentation that the PGCPS sent the request to the DCPS, or followed up with obtaining the IEP from the DCPS.
3. On January 21, 2020, following the disciplinary removal of the student and subsequent concerns expressed by the student's parent that the IEP was not being implemented, the PGCPS contacted the DCPS and obtained a copy of the DC IEP.

4. On January 29, 2020, an IEP team meeting was held. At the meeting, the IEP team discussed that the student's DC IEP had not been obtained when she transferred into the PGCPS. The IEP team reviewed and revised the DC IEP. The IEP includes goals for the student to improve reading comprehension, math problem solving, written language expression, receptive language skills, and social, emotional behavioral functioning. The IEP requires the provision of special education instruction from both general and special education teachers in the general education classroom to assist her in achieving the goals. The IEP also requires "behavior therapies" and speech language therapy as a related service in order to achieve the goals. The IEP further requires accommodations such as small group instruction, frequent breaks, calculation devices, and reduced distractions.
5. The PGCPS issued reports of the student's progress towards achieving the reading, writing, math and speech/language goals on April 8, 2020 and June 16, 2020, which document the provision of special education and related services to address those goals. However, no progress reports were issued on the social, emotional, and behavioral goal and there is no other documentation of the provision of special education and related services provided to address this goal. There is also is no evidence of the provision of the required IEP accommodations.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #4, the MSDE finds that, while the school staff are aware of the need to obtain the record for each transferring student, the PGCPS did not ensure that appropriate steps were taken to obtain the student's DC IEP in order to ensure that it was implemented from the start of the 2019-2020 school year until the IEP was revised on January 29, 2020, in accordance with COMAR 13A.08.02, and the *Maryland Student Records Manual*.

Further, based on the Findings of Facts #4 and #5, the MSDE finds that the PGCPS has not ensured that special education and related services have been provided to address the student's social, emotional, and behavioral goal or that accommodations have been provided since January 29, 2020, in accordance with 34 CFR §§300.101, .103, and .323. Therefore, this office finds that violations occurred resulting in the loss of a Free Appropriate Public Education (FAPE) to the student since the start of the 2019-2020 school year.

ALLEGATION #2 CHILD FIND PROCEDURES

FINDINGS OF FACTS:

6. The PGCPS has Administrative Procedures in place designed to ensure that students who are struggling behaviorally or academically are provided with supports in the general education program.

7. The PGCPs Administrative Procedures # 5124 establishes guidelines for the implementation of Student Intervention Teams (SITs) and the Student Support Teams (SSTs) to support students demonstrating difficulty with health, personal, interpersonal, behavior, attendance, academic and career development needs:
 - a. The procedures require teachers to refer students to the SIT team when there are identified behavioral and academic concerns. Following the referral, the SIT team identifies informal classroom-level interventions to be implemented for a period of two (2) to six (6) weeks, depending on the intervention. Progress with those interventions is to be monitored and documented and the parent notified of the student's progress. A subsequent meeting is then held to modify/discontinue the interventions or refer the student to the SIT team based on the student's response.
 - b. If strategies and interventions for a student are not successful, the parent is notified and a SST referral form is submitted to the SST chair/facilitator. The SST members "use their expertise to analyze student performance data and recommend classroom accommodations and interventions aimed at increasing academic achievement and participation as well as positively impacting social and behavior growth." The SST identifies strategies and interventions to support the student in reaching identified goals, which is documented in an implementation plan that includes a monitoring time frame and an effectiveness determination and is distributed to all employees providing services to the student relative to the intervention.
 - c. The SST holds follow up meetings to review data for the pre-determined goals in the implementation plan, determine the efficacy of each strategy and intervention, and determine the level of progress made. At that time, the SST determines the next steps to take, including referral for an IDEA evaluation, depending on the goal outcomes.
8. The PGCPs Administrative Procedures #5113 states:
 - a. If the student has missed at least ten percent (10%) of school days in a quarter, the parent(s)/guardian(s) should be called or emailed by the teacher.

- b. If no change in absences, the teacher of record will submit the student's name to the grade level administrator or principal to communicate via telephone, letter, or email with the student and parent(s)/guardian(s).
 - c. Students with chronic absences, both lawful and unlawful, will be referred to the Student Intervention Team (SIT) to address the underlying problems that lead to the absenteeism.
 - d. Students who demonstrate a pattern of truancy will be referred to the SST, which will include the Pupil Personnel Worker, for intensive interventions designed to increase regular attendance. Habitual truancy is defined as being absent at least 20% of the school days in a marking period.
 - e. Pupil Personnel Workers are required to report monthly, to the school principal, the names of students who have been habitually truant and chronically absent the previous month.
9. While the school system staff report that the school staff are trained on implementation of these Administrative Procedures at the start of each school year, there is no documentation of this information.
 10. On May 19, 2019, the MSDE issued a monitoring report to the PGCPS reflecting a finding that the PGCPS was not compliant on some of the requirements for fulfilling the Child Find obligation. The MSDE also found that the PGCPS had no system of general supervision related to IDEA compliance. The MSDE required that the school system begin to implement such a system, to include policies, procedures and integrated monitoring activities, data on progress and results and targeted technical assistance and professional development. The MSDE is currently in the process of conducting monitoring of the school system again on these requirements.
 11. The PGCPS developed a Department of Special Education Strategic Plan to include implementation of a system of general supervision. However, the plan does not address the Child Find requirements.
 12. There is documentation that the PGCPS began training and self-monitoring in response to the May 19, 2019 MSDE monitoring report on February 28, 2020. The documentation of this training reflects that one of the areas covered is ensuring that a student suspected of a disability under the IDEA is referred for an IDEA evaluation. However, there is no

documentation that training has covered the PGCPS Administrative Procedures for providing supports in the general education program prior to a student being suspected of having a disability in order to ensure that additional data is obtained to determine if the student should be suspected of having a disability after the provision of general education interventions.

13. From the start of the 2019-2020 school year until the DC IEP was obtained at the end of January 2020, the student was absent 15.5 days. However, there is no documentation that the school staff took steps required by Administrative Procedure #5113.
14. From the start of the 2019-2020 school year until the DC IEP was obtained at the end of January 2020, the student was failing science, college and career readiness and Spanish. However, there is no documentation that the school staff took steps required by Administrative Procedure #5124.
15. From the start of the 2019-2020 school year until the DC IEP was obtained in January 2020, the student was disciplinarily removed from school on one (1) occasion on December 19, 2020, which resulted in school staff obtaining the DC IEP. The student's disciplinary record does not reflect a pattern of behavior from the start of the 2019-2020 school year until December 19, 2020.

DISCUSSION/CONCLUSIONS:

The "Child Find" requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services, or are suspected of having disabilities and being in need of special education and related services. It is, however, the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services (34 CFR §300.111).

To meet this expectation, school staff may review a student's academic and behavioral performance and determine teaching strategies, modifications to instruction and behavior management techniques in the general education program that will appropriately assist the student (34 CFR §300.111).

In this case, the complainants allege that the PGCPS did not ensure that their established Administrative Procedures were followed when the student demonstrated behavioral and academic struggles prior to the discovery of her DC IEP. They allege that, had those

Megan Berger, Esq.
Megan Marie Collins, Esq.
Renuka Rege, Esq.
Michele Hall, Esq.
Ms. Trinell Bowman
November 10, 2020
Page 7

procedures been followed, the school staff would have suspected that the student is a student with a disability under the IDEA prior to the discovery of her DC IEP.

Based on the Finding of Fact #15, the MSDE finds that during the time period covered by this investigation, the student did not demonstrate a pattern of behavior that resulted in disciplinary removals prior to the discovery of the DC IEP.

However, based on the Findings of Facts #13 - #14, the MSDE finds that the student did demonstrate truancy and academic struggles, and the PGCPS did not ensure that its Administrative Procedures were followed to provide supports in the general education program, in accordance with 34 CFR §300.111.

Based on the Findings of Facts #6 - #12, the MSDE finds that, while the PGCPS has established procedures for providing interventions to meet the needs of students within the regular school program before referring students for special education services, they did not take appropriate steps to implement those procedures, in accordance with 34 CFR §300.111. Therefore, this office finds that violations 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 below¹.

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

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.

Megan Berger, Esq.
Megan Marie Collins, Esq.
Renuka Rege, Esq.
Michele Hall, Esq.
Ms. Trinell Bowman
November 10, 2020
Page 8

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 the IEP is being implemented, and that the IEP team has determined the compensatory services or other remedy for the loss of a FAPE to the student from the start of the 2019-2020 school year until the documentation of implementation of the IEP.

School Based:

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that the [REDACTED] School staff obtain the records of students transferring to the school from the sending school. 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 recur.

System Based:

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that the school system staff are providing interventions to meet the needs of students within the regular school program consistent with the school system's Administrative Procedures. The documentation must include a description of the training that will be conducted with both general and special education staff, and how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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.

² The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

Megan Berger, Esq.
Megan Marie Collins, Esq.
Renuka Rege, Esq.
Michele Hall, Esq.
Ms. Trinell Bowman
November 10, 2020
Page 9

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 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:dee

c: Monica Goldson
Gwendolyn Mason
Barbara VanDyke
Gail Viens
Robert Reese
[REDACTED]
Dori Wilson
Anita Mandis
Diane Eisenstadt
Vicky Ciulla
Brian Morrison
Nancy Birenbaum