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State Superintendent of Schools

November 10, 2020

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Prince George’s County Public Schools
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RE: [REDACTED] Reference:
#21-018

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

The MSDE investigated the following allegations:

1. The PGCPS did not follow proper procedures to respond to referrals for an IDEA evaluation made by the parent on September 13 and 30, 2019 and by the Section 504 Team on May 6, 2020, in accordance with 34 CFR §§300.301 and .503, and COMAR 13A.05.01.04 and .06.

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2. The PGCPS did not ensure that the decisions made by the Section 504 Team prior to May 6, 2020 that the student was not suspected of having a disability as a result of his anxiety and truancy were consistent with the data, in accordance with 34 CFR §300.111.

BACKGROUND:

The student is fifteen (15) years old and is not identified as a student with a disability under the IDEA.

During the 2019 – 2020 school year, the student was enrolled in [REDACTED] where he attended school until a March 16, 2020 Statewide closure of school buildings and initiation of virtual learning as a result of the national COVID-19 pandemic.

At the start of the 2020 – 2021 school year, the student enrolled at [REDACTED] School where he continues to receive virtual learning.

FINDINGS OF FACTS:

1. On September 3, 2019, the student’s private psychiatrist provided the school staff with documentation that the student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and an anxiety disorder, and that the student would “likely benefit from a 504 program and reasonable accommodations for 1 - 2 hours each class.”
2. On September 13, 2019, the school staff acknowledged, to the student’s mother, their receipt of information provided by the student’s private psychiatrist. The school staff also informed the student’s mother that a 504 Team meeting would be scheduled in October 2019 to conduct an evaluation of the need for a Section 504 Accommodations Plan (504 Plan).
3. There is no documentation that a referral was made for an IDEA evaluation on September 13, 2019.
4. On September 30, 2019, the student’s mother emailed school staff requesting an “Individualized Education Program (IEP) meeting and a Functional Behavior Assessment (FBA) to develop a behavior intervention plan, if necessary.” In response, the school staff stated that the “504 Team will meet on Monday, October 21, 2019 at 10:00 am to determine eligibility under the 504.” However, the school staff did not address the parent’s request for an IDEA evaluation.

October 21, 2019 504 Plan Meeting

5. On October 21, 2019, the 504 Team convened to conduct an evaluation of the student's need for a 504 Plan. At the meeting, the student's teachers reported that he is frequently absent from school or tardy to classes, defies teacher's directions, does not attempt classwork, has difficulty staying on topic, demonstrates poor impulse control, and continuously uses his cellphone, and that he did not demonstrate these behaviors the previous year.
6. The written summary of the October 21, 2019 504 Team meeting reflects that the student's mother reported that the student's schedule was changed after the start of the school year to place him in different classes, and that he felt "humiliated" as a result. She reported that he was not regularly attending class and completing class work as a result of his embarrassment, and the fact that he felt that his new classes were "too easy." She also reported that the student was becoming anxious in his classes due to yelling and loud noises in the classes. The student's mother further reported that the student was anxious about her health, which made it hard for him to concentrate on his work.
7. At the 504 Team meeting, the student's mother stated that the student's psychiatrist was assessing the student for an immune deficiency syndrome which is "causing all the issues and the doctor may remove the reported diagnosis of ADHD and anxiety" and change his medication. However, she also stated that the student's psychiatrist was "currently on probation for misdiagnosing patients and that he was currently unable to prescribe medication."
8. At the 504 Team meeting, the student stated that he did not have behavior issues, but that he is "upset that his classes were switched and his teachers did not know about his need for anxiety breaks."
9. The 504 Team considered information that the student previously had a 504 Plan for ADHD but had been found to no longer require the supports in March 2018. The team discussed that when the student previously had a 504 Plan, he struggled with completing work even while attending class, whereas he was now observed to be able to complete work if he attends class.
10. Based on the data considered, the 504 Team recommended that a FBA and classroom observation be conducted, and that the student's schedule be changed back to the classes in which he was assigned at the start of the school year. The team discussed that it would reconvene to consider the additional data within sixty (60) days.

November 13, 2019 504 Plan Meeting

11. On November 13, 2019, the 504 Team reconvened. At the meeting, the student's mother reported that the student is "depressed and disinterested" in school because his schedule was not changed as decided in October 2019, and continues to refuse to complete work because he feels that the work is "beneath him." The student reported that he feels "disrespected because his schedule was not changed back to his original from the start of the school year." He also reported that he feels anxious when he is in class because he believes the class is for "students with IEPs or receiving special education services," and that he is "intelligent and does not need special classes."
12. At the November 13, 2019 504 Team meeting, the student's teachers reported that he is personable and respectful, but misses class frequently and does not complete work, often asks to leave class but does not return or report to the school office, and often has his cell phone out during instruction.
13. The 504 Team reviewed the student's school grades, teacher screening forms, medical information, student, parent, and school staff reports, and determined that there was no evidence of anxiety impacting the student's education, that what was impacting his class attendance was his disagreement with his schedule, and that he is capable of completing work when he is in class. Therefore, the team determined that the student was not eligible for a 504 Plan.
14. The PGCPS has Administrative Procedures in place designed to ensure that students who are struggling academically or behaviorally are provided with supports in the general education program. The Administrative Procedure #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.
15. 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 or discontinue the interventions or refer the student to the SIT team based on the student's response.
16. If strategies and interventions for a student are not successful, the parent is notified and a SST referral form submitted to the SST chairperson/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.

17. 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.
18. 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 School Support Team (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.
19. 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.
20. On May 19, 2019, the MSDE issued a monitoring report 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.

21. 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.
22. 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.
23. On November 10, 2020, the MSDE issued a Letter of Findings as a result of an investigation of another State complaint (#21-015). In that Letter of Findings, this office required the PGCPS to take steps to ensure that the PGCPS Administrative Procedures for providing supports in the general education program are implemented.
24. There is no documentation that supports were offered in the general education program following the determination that the student was not eligible for a 504 Plan.
25. There is no documentation that a written referral for an IDEA evaluation was made on May 6, 2020. However, an IDEA evaluation is currently pending as a result of a written referral made in September 2020.

CONCLUSIONS:

Allegation #1 Proper Response to an IDEA Evaluation Request

Based on the Findings of Facts #3 and #25, the MSDE finds that there is no documentation to support the allegation that a written referral was made for an IDEA evaluation on September 13, 2019 or May 6, 2020. Therefore, this office does not find violations with respect to those aspects of the allegation.

However, based on the Finding of Fact #4, the MSDE finds that the PGCPS did not follow proper procedures in response to a referral for an IDEA evaluation made by the parent on September 30, 2019, in accordance with 34 CFR §§300.301 and .503, and COMAR 13A.05.01.04 and .06. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

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Allegation #2 Child Find Procedures

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 established procedures were followed to address the student’s behavioral and academic struggles in the general education program. They allege that, had those procedures been followed, the school staff would have suspected that the student is a student with a disability under the IDEA.

Based on the Findings of Facts #5 - #13, the MSDE finds that the student was referred for an evaluation under Section 504 to determine whether supports could be provided in the general education program, consistent with the PGCPS Administrative Procedures.

In addition, based on the Findings of Facts #5 - #13 and #24, the MSDE finds that there was data to support the eligibility decision made by the 504 Team.

However, based on the Findings of Facts #14 - #19 and #24, the MSDE finds that the PGCPS did not ensure that supports were provided in the general education program, consistent with its Administrative Procedures, once it was determined that the student did not require a 504 Plan, in accordance with 34 CFR §300.111. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #20 - #23, the MSDE finds that the PGCPS is being required to take steps to ensure that the violation does not recur within the school system. Therefore, no further system-based corrective action is required.

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

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(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 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 of the results of the pending IDEA evaluation. If the student is found to meet the criteria for identification as a student with a disability under the IDEA, the PGCPS must also provide documentation that the IEP team has determined the compensatory services or other remedy for the delay in identification of the student from September 30, 2019 until the date his is identified under the IDEA.

School-Based

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that the proper procedures are followed at [REDACTED] when a written referral is made for an IDEA evaluation.

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

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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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/Special Education Services

MEF:ac

c: Monica Goldson
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