



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

April 19, 2021

Ms. Ronetta Stanley
Educational Advocate
Loud Voices Together
P.O. Box 1178
Temple Hills, Maryland 20757

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

RE: [REDACTED]
Reference: #21-064

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.

ALLEGATION:

On March 5, 2021, the MSDE received a complaint from Ms. Ronetta Stanley, educational advocate, hereafter, “the complainant,” on behalf of the above-referenced student and his grandmother, Ms. [REDACTED] who is also his guardian. 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 above-referenced student.

The MSDE investigated the allegation that the PGCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified needs since March 5, 2020, in accordance with 34 CFR §300.324.

In this case, the complainant alleges that the student’s identified needs require the following services which are not included the IEP:

- a. Daily research-based interventions designed to address dyslexia, dysgraphia, and dyscalculia;
- b. Small class sizes of five (5) to seven (7) students in all academic areas;
- c. Direct occupational therapy services;

- d. Daily instruction in executive functioning skills development; and
- e. A health plan to address complex medical needs.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with a Specific Learning Disability under the IDEA. He has an IEP that requires the provision of special education instruction.

The student is a parentally placed private school student. He attends [REDACTED] School, where he was placed by his guardian.

FINDINGS OF FACTS:

- 1. On May 28, 2020, the IEP team convened in response to the guardian's request that an IEP be developed. The IEP was completed on July 22, 2020.

Daily Research-Based Interventions

- 2. The IEP that was developed required the student's participation in research-based reading and math interventions as a supplementary aid/service. The documentation and audio recording of the IEP team meeting reflects that the guardian requested that the interventions be provided on a daily basis. However, she did not provide information on the specific interventions she believed to be appropriate and there is no documentation that the IEP team determined that specific interventions are required.
- 3. The school staff explained that the developer of each intervention prescribes a frequency with which the intervention must be used in order to be effective, and that in order to know the frequency with which an intervention should be provided, the specific intervention must first be identified. The school staff explained that if the IEP team does not determine that a specific intervention is required, a team within the school system identifies appropriate intervention based on the needs identified for the student in the IEP.
- 4. There is no documentation that a request was made for a research-based writing intervention or data indicating the need for participation in a daily writing intervention.

Small Class Sizes of Five to Seven Students

- 5. The documentation and audio recording of the IEP team meeting reflects that the IEP team considered information from the student's private school providers that the student receives instruction in a small group setting of no more than five (5) students. The IEP team also considered information that, despite this small student to teacher ratio, the student continues to experience a high level of distraction that interferes with his learning. Based on this information, the IEP team rejected the guardian's request for the student's classes to consist of five (5) to seven (7) students because the data does not

support a decision that the current student-teacher ratio is effective in addressing the student's inattention.

Fine Motor/Visual Motor and Visual Spatial Needs

6. The documentation and audio recording of the IEP team meeting reflect that the team considered data from a neuropsychological evaluation from 2019, administered by a private provider. The report included the results of a screening that identified areas of weaknesses in fine motor, visual motor and visual spatial skills that affect written language. The report contains recommendations for strategies and tools to accommodate those weaknesses, such as use of a word processor with specialized software for graphic organizers, context-based spell checkers and word prediction software.
7. In addition, the team considered information from the PGCPs occupational therapist that the prior occupational therapy assessment indicated that the student was not identified with significant fine motor or visual-spatial skills deficits, and that the student had been successful with the provision of occupational therapy consultation services when he previously attended a PGCPs school.
8. The guardian requested direct occupational therapy services to address fine motor skills needs, which was rejected due to lack of data that the student requires such services. However, in order to address the guardian's disagreement, the team recommended that an updated occupational therapy assessment be conducted as well as an assessment of the student's assistive technology needs.
9. Before the assessments were conducted, the guardian re-enrolled the student in the private school for the 2020-2021 school year. As a result, the PGCPs believed it was no longer obligated to offer a FAPE and did not pursue the assessments. However, there is no documentation that the guardian indicated that she was no longer interested in considering what the PGCPs would offer through an IEP if she were to return the student to the school system.

Executive Functioning Instruction

10. The documentation and audio recording of the IEP team meeting reflect that the team considered information that the student was receiving accommodations at the private school to address executive functioning skills deficits. These included the use of a daily planner and "check-ins" with school staff to ensure work completion.
11. Based on this data and the guardian's request for special education services to address the student's executive functioning deficits, the IEP team developed a goal for the student to improve self-management by initiating and persisting at a task and using a self-monitoring tool. The team also required the provision of special education instruction to assist the student in achieving the goal, as well as many various accommodations,

including the use of a daily planner and “check- ins” with school staff to ensure work completion.

Health Plan

12. The documentation and audio recording of the IEP team meeting reflect that the team considered the guardian’s concern that the student requires a health plan to address chest pain resulting from complex congenital heart disease that impacts his learning. The team also considered information contained in the report of the 2019 neuropsychological assessment that reflects that the student’s physicians reported that the student was born with congenital heart disease and underwent surgical repair in infancy, and that the chest pains were unrelated to this medical condition.
13. The IEP team requested that the guardian provide documentation of the student’s medical condition, and agreed to reconvene to develop a health plan with appropriate health care professionals on the team once the data was provided. However, the guardian did not provide documentation in response to this request.
14. When the student was enrolled in PGCPs from 2015 to 2018, the guardian expressed the same concern about the student having a complex medical history at that time, but never provided medical documentation of needs in this area.

DISCUSSION/CONCLUSIONS:

The IDEA requires that all students with disabilities requiring special education and related services, including those attending private schools, be identified, located, and evaluated, and that a Free Appropriate Public Education (FAPE) be offered to those students through an appropriate IEP (34 CFR §§300.101 and .111).

The United States Supreme Court has held that the obligation to offer a FAPE is not dependent upon the student being enrolled in the school system. Where a parent indicates the intent to have the school system to develop an IEP that the parent can consider, the school system must do so (*Forest Grove School District v. T.A.*, 129 S.Ct. 2484, June 22, 2009).

Based on the Findings of Facts #10 - #11, the MSDE finds that IEP addresses the student’s need for special education instruction to address deficits in executive functioning, in accordance with 34 CFR §§300.320 and .324. Based on the Findings of Facts #2 - #8 and #12 - #14, the MSDE finds that there is no data that the student requires the remaining services alleged by the complainant.

However, based on the Finding of Fact #9, the MSDE finds that once the guardian reenrolled the student in the private school, the PGCPs inappropriately discontinued the process of obtaining additional OT data that the IEP team had agreed to obtain, in accordance with 34 CFR §§300.323, .324, and COMAR 13A.05.01.06 and *Forest Grove School District v. T.A.*, 129 S.Ct. 2484, June 22, 2009. Therefore, this office finds that a violation occurred.

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 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 following:

- a. Consent has been requested from the guardian in order to obtain additional data regarding the student's need for occupational therapy and his assistive technology needs;
- b. If consent is provided, that the PGCPS has ensured that the assessments have been conducted and that the IEP team has reviewed and revised the IEP, as appropriate, based on the data; and
- c. If the IEP requires revision based on the data, the IEP team has determined the compensatory services or other remedy for the delay in offering a FAPE, to be provided if the guardian enrolls the student in the PGCPS.

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.

System-Based

The MSDE requires the PGCPS to provide documentation of the steps it has taken to ensure that parentally-placed private school students are offered a FAPE if a parent expresses an interest, without requiring the parent to enroll the student in the school system.

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 guardian 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 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:dec

c: [REDACTED] c/o Ronetta Stanley
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