



Carey M. Wright, Ed.D.
Interim State Superintendent of Schools

December 22, 2023

Ms. Megan Berger, Esq.
Assistant Managing Attorney
Disability Rights Maryland
Baltimore, Maryland 22111

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

RE: [REDACTED]
Reference: #24-056

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 October 24, 2023, the MSDE received a complaint from Ms. Megan Berger hereafter, "the complainant," on behalf of 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 above-referenced student.

MSDE investigated the allegation that the PGCPS has not ensured that the student has been provided with the nursing and special education services required by her Individualized Education Program (IEP) since November 2022, in accordance with 34 CFR §300.101 and.323.

BACKGROUND:

The student is eighteen years old and is assigned to [REDACTED], in the PGCPS. She is identified as a student under the IDEA and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The IEP in place in November 2022 requires that the student be provided with 33 hours per week of specialized instruction and services from a private duty nurse.
2. There is no documentation that the student has been provided with the services of a nurse, and as a result, has not attended school since November 2022.

3. There is documentation that the PGCPs has offered some virtual services to the student, but there is no documentation that the student has meaningfully participated in instruction. There is no documentation that the PGCPs has otherwise provided in-person instruction to the student in her home.
4. There is some documentation that the PGCPs has provided nursing services to other students who reside in the group home where the student's resides, but that staff at the home had disagreements with contracted nurses from the PGCPs. There is no documentation that the PGCPs has taken steps to formally coordinate service delivery for the student or others in the group home.

DISCUSSION/CONCLUSIONS:

Based on Findings of Facts #1 and #2, MSDE finds that there is no documentation that the student was consistently provided with nursing services as required by her IEP, since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation 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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner¹. 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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action². Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

MSDE requires the PGCPs to provide documentation by February 15, 2024, that it has taken the following steps:

- a. That the student is receiving the nursing services required by her IEP.
- b. If the PGCPs is unable to provide nursing services to the student by the above date, that the PGCPs has taken steps to provide instructional services in-person to the student and

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, 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 MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

- developed a formal strategy with the student's group home staff to ensure that each service provider of the student has agreed-upon duties for the student's care.
- c. That the IEP team has convened and determined the compensatory services necessary to remedy the violation identified.

System-Based

MSDE requires the PGPCS to provide documentation by February 15, 2024 of the following:

- a. That it has identified each student in the PGPCS who is required to receive private duty nursing services in their IEP and documentation that each student is receiving those services.
- b. For any student not receiving services due to a lack of nursing services, a plan to identify and secure nursing services for the student by April 1, 2024.

For any student identified above not receiving services, the PGPCS is required to convene IEP team meetings to determine alternative strategies to mitigate educational harm for the student and compensatory services, or other remedy as appropriate.

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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Antoine L. Hickman, Ed.D.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

ALH/gl

- c: Mr. Millard House II, Superintendent, PGPCS
Mr. Keith Marston, Instructional Supervisor, PGPCS
Ms. Lois Jones-Smith, Special Educational Compliance Liaison, PGPCS
Mr. Darnell Henderson, General Counsel, PGPCS
Ms. Alison Barmat, Branch Chief, Family Support and Due Process, MSDE
Dr. Paige Bradford, Chief, Specialized Instruction, MSDE
Ms. Elizabeth B. Hendricks, Complaint Investigator, MSDE
Ms. Diane Eisenstadt, Compliance Specialist, MSDE