

April 4, 2024

Ms. Jodi Louer
Volunteer Education Advocate
Juvenile Protection Division
Maryland Office of the Public Defender
217 E. Redwood Street, Suite 1000
Baltimore, Maryland 21202

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

RE: [REDACTED]
Reference: #24-144

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 February 7, 2024, MSDE received a complaint from Ms. Jodi Louer, 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 following allegations:

1. The PGCPS has not ensured that the student has been consistently provided with specialized instruction and counseling services, as required by the Individualized Education Program (IEP), since November 27, 2023, in accordance with 34 CFR §300.101 and .323.
2. The PGCPS has not ensured that the student has been provided an appropriate educational placement as required by the IEP since November 27, 2023, in accordance with 34 CFR §300.116 and COMAR 13A.05.01.10.

BACKGROUND:

The student is 16 years old and is identified as a student with an Emotional Disability (ED) under the IDEA. He is enrolled in the [REDACTED] ([REDACTED]) and has an IEP that requires the provision of special education instruction and related services.

SUMMARY OF FINDINGS:

1. In its written response to this State complaint, the PGCPs acknowledges that violations occurred with Allegations #1 and #2. Specifically, the PGCPs acknowledges that the student has not been provided with specialized instruction, counseling services, and an appropriate educational placement as required by the IEP, since November 27, 2023.

CONCLUSION:

Based upon Finding of Fact #1, MSDE concurs with the PGCPs conclusions that violations occurred and appreciates the school system's response to the investigation.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

FINDINGS OF FACTS:

1. The student's IEP developed on May 31, 2023, requires 27 hours per week of specialized instruction outside of the general education setting and one hour per week of counseling services outside of the general education setting.

The IEP requires that the student be placed in a "separate class (SEAD) program inside general education less than 40%." The IEP reflects the student requires a small, structured classroom to address social/emotional needs as well as academics. The student will participate in one class, school wide assemblies, lunch, and extracurricular activities with non-disabled peers.

2. On January 12, 2024, the IEP team met to discuss evaluations and placements. The Prior Written Notice (PWN) generated after the meeting reflects that the IEP team reviewed the student's current grades, attendance, behavior, teacher, student, and parent input. The IEP team discussed the student's attendance and why the student did not return to [REDACTED] ([REDACTED]) after a November incident. The parent shared that she was told by "someone" at [REDACTED] that the student should "stay home for his safety." The PGCPs Administrator shared that the parent advised that she was keeping him out of school for his safety. The [REDACTED] school team shared that the student could have returned to school at any time and was not excluded for any reason. The IEP team proposed and accepted a placement change from day school to [REDACTED] School¹ ([REDACTED]). The student did not agree with placement in [REDACTED]. The [REDACTED] team shared that [REDACTED] School is not the best

¹ The PGCPs [REDACTED].

placement for the student. The IEP team further discussed if the student returns to day school they will make a referral to the Central IEP (CIEP) team for placement considerations.

3. There is no documentation that the placement determination was made based upon the student's IEP.
4. The progress reported on January 19, 2024, towards the student's annual math problem solving, and self-management goals reflects that the student is not making progress to meet the goal. Specifically, "due to an extended unexcused absence, [the student] was unable to attempt any goals in addition failed the quarter. Team recently met to discuss a potential [REDACTED] program at night to allow [the student] to complete at his own pace." There is no documentation that the IEP team met to discuss the student's lack of progress.
5. The progress reported on January 19, 2024, towards the student's annual social emotional/behavioral goal reflects that the student is not making progress to meet the goal. Specifically, "due to excessive absences from school and out of location when in school, [the student] missed 90% of his classes. Due to an extended unexcused absence, [the student] was unable to attempt any goals in addition failed the quarter. Team recently met to discuss a potential [REDACTED] program at night to allow [the student] to complete at his own pace." There is no documentation that the IEP team met to discuss the student's lack of progress.

DISCUSSIONS/CONCLUSIONS:

Placement Determination

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP Team. The placement decision must be made in conformity with the least restrictive environment (LRE) provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

In this case, the IEP team met on January 12, 2024, and determined the student should be placed in the [REDACTED]. The [REDACTED] is a [REDACTED] as the learning platform. There is no indication that this program supports the specialized instruction or counseling services as required by the student's IEP.

Based upon the Findings of Fact #1, to #3, MSDE finds that the PGCPS did not follow proper procedures when the IEP team determined the student's educational placement on January 12, 2024, in accordance with 34 CFR 300.116 and COMAR 13A.05.01.10(C)(1).

Addressing The Lack Of Expected Progress

It is the public agency's responsibility to ensure that the IEP team reviews the student's IEP to address any lack of expected progress toward the annual goals (34 CFR §300.324). In this case, the progress reported on January 19, 2024, toward the annual goals reflects the student was not making progress to meet the goal. The IEP team did not meet to address the lack of progress.

Based upon the Findings of Fact #4 and #5, MSDE finds that the PGCPs did not ensure that the IEP team reviewed and revised the student's IEP to address the lack of expected progress toward achieving the student's IEP goals since January 19, 2024, in accordance with 34 CFR §300.324.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include 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 non-compliance is corrected in a timely manner.² This office will follow up with the public agency to ensure that it completes the required actions consistent with 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 Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student-Specific

MSDE requires the PGCPs to provide documentation by May 31, 2024, of the following actions:

- Provide the student with specialized instruction and counseling as required by the IEP.
- Convene an IEP team meeting and determine an appropriate educational placement, as well as the amount and nature of compensatory services or other remedy to address the lack of provision of specialized instruction, counseling services, inappropriate placement, and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

The PGCPs must ensure that the parent is provided with prior written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

² 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.

³ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

School-Based

MSDE requires the PGCPs to provide documentation by May 31, 2024, of the steps it has taken to ensure that the [REDACTED] School staff properly implements the requirements for providing specialized instruction and related services, addressing the lack of progress, and determining placement of students in an appropriate educational placement under the IDEA and COMAR. These steps must include staff development, as well as tools developed to monitor compliance. Monitoring must include a review of all students enrolled at [REDACTED] School with IEPs who have accumulated ten consecutive days of unexcused absences. The IEP team must convene a meeting to address the students' absences. The monitoring report must be submitted to MSDE by August 1, 2024.

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/tg

c: Millard House II, Superintendent, PGCPs
Keith Marston, Compliance Instructional Supervisor, PGCPs
Darnell Henderson, General Counsel, PGCPs
William Fields, Associate General Counsel, PGCPs
Lois Jones-Smith - Special Education Compliance Liaison, PGCPs
Alison Barbat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE