

July 1, 2024

Ms. Andrea LeWinter, Esquire
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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: #24-213

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention 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 May 2, 2024, MSDE received a complaint from Ms. Andrea LeWinter, 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 did not ensure that the student has been provided with the special education instruction required by the Individualized Education Program (IEP) from a certified special education teacher since the beginning of the 2023-2024 school year, in accordance with 34 CFR §300.156 and COMAR 13A.12.02.20.
2. The PGCPS did not ensure that the student was provided with transportation services required by the IEP from August 28, 2023, to November 6, 2023, in accordance with 34 CFR §§ 300.101 and 323.
3. The PGCPS has not addressed the parent’s concerns regarding the student’s need for a one to one, since March 2024, in accordance with 34 CFR§300.324.
4. The PGCPS has not ensured that the student's behavioral needs have been met since the beginning of the 2023-2024 school year, in accordance with 34 CFR §§300.323 and .324.

BACKGROUND:

The student is seven years old and attends [REDACTED]. He is currently identified as a student with Multiple Disabilities (MD) under the IDEA and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1, #3, and #4

PROVISION OF SPECIAL EDUCATION INSTRUCTION INCLUDING THE REQUIREMENT OF A CERTIFIED SPECIAL EDUCATION TEACHER, ONE TO ONE, AND BEHAVIOR NEEDS

FINDINGS OF FACT:

1. The IEP in effect in August 2023, was developed on June 9, 2023. The IEP reflects the disability impacts the student in the following areas: Reading Phonics, and Social/Emotional/Behavioral. The IEP requires two hours and thirty minutes per week of special education instruction inside the general education classroom provided by a special education teacher until August 18, 2023. The IEP requires 25 hours of classroom instruction provided by the special education teacher and instructional assistant outside of the general education classroom. The IEP requires psychological services for thirty minutes per month and transportation as related services. The IEP requires the following supplementary aids and services to support behavioral needs:

- As needed - positive reinforcers, adult/peer model;
- Daily - trauma-informed approach, behavior management system; and
- Periodically - crisis intervention.

The IEP includes a social-emotional/behavior goal which states: "Given an image of an unsafe situation (e.g., crossing a busy street, being approached by a strange adult), [student] will verbally describe (1) reason why it is unsafe and (1) way to make the situation safer, scoring (2 out of 2) rubric points on (8 out of 10) progress monitoring assessments."

The IEP includes a social-emotional/behavior goal which states: "When reading aloud a scenario describing an upsetting emotion, [student] will verbally describe one way the person could manage their emotions in the upsetting situation, in (8 out of 10) opportunities as measured by an observation checklist."

2. On April 29, 2024, the IEP team convened to conduct the annual review meeting. The prior written notice (PWN) developed after the IEP team meeting, reflects that the parent disagreed with the following statement: "Additional Adult Support/Clarify the topic(s), the participant(s), location and manner in which Supplementary Aids, Services, Program Modifications, and Supports to or, on behalf of, the student will be provided: [student] requires additional adult support in his classes and throughout his school day to implement prevention strategies and teaching strategies in his Behavior Intervention Plan as well as to support his behaviors (such as elopement and aggression toward peers and adults) in the classroom, during transitions, at specials and at recess." The parent's position is that the student requires the same dedicated staff member with him the entire day. The PWN also reflects "a Vacancy Impact Meeting for the special education teacher vacancy in [the student's] classroom for the 23/24 school year will be scheduled for the end of June 2024."

3. The IEP developed on April 29, 2024, reflects the student's disability impacts him in the following areas: Reading Fluency, Reading Phonemic Awareness, Reading Phonics, Written Language Expression, Self-Management, Social/Emotional/Behavioral. The IEP requires seventeen hours and thirty minutes per week of special education instruction provided by the IEP team and instructional assistant outside of the general education classroom, and seven hours and thirty minutes of classroom instruction inside the general education classroom, provided by the general education teacher, IEP team, and instructional assistant. The IEP requires two hours per week of counseling services inside the general education and transportation as a related service. The student requires a Behavior Intervention Plan (BIP) and crisis intervention plan.

The IEP requires the following supplementary aids and services to address instructional and behavioral needs:

- Weekly - positive reinforces, crisis intervention;
- As needed - adult/peer model;
- Daily - trauma informed approach, additional adult support, behavior management system; and
- Quarterly - Psychologist consult.

The IEP includes a self-management goal which reflects "By April 28, 2025, when given a verbal prompt to practice self-talk to practice that calms oneself, and verbally given a choice of (2) previously – taught, calming self-talk phrases (e.g. "I am safe or "I can calm down,"), [student] will state (1) calming self-talk phrase, scoring (1 out of 1) on (4 out of 4) observation tools;

The IEP includes a social-emotional/behavior goal which reflects: "By April 28, 2025, [student] will verbalize the connection between his feelings and behavior during a period of emotional upset, in 3 out of 5 occurrences."

The IEP does not require a dedicated aide.

4. The BIP identifies the following target behaviors: physical aggression, including hitting, punching, throwing and damaging school materials; verbal aggression, including yelling, cursing, and calling staff and students names; and elopement, including walking out of his classroom or assigned area, running around the school building, or walking outside the school doors. The BIP also reflects that a crisis plan is required to support the student with remaining safe.

The crisis plan reflects escalation signals, escalation strategies, eruption signals, eruption strategies, de-escalation signals, and de-escalation strategies.

5. There is documentation that the person in the role of classroom teacher for the Social Emotional Academic Development (SEAD) first-grade classroom is a paraprofessional and reviewed the range of support the staff receives weekly.
6. There is documentation that the Crisis Resource Teacher, a certified special education teacher, is present for lessons and to provide support, to address student's behavioral goals within the general education setting as required by the IEP.
7. There is no documentation that the student received special education instruction outside of the general education setting as required by the IEP since the beginning of the 2023-2024 school year, as required by the IEP.

8. There is no documentation that the student was consistently provided with psychological services since the beginning of the 2023-2024 school year, and counseling services since April 29, 2024, as required by the IEP.

CONCLUSIONS:

Special Education Instruction

Based on the Findings of Fact #1 #3, #5, #6, and #7, MSDE finds that the PGCPs has not consistently provided the student with special education instruction, by a certified special education teacher, as required by the IEP since the beginning of the 2023-2024 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

Address Parental Concerns Regarding the Need for a One-To-One

Based on the Findings of Fact #2, MSDE finds that the PGCPs has addressed the parent's concerns regarding the student's need for a one to one, since March 2024, in accordance with 34 CFR§300.324. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation.

Address Behavioral Needs

Based on the Findings of Fact #1, #3, and #8, MSDE finds that the PGCPs did not ensure that the student's psychological services were provided as required by the IEP; therefore, PGCPs did not ensure that the identified behavioral needs were met since the beginning of the 2023 – 2024 school year, in accordance with 34 CFR §§300.323 and .324. Therefore, this office finds that a violation has occurred concerning this aspect of the allegation.

ALLEGATION #2

PROVISION OF TRANSPORTATION

FINDINGS OF FACTS

9. There is no documentation that transportation was in effect from August 28, 2023, through September 8, 2023, as required by the IEP.

Based on Findings of Facts #1, #3, and #9, MSDE finds that the PGCPs did not ensure that the student was provided with transportation services required by the IEP from August 28, 2023, to September 8, 2023, in accordance with 34 CFR §§ 300.101 and 323. Therefore, this office finds that a violation occurred concerning this aspect of the violation allegation.

CORRECTIVE ACTIONS and 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 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 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.^[2] 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 September 1, 2024, of the following:

- a. The IEP team has convened and determined the compensatory services or other remedies to redress the failure to provide psychological counseling and special education services as required by the IEP; and develop a plan for the provision of those services within a year of the date of this Letter of Findings; and
- b. Determined whether the violation related to transportation services had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

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

School-based

MSDE requires the PGCPs to provide documentation by September 1, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the implementation of special education services and related services under the IDEA. These steps must include staff development, as well as tools developed to monitor compliance.

MSDE further requires the PGCPs to inform MSDE at the start of the 2024- 2025 school year of all students at [REDACTED] that have a special education teacher vacancy. MSDE further requires the PGCPs to inform all parents and guardians of students who require specialized instruction as part of their IEP of the vacancy at the start of the 2024- 2025 school year. In addition, MSDE requires the PGCPs to develop and implement an action plan at the start of the 2024- 2025 school year to provide special education instruction.

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.

Similarly Situated

MSDE further requires that PGCPs identify all similarly situated students at [REDACTED] that were not provided special education instruction by a certified special education teacher during the 2023-2024 school year, convene IEP team meetings for those students to determine appropriate compensatory services and a plan to implement those services.

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/ra

c: Millard House II, Superintendent, PGCPs
Trinell Bowman, Assistant Superintendent Special Education, PGCPs
Lois Jones Smith, Compliance Liaison, PGCPs
Keith Marston, Coordinator of Special Education Compliance, PGCPs
Darnell Henderson, General Counsel, PGCPs
Henry Johnson, Compliance, PGCPs
[REDACTED], Principal, [REDACTED] School
Alison Barmat, Chief, Family Support and Dispute Resolution Branch, MSDE
Tracy Givens, Section Chief, MSDE
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