



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

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July 27, 2015

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Mrs. Joan Rothgeb
Director of Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #15-085

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 14, 2015, the MSDE received a complaint from Ms. XXXXXXXX, the student's mother, 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 student.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the educational placement is the Least Restrictive Environment (LRE) in which the Individualized Education Program (IEP) can be implemented from the start of the 2014-2015 school year to January 24, 2015, in accordance with 34 CFR §300.114.

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2. The PGCPS has not ensured that the student has been provided with the supports and services required by the IEP from the start of the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323. These services include the following:
 - a. Consistent support of a dedicated “1:1 assistant” throughout the school day since April 30, 2015;
 - b. Positive Behavioral Intervention Plan (BIP) supports and strategies since September 18, 2014;
 - d. Monthly counseling services; and
 - e. Use of an agenda book and weekly emails since May 21, 2015.
3. The PGCPS did not ensure that documents considered by the IEP team on April 30, 2015, were provided at least five (5) business days before meeting, in accordance with COMAR 13A.05.01.07.
4. The PGCPS did not ensure that a copy of the Behavior Intervention Plan was provided within five (5) business days of the April 30, 2015 IEP team meeting, in accordance with COMAR 13A.05.01.07.
5. The PGCPS has not ensured that proper procedures have been followed when disciplinarily removing the student during the 2014-2015 school year, in accordance with 34 CFR §§300.530 and COMAR 13A.08.03.

INVESTIGATIVE PROCEDURES:

1. On May 14, 2015, the complainant provided correspondence to the MSDE in which concerns were raised about the provision of special education services to the student.
2. On May 21, 2015, Ms. Marjorie Shulbank, Chief, Family Support Services, MSDE, conducted a telephone interview with the complainant about the concerns raised in the correspondence and requested additional information necessary to initiate a State complaint investigation.
3. On May 28, 2015, the complainant provided the MSDE with the additional information needed to initiate a State complaint investigation.
4. On May 29, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Joan Rothgeb, Director of Special Education, PGCPS; Dr. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Kerry Morrison, Special Education Instructional Specialist, PGCPS.

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5. On June 9 and 10, 2015, Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a telephone interview with Ms. Amanda R. White, Esq., Maryland Disability Law Center, about the allegations at the request of the complainant.
6. On June 11, 2015, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPs of the allegations and requested that the PGCPs review the alleged violations.
7. On June 12, 2015, Ms. Floyd conducted a telephone interview with Ms. Morrison about the allegations.
8. On June 22, 2015, Ms. Floyd and Ms. Janet Jacobs, Monitoring and Accountability Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Mr. XXXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXX, School Psychologist;
 - c. Ms. XXXXXXXXXXXX, Math Teacher;
 - d. Ms. XXXXX, Special Education Teacher;
 - e. Ms. XXXXXXXXXXXX, General Education Teacher;
 - f. Ms. XXXXXXXXXXXX, Special Education Department Chairperson; and

Ms. Morrison participated in the site visit as a representative of the PGCPs and to provide information on the school system's policies and procedures, as needed.
9. On June 25, 2015, the PGCPs provided the MSDE with documentation to be considered.
10. On June 26, 2015, the MSDE requested information and documentation from the PGCPs.
11. On June 27, 2015, the PGCPs provided the MSDE with additional information and documentation.
12. On July 21, 2015, Ms. White provided Ms. Floyd with information.
13. On July 23, 2015, the PGCPs provided the MSDE with additional information and documentation.
14. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

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- a. Notice of the procedural safeguards, provided to the student's parents on June 17, 2014;
- b. IEPs, dated June 17, 2014, March 11, 2015, April 17, 2015, and April 30, 2015, and progress reports;
- c. FAPE logs, student/ math teacher attendance sheets, dated March 11 through April 18, 2015;
- d. FAPE logs, student/school psychologist, dated March 16, 2015 through April 15, 2015;
- e. Electronic (email) correspondence from the complainant to the school staff, dated November 2014 through June 2015;
- f. Dedicated assistant, substitutes, attendance sign-in sheets, dated May 14, 2015 through June 23, 2015;
- g. Counseling logs, school psychologist, dated May 4, 2015 through June 23, 2015, psychological assessments, PGCPs, dated August 9, 2012 and May 21, 2014;
- h. Discipline referrals for the student, dated the 2014-2015 school year;
- i. ABC charts for the student dated May 15, 2015 through June 19, 2015;
- j. Daily behavior checklists, dated May 18 through May 22, 2015;
- k. BIPs, dated February 4, 2015, and May 4, 2015, and FBA/BIP dated October 27, 2014;
- l. Notifications of suspensions, dated September 18, 2014, November 13, 2014, January 12, 2015, February 25, 2015, and May 22, 2015;
- m. Prior written notices, dated October 16, 2015, October 29, 2014, November 19, 2014, February 4, 2015, February 11, 2015, April 21, 2015, May 15, 2015, May 22, 2015, and June 5, 2015;
- n. Manifestation IEP team summaries, dated February 25, 2015, May 21, 2015, and June 2, 2015;
- o. Extended suspension report packet, dated March 11, 2015;
- p. Code of conduct, signed by the student, dated September 11, 2014;
- q. Student attendance for the 2014-2015 school year;
- r. Student report cards for the 2014-2015 school year;
- s. Professional development, on manifestation IEP meetings and provision of documents to parents, for the BSMS staff, dated June 19, 2015;
- t. Electronic (email) correspondence from the PGCPs school staff to the PGCPs Central Office staff, dated November 2014 through June 2015;
- u. Electronic (email) correspondence from the school staff, to the complainant, dated September 2014 through June 2015;
- v. Counseling logs, guidance counselor, dated October 24, 2014, November 24, 2014, and January 5, 2015, mentoring sign-in sheets for the student, dated September 2014-June 2015; and
- w. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on May 14, 2015, an addendum from the parent's attorney, received by the MSDE on May 28, 2015.

BACKGROUND:

The student is fourteen (14) years old, is identified as a student with an Other Health Impairment related to a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD) under the IDEA, and has an IEP that requires the provision of special education and related services. He attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXXXX), (Doc. b).

There is documentation that, during the time period covered by this investigation, the complainant was provided with notice of the procedural safeguards (Doc. a).

ALLEGATION #1 IEP IMPLEMENTATION DURING THE 2014-2015 SCHOOL YEAR

FINDINGS OF FACTS:

Educational Placement

1. The IEP in effect at the start of the school year required that special education instruction in core academic classes be provided in a separate special education classroom (Doc. b).
2. The written summaries of IEP team meetings held on February 11, 2015, April 17, 2015, and May 15, 2015 document that the IEP team rejected placement of the student in the general education classroom because he had previously been provided with instruction in a co-taught general education classroom, which was “not successful” (Doc. m).
3. The electronic mail (email) correspondence, between the school staff and the PGCPs Central Office staff documents that the student was not placed in a separate special education classroom for core subjects until January 24, 2015 (Doc. u).

Agenda Book

4. The IEP requires daily communication between all of the student’s teachers and the complainant, through the use of student’s agenda book. Information about the student’s conduct, homework completion, and whether he turned in his homework to the teachers was to be communicated through the agenda book (Doc. b).
5. The emails sent to the complainant from the student’s teachers on October 24, 2014, December 17, 2014, and May 11, 2015, document that the student has not been able to be responsible for carrying the agenda book, as required by the IEP. However, on April 17, 2015, when the IEP team met to conduct the annual review of the IEP, use of the agenda book continued to remain a requirement of the IEP (Doc. u).

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Weekly Contact with the Complainant

6. The IEP requires that the complainant receive weekly emails about the student's conduct and homework (Doc. b).
7. While there is documentation that some teachers occasionally sent emails to the complainant, there is no documentation that emails were consistently sent to the complainant from all of the student's teachers every week (Doc. u).

Monthly Counseling Services

8. The IEP, in effect at the start of the 2014-2015 school year, required the provision of counseling services, two (2) hours per month, to be provided by the school psychologist or the guidance counselor. On January 5, 2015, the IEP was revised to require that the student receive four (4) hours of counseling service per month (Doc. b).
9. Logs maintained by the school psychologist and guidance counselor document that services were not consistently provided during the 2014-2015 school year (Docs. g and v).

BIP Supports and Strategies

10. The Behavior Intervention Plan (BIP) in effect at the start of the 2014-2015 school year requires that the student receive support from a mentor (Doc. k).
11. On February 4, 2015, the IEP team revised the BIP to require that the school staff be provided with professional staff development in the areas of tracking behaviors, data collection, and the requirements of the student's BIP (Doc. k).
12. On May 4, 2015, the BIP was revised to require the student to be provided with instruction in the use of peer mediation skills (Doc. k).
13. There is documentation that the guidance counselor held mentoring sessions consistently and that the student was instructed in how to use peer mediation skills as required by the student's BIP since the start of the 2014-2015 school year. However, there is no documentation that school staff were provided with the required professional staff development (Doc. v).

Dedicated Assistant

14. On April 17, 2015, the IEP team met, and the IEP was revised to require that a dedicated assistant be provided to the student (Docs. b and m).

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15. There is documentation that, from May 4, 2015 to June 5, 2015, a school staff member was assigned to serve as a substitute dedicated assistant for the student and worked with the student on behavioral goals during this time (Doc. f).
16. There is documentation that from June 8, 2015 to June 12, 2015, a dedicated assistant worked with the student on his behavioral goals (Doc. f).
17. There is documentation that from June 15, 2015 to June 23, 2015, a school staff member was assigned as substitute dedicated assistant and worked with the student on his behavioral goals (Doc. f).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student with a disability is provided with the special education services in the educational placement required by the IEP (34 CFR CFR §§300.101 and .323).

Educational Placement

In this case, the complainant alleges that although the IEP in effect at the start of the 2014-2015 school year required the provision of special education instruction in a separate special education classroom, he was placed in a general education classroom until January 24, 2015.

Based on the Findings of Facts #1-#3, the MSDE finds that the student was not provided with special education instruction in the educational placement required by the IEP from the start of the school year until January 24, 2015, and that a violation occurred with respect to this aspect of the allegation.

Agenda Book

The complainant alleges that the PGCPs did not ensure that the student was using an agenda book to inform her of his conduct and academic progress and homework assignments from the start of the school year until an IEP team meeting was held on October 29, 2014.

Based on the Findings of Facts #4 and #5, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Weekly Contact with the Complainant

Based on the Findings of Facts #6 and #7, the MSDE finds that the school staff did not consistently provide weekly contact by email to the complainant, and therefore a violation occurred with respect to this aspect of the allegation.

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Monthly Counseling Services

Based on the Findings of Facts #8 and #9, the MSDE finds that the PGCPS did not ensure that the counseling services were provided consistent with the IEP requirements. As a result, this office finds that a violation occurred with respect to this aspect of the allegation.

BIP Supports and Strategies

Based on the Findings of Facts #10-#13, the MSDE finds that the student was provided with mentoring and instruction in peer mediation skills. However, the team members did not receive staff development, as required by the IEP, therefore, a violation occurred with respect to this aspect of the allegation.

Dedicated Assistant

Based on the Findings of Facts #14-#17, the MSDE finds that there is documentation that a staff member has consistently served as the student's dedicated assistant since May 4, 2015. Therefore, the MSDE finds no violation occurred with respect to this aspect of the allegation.

ALLEGATION #2 PROVISION OF DOCUMENTS AT LEAST 5 BUSINESS DAYS PRIOR TO THE APRIL 30, 2015 IEP TEAM MEETING

FINDINGS OF FACTS:

18. The IEP team met on April 30, 2015 and considered the following documents: the IEP, psychological assessment, an Functional Behavior Assessment (FBA) and BIP, progress reports, and attendance and behavioral data (Docs. b, j, k, and q).
19. The complainant was not provided with the documents considered by the IEP team meeting prior to the meeting (Doc. m).

DISCUSSION/CONCLUSIONS:

The public agency must provide the student's parents with the opportunity to participate in the IEP team meeting (34 CFR §300.322 and COMAR 13A.05.01.07). This includes ensuring that parents are provided with each assessment, report, data chart, draft IEP, or other document the IEP team plans to discuss at an IEP team meeting at least five (5) business days before the meeting (COMAR 13A.05.01.07).

Based on the Findings of Facts #18 and #19, the MSDE finds that the PGCPS did not make the documents available to the complainant prior to the team meeting. Therefore, the MSDE finds a violation occurred with respect to the allegation.

ALLEGATION #3

**PROVISION OF THE BEHAVIOR INTERVENTION PLAN
(BIP) WITHIN 5 BUSINESS DAYS OF THE APRIL 30, 2015
IEP TEAM MEETING**

FINDINGS OF FACTS:

20. The IEP team made revisions to the student's BIP at the April 30, 2015 IEP team meeting (Docs. b, k and m).
21. There is no documentation that the BIP was provided to the complainant before she requested a copy on May 18, 2015 (Doc. m).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that parents are provided with a copy of the IEP within five (5) business days of the date of an IEP team meeting. If the IEP has not been finalized, a draft IEP must be provided. However, a violation of this requirement does not constitute a denial of a FAPE (COMAR 13A.05.01.07 and Md. Code Ann., Educ., §8-405).

In this case, the complainant alleges that she did not receive a copy of the BIP at the April 30, 2015 IEP team meeting until she requested a copy on May 18, 2015. Based on the Findings of Facts #20 and #21, the MSDE finds that a violation occurred with respect to the allegation.

ALLEGATION #4

DISCIPLINARY PROCEDURES

FINDINGS OF FACTS:

The February 25, 2015 Disciplinary Removal

22. On February 25, 2015, the student was removed from school for the eleventh (11th) day during the 2014-2015 school year for "being in possession of a cigarette lighter and using it to burn another student's hair" (Docs. h, n, and o).
23. On February 26, 2015, the IEP team determined that the student's behavior was not a manifestation of his disability. On the same date, the IEP team reviewed and revised the BIP to address the behavior that resulted in the student's removal (Docs. b, k, and n).
24. The student was not provided with special education services from February 25, 2015 until March 11, 2015 (Docs. c and d).
25. On April 20, 2015, the student was returned to school (Docs. n, o, and q).

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The May 1, 2015 Disciplinary Removal

26. On May 1, 2015, the student was removed from school for “constant yelling, sexual misconduct (touching another student), inappropriate remarks, laughing, and overall causing a disruption of the learning for himself and his classmates” (Doc. h).
27. On May 4, 2015, the IEP team determined that the behavior was a manifestation of the student’s disability, and the student was returned to school on May 6, 2015 (Doc. n).
28. The student was not provided with special education services from May 1, 2015 to May 6, 2015 (Docs. c and d).

The May 22, 2015 Disciplinary Removal

29. On May 22, 2015, the student was removed from school “for physical conduct of a sexual nature” (Doc. h).
30. On May 28, 2015, the student was returned to school (Docs. l and q).
31. On June 2, 2015, the IEP team determined that the behavior was not a manifestation of the student’s disability (Docs. l and n).
32. The student was not provided with special education services from May 26, 2015 to May 28, 2015 (Docs. c and d).

DISCUSSION/CONCLUSIONS:

A student with a disability may be disciplinarily removed from the current educational placement, to the extent that removal is applied to students without disabilities, for up to 10 school days for each incident that results in disciplinary removal. Once a change in educational placement¹ occurs for a student with a disability as a result of a disciplinary removal, the regulations require the provision of specific protections to the student (34 CFR §300.530).

These protections include the requirement that the IEP team convene within 10 business days of the removal to develop or review and revise, as appropriate, an existing plan to address the behavior that resulted in the removal and to determine whether the student’s behavior was a manifestation of the disability. If the student’s behavior is found to be a manifestation of the disability, the student must be returned to the educational placement from which the student was removed unless the parent and public agency agree to a change in placement. If the student’s behavior is not found to be a manifestation of the disability, the IEP team must determine the extent to which services are necessary during the period of removal in order to enable the student

¹ A disciplinary removal constitutes a change in educational placement if the student is removed for more than 10 consecutive school days or 10 cumulative school days in a school year if those removals constitute a pattern of removal of the student (34 CFR §300.530).

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to progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530).

Based on the Findings of Facts #22-#32, the MSDE finds that the IEP team made decisions about whether the behaviors were a manifestation of the student's disability and reviewed the IEP as required. However, based on the Findings of Facts # 24, #28, and #32 the MSDE finds that the PGCPS did not ensure that the student was provided with special education services following the eleventh (11th) day of removal to enable him to progress in the general curriculum and advance toward achieving the annual IEP goals therefore, the MSDE finds that a violation occurred with respect to the allegation.

ALLEGATION #5 DETERMINING THE EDUCATIONAL PLACEMENT FOR THE 2015-2016 SCHOOL YEAR

FINDING OF FACT:

33. On April 30, 2015, the IEP team considered information from psychological and educational assessments and reports on the student's academic and behavioral performance. Based on that data, the team determined that, even with the provision of supplementary aids and services in the separate special education classroom, the IEP cannot be successfully implemented. The team documented that, due to the student's need for intensive behavioral supports, he requires special education instruction in a program designed to provide specialized behavioral supports in a separate special education classroom. The IEP team also determined that the school closest to the student's home where those services can be provided is at XXXXXXXXXXXXXXXXXXXX. Therefore, the team decided that the student will attend the XXXXXXXXXXXXXXXX School at the start of the 2015-2016 school year (Doc. b).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are nondisabled. The removal of a student with a disability from the regular educational environment may occur only if the nature and severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved (34 CFR §300.114 and *Analysis of Comments and Changes to the IDEA, Federal Register*, Vol. 71, No. 156, p.46585, August 14, 2006).

Based on the Finding of Fact #33, the MSDE finds that the IEP team considered the data regarding the student's current performance and the supplementary aids and services that could be provided in the current educational placement, and based the placement decision on the student's need for additional supports. Since there is no requirement that the school staff demonstrate that the supplementary aids and services have been provided, but were unsuccessful in the previous placement, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation by November 1, 2015 that the IEP is being implemented as written and that the team has determined the services required to compensate the student for the violations identified. The documentation must reflect that the IEP team has developed a plan for the provision of the compensatory services to the student within one (1) year of the date of this letter.

School-Based

The MSDE requires the PGCPS to provide documentation by February 1, 2016 of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770. Please be advised that both the complainant and the PGCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

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If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainant 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 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 Special Education/
Early Intervention Services

MEF/sf

c: Kevin W. Maxwell
Shawn Joseph
LaRhonda Owens
Kerry Morrison
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