



October 24, 2022

Ciji Pittman, Superintendent
KIPP Columbus
2900 Inspire Dr
Columbus, OH 43224

RE: Complaint #CP 0132-2022, Findings Letter

Dear Superintendent Pittman:

After reviewing the information regarding the complaint concerning [REDACTED], (Student) the Office for Exceptional Children (OEC) has determined the following:

- The Education Program Specialist (EPS) assigned to the complaint reviewed and considered all documentation and information submitted by both parties.
- The Parent provided additional information about allegations in this complaint via email on August 20, 2022.
- The Community School's Special Education Director (Director) provided email responses to the EPS on September 22, October 3, 13 and 14, 2022 pertinent to the complaint. The Letter of Findings (LOF) will refer to these as emails from the Director.
- The Student was in 11th grade during the 2021-2022 school year, enrolled in the Community School, and identified as a student with a disability in the category of Autism.
- The Student enrolled in the Community School for the 2019-2020 school year. When the Student enrolled, the previous District provided an IEP, an ETR, two FBAs and a BIP. However, the Community School did not submit documentation to show that these documents were formally adopted.
- This complaint contains allegations pertaining to the Community School as well as another public school district that has an Education Center (Center) where the Student participated in a music program during the 2021 –2022 school year. However, the Community School is considered the Student's district of residence (DOR). Therefore, any allegations and subsequent findings of violations are the responsibility of the Community School.

Issue 1:

The Parent alleges the Community School did not ensure the Center implemented the Student's Individualized Education Program (IEP) as written during the 2021-2022 school year. Specifically, the Parent alleges the Center did not implement behavior goals and services, including the Student's Behavior Intervention Plan (BIP). As a result, the Parent alleges the Student was suspended by the Center on May [REDACTED] 2022¹. These are alleged violations of 34 C.F.R. 300.323(a) [When IEPs must be in effect – General].

¹ In an email to the EPS dated September 2, 2022, the Community School's Director of Special Education (Director) confirmed that the Student was suspended by the Center. The Director also stated that the Parent challenged the suspension, and the Center upheld its decision.

Facts:

The EPS assigned to the complaint reviewed and considered all documentation and information submitted by both parties. Based on that review, the following facts were determined:

1. Emails from the Director stated the Community School did not update either the FBA nor the BIP created by the Student's prior school at the time of the Student's enrollment.
2. The Community School submitted a copy of the Student's IEP with effective dates of October 14, 2021 and October 13, 2022 that included the following information relevant to the May [REDACTED] 2022 suspension:
 - a. The Student has behaviors which impede his learning or the learning of others.
 - b. The Student receives counseling services through a private counseling center.
 - c. A Center teacher and a Community School teacher rated the Student's social emotional functioning in the "at-risk range" on his most recent ETR dated May [REDACTED] 2021.
 - d. The IEP included "Implications for Instruction and Progress Monitoring" from the Student's most recent ETR and stated the Student's Teachers "should consider employing" the following strategies:
 - i. Communication in writing or gestures;
 - ii. Social stories that "a typical high school student would encounter;"
 - iii. Grouping with "empathic peers and given specific tasks to complete in group assignments;" and
 - iv. Social skills training to improve the quality of the Student's relationships.
 - e. The Student had a measurable annual Social-Emotional/Behavioral goal which stated:
 - i. "When [the Student] is in a social situation in which he disagrees, is in the wrong place, or is given a consequence for a clearly defined rule, [the Student] will ask for more clarity on the rule if needed and follow through with the rule for his safety with 90% accuracy in all situations, as measured by anecdotal records on Kickboard²."
 - f. Support for school personnel- The Student requires a BIP³ that "is to be used and followed at all times, and to be reviewed as needed with the presence of the entire IEP team."
2. The Community School submitted a copy of the Student's BIP completed by the Student's previous District and with a date of implementation as October [REDACTED], 2019. The Community School did not submit documentation to show when this BIP was shared with the Center. The BIP contained the following relevant information:
 - a. Goal: The Student "will reduce his time out of class and increase appropriate interaction with peers through use of a specific pass system⁴ to account for his whereabouts and have increased check-ins with Staff utilizing positive reinforcement techniques (positive praise, opportunities to be 'helper,' etc.) in order to help model and work through interactions with peers."
 - b. Encourage the Student to use the "Collaboration Room" and the Intervention team to help with challenging tasks.

² Kickboard is a social-emotional tracking system.

³ The BIP mentioned in the Student's IEP was the BIP that accompanied the Student upon his enrollment in the Community School and was written by the Student's previous school district.

⁴ In an email to the EPS dated October 3, 2022, the Director stated that the Community School did not have examples of the passes used in the pass system outlined in the Student's BIP.

- c. If the Student requests to leave class, staff will provide a written, signed, dated and times pass stating the purpose of being out of class and the specific amount of time allotted for the task.
 - d. Staff will remind the Student that if another need arises while out of the classroom, that he is required to return to the classroom and get permission to engage in the new task.
 - e. Staff encountering the Student in the hallway, should ask to see his pass. If the Student is not engaging in the activity specified on the pass, then the staff should either escort or direct the Student back to class as well as remind him of the expectations of his BIP.
 - f. Staff will not reprimand the Student, but “rather remind [him] again of expectations....”
 - g. “When possible, Staff may suggest or model different ways to interact with peers.”
3. The Director emailed a copy of an undated BIP (BIP 2) to the EPS on October █, 2022 and stated that she believed the document was created during a May █ 2022 IEP amendment team meeting in conjunction with the Center, but she was unable to confirm the date or provide a prior written notice (PR-01) pertaining to that meeting. The BIP included the following relevant information:
- a. Behaviors to Increase: “time in class, accountable communication and decision making, emotion regulation in interactions with peers and adults, appropriate boundaries and physical space.”
 - b. Behaviors to decrease: “Conflict with peers, time spent out of class out of seat or walking around [and] use of profanity.”
 - c. The Social Work Team would meet with the Student daily for a “check-in/checkout” to discuss organization, coping strategies and replacement behaviors.
 - d. The BIP included positive intervention and implementation strategies for staff to use with the Student as well as a response to intervention (RTI) plan for the Student.
 - e. Pertinent staff were to track and check the implementation of the BIP in Kickboard daily as well as send the Parent a report weekly.
 - f. The BIP should be reviewed yearly “with additional reviews available upon request.”
 - g. The Parent would be “notified as needed for behavior concerns” that were occurring at the Center.
 - h. The BIP did not include a list of participants or signatures.
4. The Community School submitted a copy of a letter dated May █ 2022 sent by the Center to the Parent that stated the Student was suspended for 5 school-days due to “Level II – Insubordination.” The Student “was in an unauthorized area without permission” and “refused” to follow a teacher’s instructions. The Student was not permitted to be “on any property or in any building of the [Center’s district] and shall not attend any activity held by the [Center]” during the suspension. The Community School did not provide an incident report pertaining to the events that led to the May █ 2022 suspension.

5. The Community School submitted a copy of a letter dated May [REDACTED] 2022 sent by the Center to the Parent that included the following relevant information:
 - a. The Parent had requested an appeal of the decision to suspend the Student from the Center for the offense of Level II – Insubordination.
 - b. The Hearing Officer upheld the decision and “the decision of the Hearing Officer [was] final.” The decision could only be reviewed further “in accordance with Chapter 2506 of the Ohio Revised Code.”
 - c. The letter provided a link to a “Mental Health Directory” as support for the Student.
6. The Parent emailed the EPS on September [REDACTED] 2022 and stated the Music Teacher at the Center leaves the Student unattended and allows him “to be [placed in] vulnerable” situations.
7. The Director sent the EPS an email that included the following relevant information:
 - a. Neither the Community School nor the Center had documentation such as notes, anecdotal reports, specially designed instruction (SDI) logs, etc. from the Student’s general education teachers, intervention specialist (IS), or other designated staff which would demonstrate the implementation of the Student’s behavior goal or the BIP.
 - b. The Student was suspended from May [REDACTED]-June [REDACTED] 2022 (5 days) for insubordination from the Center, and the Community School honored the suspension, as well.
 - c. Neither the Community School nor the Center had any PR-01s pertaining to this issue.

Finding:

The Community School is in violation of 34 C.F.R. 300.323(a) [When IEPs must be in effect – General]. Section 34 C.F.R. 300.323(a) states at the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP. To be in effect, the IEP must be implemented as written.

Here, the student was suspended on May [REDACTED] 2022 due to insubordinate behavior. The Community School did not submit any documentation to demonstrate the implementation of the Student’s behavior goal or the BIP. The Community School did not provide documentation which demonstrated that the Center had a copy of the IEP and BIP. Therefore, the Community School is in violation of this section of the regulations.

Issue 2:

The Parent alleges the Community School did not reconvene the Student’s IEP Team or invite the Center to discuss interventions which would have prevented the Student from being suspended by the Center on May [REDACTED] 2022. This is an alleged violation of 34 C.F.R. 300.324(b)(1)(ii)(C) [Development, review, and revision of IEP – Review and revisions of IEPs – General].

Facts:

The EPS assigned to the complaint reviewed and considered all documentation and information submitted by both parties. Based on that review, the following facts were determined:

1. The Community School submitted a timeline with typed notes, emails, and screenshots of text messages from February 17 to June 14, 2022 between Community School Staff, Center Staff, the Parent and the Parent's Advocate (Advocate). These documents included the following relevant information⁵:
 - a. The Parent or Advocate requested IEP team meetings via emails dated March [REDACTED], April [REDACTED] and [REDACTED] and June [REDACTED] 2022⁶.
 - b. The Parent's email requests for IEP team meetings contained the following as concerns: Missed transportation, unexcused absences, communication with the Center, setting up a communication plan with the Center, a music theory assessment, rehearsals, track and field photographs, food for the Student during late rehearsals, the Student's Google password, a request for a school issued computer, arrangement of music and song choices, the Student's progress, the Center Music Teacher's willingness to listen to the Student's concerns and "push back" the Student received from the Center Music Teacher.
 - c. The Center emailed the Community School and requested that an IEP team meeting pertinent to the above issues be scheduled. Emails were sent April 1, May 3, and May 9, 2022.
 - d. The submitted timeline stated that a virtual IEP team meeting was held on May 16, 2022, with Center staff, but due to conflict between participants, the IEP team decided to reconvene with the assistance of a mediator. The timeline did not state what was discussed at the meeting and the Community School did not submit a PR-01 from the meeting.
2. The Community School submitted a copy of a PR-01 dated September 1, 2022, that contained the following relevant information to the May [REDACTED] 2022 suspension:
 - a. The purpose of meeting was to amend the Student's IEP and address the Parent's concerns.
 - b. The IEP team discussed "issues related to a suspension [the Student] received at [the Center] in May 2022."
 - c. The Center and the Parent "were unable to come to resolution about the suspension that occurred in May 2022."
 - d. Any behavioral incidents would be communicated to the Parent through the two building Principals within 24 hours of an incident.
 - e. The Director will speak with the Community School's High School Administration Team "to remind them of how to engage with [the Student] when he is having difficulties and to communicate with the [P]arent."
 - f. The IEP team determined that the discussion around the May 2022 suspension was "outside the scope of the IEP team" and would be addressed by the Center's administrative team.

⁵ Issue 2, Fact 1 includes language from the fact pattern included in complaint CP 0120 2022. In an email to the EPS dated October [REDACTED] 2022, the Director indicated that the submitted timeline for complaint CP 0120 2022 and its subsequent facts were pertinent to this complaint, CP 0132 2022.

⁶ The Parent submitted a copy of an email dated March [REDACTED] 2022 in which she requested a virtual meeting to address her concerns "with communication, performance, use of equipment and breakfast." This email was not included in the documentation submitted by the Community School.

3. The Community School submitted a copy of a PR-01 dated September [REDACTED] 2022 that included the following relevant information regarding the May [REDACTED] 2022 suspension:
 - a. The purpose of the meeting was to address the Parent's concerns with transportation, communication, and a PR-01 dated September [REDACTED] 2022.
 - b. The Parent expressed concerns with the Student "being in trouble" when he is out of assigned areas because "he is looking for help with transportation."
 - c. The Center's Director of Special Education (Director) suggested that the Student be given a pass by a teacher to resolve the Parent's concerns. The Director stated that she would discuss a hall pass procedure with Center Staff.
 - d. The Parent requested that the Student be supervised at all times. The Executive Director for the Office of Accelerated and Extended Learning from the Center (Executive Director) stated that she would speak to Center Staff about supervising the Student during "the entire class time."
4. On September [REDACTED] 2022, the Executive Director sent an email to the Community School, Center Staff, and the Parent that included the following relevant information, which the Executive Director asked the Community School to add to the PR-01 dated September 16, 2022:
 - a. The Executive Director met with Center Staff regarding a "telephone protocol" (protocol) that was established with the Parent and Student on September [REDACTED] 2022.
 - b. The protocol was shared with the Community School, Center Staff as well as the Parent, Student, and Advocate after it was established.
 - c. The protocol stated the following:
 - i. The Student is not to leave the music classroom without permission and a note from the Music Teacher.
 - ii. The Student is not to be in any unauthorized area on campus.
 - iii. The Student will be supervised "at all times" at the Center.
 - iv. If the Student needs to use the phone to call the Parent, "particularly for transportation concerns," he is required to ask the Music Teacher to use the classroom phone.
 - v. If the classroom phone is not working, the Music Teacher is required to provide the Student with a note to go to the Main Office to call the Parent.
 - vi. The Parent stated, "she will call the office if there needs to be transportation information given to [the Student]."
 - vii. The Parent will text the Student if he needs transportation information.
5. In an email to the EPS dated October [REDACTED] 2022, the Director stated the Community School did not amend the PR-01 dated September [REDACTED] 2022 to include the additional information from Issue 2, Fact 4.
6. The Community School's Director sent the EPS an email that included the following relevant information:
 - a. The Community School does not have any anecdotal notes, emails, or other correspondence between the Parent and Community School staff, which would demonstrate communication from the Parent regarding the need to address Issue 2.
 - b. An IEP team meeting was not reconvened to address Issue 2 until September 2022.

- c. The Community School does not have any parent invitations (PR-02s) or meeting minutes pertinent to the Student's May █ 2022 suspension.

Finding:

The Community School is in violation of 34 C.F.R. 300.324(b)(1)(ii)(C) [Development, review, and revision of IEP – Review and revisions of IEPs – General]. This section states each public agency must ensure that the IEP Team revises the IEP, as appropriate, to address information about the child provided to, or by, the Parent.

Here, the Community School was aware that the Parent had concerns pertaining to the Student's music program at the Center in March 2022. The Community School took over 2 months to respond to the Parent's initial concerns, but eventually held an IEP team meeting on May 16, 2022. There were no meeting minutes or any PR-01s that documented the discussion and decisions made in that meeting. Following the Student's May █ 2022 suspension, the IEP team did not reconvene until September 1, 2022 and September 16, 2022 to discuss the incident. During these meetings, the Community School discussed the Parent's concerns pertaining to the May █ 2022 suspension. However, the September 2022 meetings were not held in a timely manner. Therefore, the Community School is in violation of this section of the regulations.

Corrective Action for all Issues:

1. **November 11, 2022:** On or before this date, the IEP team from the Community School, including the Parent and the Parent's Advocate, will reconvene to plan and gain consent to conduct an FBA for the Student. The IEP team will also review the Student's IEP to determine if the Student must be enrolled in a music program to receive a Free Appropriate Public Education (FAPE) given that the Center removed the Student from its program as of October █ 2022. During the IEP team meeting the IEP team will consider the Student's:
 - Behavior incident reports, if available, including suspensions from both the Community School and Center, from the 2021-2022 and 2022-2023 school years;
 - IEP progress reports from the 2021-2022 and 2022-2023 school years including data from the Student's behavior goal;
 - Any other information pertinent to this issue, as identified by the Community School, Parent, or the Parent's Advocate;
 - The IEP team will decide if the Student must be enrolled in a music program in order to receive FAPE. This determination should be based on what is included in the Student's IEP, including within the Transition Section of the IEP.
 - If the Student requires a music program to receive FAPE, then the Community School will find a new placement for the Student. If a music program is not required, then the Community School will amend the Student's IEP to remove references to the Center's music program.

Additionally, if the Student does enroll in a program similar to the Center's music program, the IEP team, including a representative from the new music program, *must reconvene prior to the Student beginning the program to update the Student's BIP and IEP, as necessary.*

2. **December 1, 2022:** On or before this date, the Community School will provide⁷:
 - Parent invitations (PR-02);
 - Prior written notices (PR-01s);
 - Meeting minutes or notes;
 - Signatures of all IEP team meeting participants;
 - A completed FBA(s)⁸. Please note that a separate FBA must be completed for each behavior assessed; and
 - A new BIP, which should align to and address the behavioral concerns identified in the FBA.
 - An amended IEP with behavior goal(s) which address the behavioral concerns, based on the FBA(s).
3. **December 1, 2022:** The IEP team will provide a service log by which to monitor the implementation of the Student's behavior goals and BIP. The Community School will submit a copy of the sample service log by this date. The service log should include the date, who is providing the services, where the services are being provided, the length of service, the service provided, a detailed explanation of the Student's progress as well as any other data points the Community School wishes to track based on the contents of the BIP.
4. **December 8, 2022:** The Community School will provide a copy of the Student's FBA(s), BIP and amended IEP to all staff that interact with the Student including but not limited to general education teachers, intervention specialists, administrators, counselors and coaches at the Community School. The Community School will submit documentation that includes the pertinent staff member's signatures to demonstrate receipt of the FBA(s), BIP and IEP.
5. The Community School will provide to the OEC completed service logs on **January 31, February 28, March 31, April 28 and May 31, 2023**. The Community School may wish to use an online platform to record data which could be shared by the Community School and the Center.

The Community School's final corrective action is due by **May 31, 2023**.

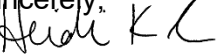
Please submit all corrective action by the above due dates to the Office for Exceptional Children, attention Kelly Barger. Please reference the complaint number on all correspondence.

⁷ If the Student enrolls in another music program, the Community School must provide any relevant listed documents for an IEP team meeting within a week following the meeting that discusses this placement.

⁸ The FBA and BIP forms should be signed even though they are optional forms. If the Parent refuses to sign, then the Community School should document that refusal in a PR-01.

We appreciate your cooperation in the resolution of the complaint investigation.

Sincerely,



Heidi Kleinman, Assistant Director, Dispute Resolution
Office for Exceptional Children

cc: [REDACTED], Parent
Christina Ifill, Special Education Director
Kelly Barger, Education Program Specialist
Colleen Grady, Senior Program Officer, Educational Options and Policy
Theda Sampson, Sponsor, Fordham Foundation