



Mohammed Choudhury
State Superintendent of Schools

February 7, 2022

Ms. Debrah Martin
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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: #22-070

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 December 9, 2021, the MSDE received a complaint from Ms. Debrah Martin 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.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that the student has been provided with the specialized instruction, supports and accommodations required by the Individualized Education Program (IEP), since August 2021, in accordance with 34 CFR §§300.101 and .323.
2. The PGCPS has not ensured that the decisions regarding recovery services made between April 2021 and June 2021 were consistent with needs of the student, in accordance with 34 CFR §300.324.

3. The PGCPS has not ensured that the IEP has included a statement of the student's present levels of academic and functional performance in the areas of written expression and social/emotional functioning, since October 29, 2021, in accordance 34 CFR §§300.320 and .324.
4. The PGCPS has not ensured that the student's parents have been provided with reports of the student's progress towards achievement of the annual IEP goals that reflect the required method of measurement, as required by the IEP since August 2021 in accordance with 34 CFR §§300.320 and .323.
5. The PGCPS did not ensure that the IEP team meeting convened on November 15, 2021, included the required participants, in accordance with 34 CFR §300.321.
6. The PGCPS did not provide the parents with a completed copy of the student's IEP within five (5) business days of the IEP team meeting held on November 15, 2021, in accordance with COMAR 13A.05.01.07.
7. The PGCPS has not provided Prior Written Notice of the IEP team's November 15, 2021 decisions, in accordance with 34 CFR §300.503.

BACKGROUND:

The student is 12 years old and attends [REDACTED] He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services

FINDINGS OF FACTS:

ALLEGATION #1:

IMPLEMENTATION OF THE STUDENT'S IEP

1. The student's IEP, in effect in August 2021, requires that he receive 23 hours and 20 minutes per week of specialized instruction inside of the general education setting with a special educator as the primary provider of these services. His IEP also requires that he receive counseling services to assist him in social skills training, "periodically". The student's IEP also requires the provision of accommodations to support him in the general education setting, including the use of a math intervention, speech to text software and organizational aids.
2. On October 22, 2021 the IEP team met to review and revise the student's IEP and respond to the parent's concerns. The IEP team acknowledged that the student's IEP required that he receive 23 hours and 20 minutes of specialized instruction, but informed the parents that the school could only provide him with 10 hours of specialized instruction.
3. The IEP team documented during the October 22, 2021, IEP team meeting that the student was "struggling" to complete assignments. The IEP team agreed to include additional supplementary aids and supports into the student's IEP including breaking down assignments into smaller units, use of a daily agenda or progress report, monitoring of independent work and providing steps and formulas.

4. There is documentation that the IEP team acknowledged that the student was not receiving a math intervention, as required by his IEP from the start of the 2021-2022 school year up to the time of the October 22, 2021 IEP team meeting.
5. While there is documentation that the student was provided with many of the supports and accommodations required by his IEP, the documentation does not support that he was provided with all of the supplementary aids determined by the IEP team including the use speech to text software.
6. During IEP meetings convened for the student on October 22, and November 15, 2021, the IEP team acknowledged that the student was not receiving specialized instruction in the frequency required by his IEP because his “IEP includes more hours than the Charter/Parent School can implement”.
7. A review of other students' educational records demonstrates that other students at the student's school have not received the services required by their IEP as a result of the inability of the school to implement those services.

ALLEGATION #2: DETERMINATION OF RECOVERY SERVICES

8. On June 9, 2021, the PGCPS provided notice to the student's parent that he was not eligible for recovery services as a result of the transition to virtual learning during the COVID-19 pandemic. The IEP team relied on multiple sources of data to make this determination and provided the parents with prior written notice of this decision.
9. On November 15, 2021, the IEP team reviewed this decision and documented that the parent was in agreement with the determination.

ALLEGATION #3: IEP PRESENT LEVELS OF PERFORMANCE

10. The student's IEP, in effect on August 2021, contained present levels of academic achievement and functional performance in the areas of written language expression and social emotional/behavioral functioning.
11. The student's parent expressed concerns regarding the student's needs in these areas at the November 15, 2021 IEP team meeting. In response, the IEP team included additional informal assessment data that demonstrated the student's abilities in these areas and determined that additional data would be collected and shared with the team at a future date.

ALLEGATION #4: IEP PROGRESS REPORTS

12. The student's IEP, in effect on August 2021, requires that the students' parents receive quarterly reports on the student's progress on IEP goals. The student's IEP goals require that progress be measured towards the acquisition and demonstration of the following skills:

- Self-management- "completing assignments on time in 4 out of 5 observable opportunities"
- Reading Comprehension- "respond to comprehension questions verbally or in writing by citing textual evidence and by making logical inferences with 80% accuracy in 4 out of 5 trials."
- Math Problem Solving- "use models, equations, drawings, or patterns to solve the problem with 80% accuracy in 4 out of 5 trials as measured by classroom performance, and informal procedures."
- Written Language Expression- "produce a narrative with coherent writing in which the development and organization are appropriate to task, purpose, and audience with 80% accuracy in 4 out of 5 trials."

13. Progress reports generated for the student since August 2021 demonstrate that the school staff are reporting progress on the student's IEP goals that reflects the student's progress in acquiring the identified skills.

ALLEGATION #5: REQUIRED IEP TEAM MEMBERS

14. On October 27, 2021, the complainant sent correspondence to the school staff requesting the PGCPs invite an assistive technology specialist that could respond to the parent's concerns regarding assistive technology.
15. There is no documentation that the IEP team meeting convened for the student on November 15, 2021 included an assistive technology specialist or that the school staff addressed the parent's concerns regarding assistive technology at the November 15, 2021 IEP team meeting.

ALLEGATIONS #6 AND #7: PROVISION OF COMPLETED IEP AND PRIOR WRITTEN NOTICE FOLLOWING THE NOVEMBER 15, 2021 IEP TEAM MEETING

16. There is documentation that on November 22, 2021, the school staff provided the student's parents with a copy of the completed IEP and prior written notice following the November 15, 2021 IEP team.

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP Implementation

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

Based on the Findings of Facts, #1-6, the MSDE finds that although the student was provided with many of the supports required by his IEP, there is no documentation that he received a math intervention and speech to text software or that he received specialized instruction in the manner and frequency required by his IEP, since August 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Based on Finding of Fact #7, the MSDE further finds that violations have occurred with respect to similarly situated students at [REDACTED]

Allegation #2: Determination of Recovery Services

Based on Findings of Facts #8 and #9, the MSDE finds that the PGCPS has ensured that there was a determination made regarding the student's need for recovery services that was based on the needs of the student and that the parents were provided the opportunity to share their concerns regarding this determination, since June 2021, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #3 Present Levels of Performance

In order to provide a student with a Free and Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. (34 CFR §§300.101 and .320).

Based on the Findings of Facts, #10 and #11, the MSDE finds that the IEP team described the student's present levels of performance, since August 2021, in accordance with 34 CFR §§300.101 and .320. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #4 Provision of IEP Progress Reports

Based on Findings of Facts #12 and #13, the MSDE finds that the Student's parents were provided with reports of the student's progress towards achievement of the annual IEP goals that reflect the required method of measurement specified in the Student's IEP, since August 2021, in accordance with 34 CFR §§300.320 and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #5 Required IEP Team Members

The IEP team must include the student's parent, at least one regular education teacher of the student if the student is, or may be, participating in the regular education environment, at least one special education teacher of the student, a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency, an individual who can interpret the instructional implication of evaluation.

Parents may invite individuals who have knowledge or special expertise regarding the student, including public agency personnel. However, decisions as to which particular teachers or special education providers will participate on the IEP team are left to the public agency (34 CFR §300.321 and *Analysis of Comments and Changes*, pp. 46670 and 46674).

Based on Findings of Facts #13 and #14, the MSDE finds an assistive technology specialist was not a required IEP team member at the November 15, 2021 IEP team meeting, in accordance with 34 CFR §300.321 and Analysis of Comments and Changes, pp. 46670 and 46674. Therefore, this office does not find that a violation occurred with respect to this allegation.

Additional Discussion Related to Allegation #5

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team is required to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320, and .324).

Based on Findings of Facts #13 and #14, the MSDE finds that the PGCPS did not consider the concerns of the parent with regard to the student's assistive technology needs when developing the student's IEP on November 15, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred.

Allegation #6 Provision of Completed IEP

Based on Finding of Fact #16, the MSDE finds that the parents were provided with a completed copy of the student's IEP within five (5) business days of the IEP team meeting held on November 15, 2021, in accordance with COMAR 13A.05.01.07. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #7 Provision of Prior Written Notice

Based on Finding of Fact #16, the MSDE finds that the parents were provided with prior written notice of the IEP team's November 15, 2021 decisions, in accordance with 34 CFR §300.503. Therefore, this office does not find 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, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.¹

¹ The OSEP states that the public agency must 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, the 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.

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact the Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.²

Student-Specific

The MSDE requires the PGCPS to provide documentation by April 1, 2022 that the student is being provided with the specialized instruction, supports and accommodations required by his IEP. The MSDE further requires that the IEP team has convened and considered the parent's concerns regarding the student's assistive technology needs.

The MSDE further requires that the IEP team has determined the compensatory services to remediate the violations found in this Letter of Findings.

School-Based/Similarly Situated Students

The MSDE requires the PGCPS to provide documentation of the steps that have been taken to ensure [REDACTED] staff follow proper procedures for implementing students' IEPs. The documentation must include a description of how the PGCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur.

Furthermore, the MSDE requires that the PGCPS conduct a review of student records at [REDACTED] [REDACTED] to identify the students with disabilities for whom similar violations may have occurred. In particular, the PGCPS must identify other students who entered [REDACTED] [REDACTED] and thereafter had services reduced based on the inability of the school to implement the student's IEP. For each student identified, the PGCPS must ensure that the IEP team reviews each student's IEP and determines the level of services required for the student to receive a FAPE irrespective of the school's ability to implement the IEP. The IEP team must then determine whether the violation negatively impacted the student's ability to benefit from the educational program. In each case where a negative impact is found, the IEP team must also determine the compensatory services required to remedy the violation.

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.

² The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

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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 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:gl

c: Monica Goldson
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