



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

April 20, 2018

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Ms. Trinell Bowman  
Executive Director  
Department of Special Education  
Prince George's County Public Schools  
John Carroll Elementary School  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: XXXXX  
Reference: #18-095

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 February 20 and 27, 2018, the MSDE received a complaint from Mr. XXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son, 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 did not provide prior written notice of the decisions made at the February 22, 2017 Individualized Education Program (IEP), and did not ensure the provision of the IEP within five (5) business days of the February 22, 2017 IEP team meeting, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.07.

2. The PGCPS did not ensure the opportunity for parent participation in the February 22, 2017 IEP team meeting, in accordance with 34 CFR §300.322.
3. The PGCPS did not ensure the confidentiality of the student's educational record when it shared a hearing decision with PGCPS staff who did not have a direct interest in the outcome of the hearing, in accordance with 34 CFR §300.610 and 34 CFR §99.22.
4. The PGCPS has not provided an opportunity for an appeal of the results of a hearing to challenge information in the student's educational record, in accordance with COMAR 13A.08.02 and the PGCPS Administrative Procedure No. 5125.

**BACKGROUND:**

The student is 12 years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services. He attends the XXXX XXXXXXXXXXXXXXXXXXXXXXX, a nonpublic, separate, special education school, where he is placed by the PGCPS.

**ALLEGATION #1**

**PRIOR WRITTEN NOTICE OF THE FEBRUARY 22, 2017  
IEP TEAM MEETING AND PROVISION OF THE IEP**

**FINDINGS OF FACTS:**

1. An IEP team meeting was scheduled for February 22, 2017 at 8:30 a.m. to review the MSDE Letter of Findings issued as a result of the investigation of State complaint #17-026 and to complete the required student-specific corrective actions.<sup>1</sup>

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<sup>1</sup> As a result of the investigation of State complaint #17-026, the PGCPS was required to ensure that the IEP team determined the compensatory services to remediate a delay in addressing the lack of expected progress on a goal to improve self-management skills from January 2016 to August 2016.

Through the investigation of State complaint #17-026, the MSDE found that, in January 2016, the student was not making sufficient progress to achieve an IEP goal to improve self-management skills with the provision of direct occupational therapy services. The MSDE found that the IEP team did not address the lack of progress until August 2016, when it decided to address the goal through the provision of Discrete Trial Training, a method of teaching in simplified and structured steps, instead of through direct occupational therapy services.

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2. On February 23, 2017, the school staff sent the complainant an electronic mail (email) message that states, "Please find attached the amendment to [the student's] IEP per our meeting. Should you have any questions or concerns, please feel free to contact me directly."
3. On March 1, 2017, a Prior Written Notice (PWN) document was generated.
4. On March 15, 2017, the entire IEP was revised reflecting the decisions made on February 22, 2017.
5. The documentation of the February 22, 2017 IEP team meeting reflects that the school-based members of the team recommended occupational therapy consultation as compensatory services to support the student in attending to quality of handwriting and task completion, and to provide modifications to a keyboard for the student to use to assist with task completion. The documentation of the meeting states that the complainant disagreed and requested "more direct compensatory services provided to focus on self-management." It reflects that the complainant's request was rejected because direct occupational therapy services had proven to be unsuccessful in assisting the student in this area, and that the decision was made to provide consultation as compensatory services, as recommended by the school-based members of the team.
6. On May 4, 2017, the complainant requested access to specific records maintained in the educational record, including the IEP that was revised following the February 22, 2017 IEP team meeting and the Prior Written Notice document developed following the meeting. On the same date, the school staff provided the complainant with copies of the documents for which he requested access.
7. On May 31, 2017, the first occupational therapy consultation was conducted as compensatory services.

### **CONCLUSIONS:**

Based on the Findings of Facts #1 and #4, the MSDE finds that a revised IEP was not provided to the complainant within the required timeline, in accordance with COMAR 13A.05.01.07. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #6, the MSDE finds that the complainant has been provided with the revised IEP. Therefore, no corrective action is required.

Based on the Findings of Facts #1 - #7, the MSDE finds that there is documentation of the provision of the Prior Written Notice document within a sufficient amount of time for the complainant to assess the decisions made and voice his objections prior to the decisions taking effect, in accordance with 34 CFR §300.503 and *Letter to Chandler*, United States Department

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of Education, Office of Special Education Programs (OSEP), 59 IDELR 110, April 26, 2012. Therefore, this office finds that the complainant was provided with prior written notice of the decisions and does not find that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION #2 PARENT PARTICIPATION IN THE FEBRUARY 22, 2017 IEP TEAM MEETING**

**FINDINGS OF FACTS:**

8. The February 22, 2017 IEP team meeting was scheduled to begin at 8:30 a.m. as proposed by the complainant, who requested to participate by telephone.
9. At 8:36 a.m. on February 22, 2017, the complainant sent an email message to the school staff stating that he was waiting for them to call him.
10. At 8:49 a.m. on February 22, 2017, the school staff responded by email that, "We apologize for the delay, please standby. We will be calling very shortly."
11. On May 19, 2017, the complainant requested that amendments be made to the documentation of the February 22, 2017 IEP team meeting. The changes requested were as follows:

Replace the Paragraph with the following paragraph: The MSDE found violation for the IEP team not addressing the student's lack of progress from January, 2016 until August 25, 2016, and required the IEP team to determine the compensatory services. [The complainant] was called 20 minutes after the start time of the IEP meeting. The Occupational Therapist (the OT) informed [the complainant] that they were discussing. The OT reiterated that OT is not helping the student, but suggested adding additional OT consultation service. [The complainant] asked the OT why the OT wants to add OT service if OT is not helping [the student]. The OT did not have an answer. [The complainant] informed the OT that adding additional OT service makes absolutely no sense in order to address the violation and suggested that the compensatory services should address the student's lack of progress in the self management area, which the MSDE identified. [The complainant] tried to go over the MSDE letter. The team did not show an understanding of the letter. [The student's] Mental Health Case Manager shared that there is disagreement about what the violation is. The OT asked a suggestion for alternative remedy. [The complainant] suggested that compensatory service could be provided at home. However, [a member of the school system staff] rejected it.

12. On October 11, 2017, a hearing was held in order for the complainant to contest the accuracy of the documentation of the February 22, 2017 IEP team meeting after the school system refused to amend the record. The decision issued as a result of the hearing states that the hearing officer found that “the existing education records are not inaccurate, misleading, or a violation of the student’s privacy rights,” and that he recommended that “the records stand as they currently exist.”
13. There is no documentation that the school-based members of the IEP team began the February 22, 2017 IEP team meeting prior to bringing the complainant into the meeting at 8:50 a.m. and they deny having done so.

**CONCLUSION:**

Based on the Findings of Facts #8 - #13, the MSDE finds that there is documentation that the complainant participated in the February 22, 2017 IEP team meeting, as required by 34 CFR §300.322. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #3**

**CONFIDENTIALITY OF THE RECORD**

**FINDINGS OF FACTS:**

14. The written decision that was issued as a result of the hearing held at the complainant’s request to contest the accuracy of the student’s educational record includes personally identifiable information because it states the name of the complainant.
15. The hearing decision contains a statement that that it was copied to the PGCPs Office of Human Resources, Office of Employee Relations, Office of General Counsel, and Office of Appeals. The hearing officer reports that the format used for reporting the results of personnel-related hearings, which are copied to these offices, was used to develop the written decision in this matter, and that the copy list was inadvertently left on the document. The hearing officer has revised the written decision to remove the copy list and proposes to take steps to ensure that any copies that were sent to these offices in error be destroyed in order to remediate the violation.

**CONCLUSION:**

Based on the Findings of Facts #14 and #15, the MSDE finds that the PGCPs did not ensure the confidentiality of the hearing decision, in accordance with 34 CFR §300.610 and 34 CFR §99.22. Therefore, this office finds that a violation occurred.

**ALLEGATION #4                      APPEAL OF THE HEARING DECISION**

**FINDINGS OF FACTS:**

16. On January 4 and 5, 2018, the complainant filed an appeal of the December 6, 2017 hearing decision to the Prince George's County Board of Education.
17. On March 26, 2018, the Prince George's County Board of Education sent an email message to the complainant stating that they were planning to conduct the hearing on April 19, 2018 at 6:30 p.m. and requesting that he confirm his attendance by March 29, 2018. The email also states that the legal counsel for the Prince George's County Board of Education would be contacting the complainant to explain the process.
18. On March 27, 2018, the legal counsel for the Prince George's County contacted the complainant by email explaining that once he confirmed his availability for the April 19, 2018 hearing, he would be provided with written notice concerning next steps for oral argument. The email requests that the complainant confirm his availability as soon as possible.
19. On April 4, 2018, the Prince George's County Board of Education sent an email to the complainant stating that they had not heard back from him and reiterating that the hearing was scheduled for April 19, 2018 at 6:30 p.m. The email states that if they did not hear from the complainant, their legal counsel would be in contact with him regarding next steps.

**CONCLUSION:**

Based on the Findings of Facts #16 - #19, the MSDE finds that the PGCPS has provided the complainant with the opportunity for a hearing before the Prince George's County Board of Education, as required by COMAR 13A.08.02 and the PGCPS Administrative Procedure No. 5125. Therefore, this office does not find that a violation occurred.

**CORRECTIVE ACTION/TIMELINE:**

The MSDE agrees with the corrective action proposed and requires the PGCPS to provide documentation by June 1, 2018 of the steps taken to ensure that copies of the December 6, 2017 hearing decision that were sent to the PGCPS officials in error be destroyed.

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.

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Please be advised that the PGCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been available to this office during the complaint investigation and a substantial reason must be provided for not submitting the documentation during the investigation. If additional documentation 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. Pending the decision on a request for reconsideration, the school system must implement any corrective action within the timelines reported in this Letter of Findings.

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/am

c: Kevin W. Maxwell  
Gwendolyn Mason  
Barbara Vandyke  
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