



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

July 11, 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: #18-169

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 24, 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 ensure that work samples reviewed by the Individualized Education Program (IEP) team on May 25, 2017 were provided at least five (5) business days before the meeting, in accordance with COMAR 13A.05.01.07.

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2. The PGCPS did not ensure that parent concerns about the manner in which progress towards achievement of IEP goals is to be measured was considered by the IEP team since May 25, 2017,¹ in accordance with 34 CFR §300.324.
3. The PGCPS has not provided an opportunity to inspect and review educational records, including the provision of explanations and interpretation of records, in response to a request made on November 3, 2017, in accordance with 34 CFR §300.613.²

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 XXXXX XXXXXXXXXXXXXXXXXXXXXXX, a nonpublic, separate, special education school, where he is placed by the PGCPS.

ALLEGATIONS #1 AND #2

**PROVISION OF DOCUMENTS PRIOR TO THE
MAY 25, 2017 IEP TEAM MEETING AND
CONSIDERATION OF THE COMPLAINANT'S
CONCERNS ABOUT PROGRESS MONITORING
SINCE MAY 25, 2017**

FINDINGS OF FACTS:

1. There were IEP team meetings held on May 25, 2017, August 23, 2017, November 14, 2017, January 25, 2018, March 15, 2018, and May 10, 2018.

May 25, 2017 IEP Team Meeting

2. The IEP team met on May 25, 2017 to conduct an annual review of the IEP.
3. The Parent Contact Log documents that, on May 22, 2017, a draft IEP “and corresponding documents” were sent to the complainant by electronic mail (email) in preparation for the May 25, 2017 IEP team meeting.
4. On May 22, 2017, the complainant sent an email to the school staff acknowledging receipt of the documents, and stated the following:

¹ While the complainant alleged that the violation occurred since August 2016, he was informed, in writing, that only those violations that are alleged to have occurred within one (1) year of the filing of the State complaint can be resolved through the State complaint investigation procedure.

² The requirements do not address access to, and an explanation of, the content of in-person or telephone conversations that were requested by the complainant on November 3, 2017.

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Please come prepared to explain the contents of the IEP. I would like to go over it at the meeting. I am having a quick glance at the documents, but I don't think I will have time to fully go over it before the meeting.

The complainant further stated the following:

One feedback I have based on the information from [the MSDE] is regarding the measurement of progress of IEP goals. It was noted that there is sufficient progress made in many of the goals for the first three (3) quarters and then suddenly not making sufficient progress at the fourth (4th) quarter. I see some of it for the current goals as well. I think measurement process needs to be revisited to ensure smooth measuring and reporting of the progress to avoid a sudden fall at the end. I don't think [the student] knows it is fourth (4th) quarter.

5. The written documentation of the May 25, 2017 meeting reflects that the IEP team considered information about the student's classroom performance when determining his present levels of performance. The school staff report that the school-based members of the IEP team reviewed samples of the student's work with the complainant at the meeting at his request, but that copies of the work samples were not provided to the complainant prior to the meeting because there was no plan to review them at the meeting.
6. There is no information from the complainant or documentation that the IEP team intended to review the student's work samples at the May 25, 2017 IEP team meeting.
7. There is no documentation that the complainant was unable to participate in the meeting due to lack of provision of documents prior to the meeting.
8. The written documentation of the IEP team meeting does not reflect discussion by the IEP team about how the student's progress towards achievement of annual goals is to be measured, and the meeting was not documented through an audio recording.

August 23, 2017 IEP Team Meeting

9. The IEP team met again on August 23, 2017.
10. The written documentation of the meeting does not reflect discussion by the IEP team about how the student's progress towards achievement of annual goals is to be measured, and the meeting was not documented through an audio recording.

November 14, 2017 IEP Team Meeting

11. The IEP team met again on November 14, 2017.

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12. The written documentation of the meeting does not reflect discussion by the IEP team about how the student's progress towards achievement of annual goals is to be measured.
13. A review of the audio recording of the meeting reflects that there was no discussion by the IEP team about how the student's progress towards achievement of annual goals is to be measured.

January 25, 2018 IEP Team Meeting

14. The IEP team met again on January 25, 2018.
15. The written documentation of the meeting does not reflect discussion by the IEP team about how the student's progress towards achievement of annual goals is to be measured, and the meeting was not documented through an audio recording.

March 15, 2018 IEP Team Meeting

16. The IEP team met again on March 15, 2018.
17. The written documentation of the March 15, 2018 IEP team meeting reflects that the complainant inquired about how the school staff know the intent of the student's actions in order to determine whether he is following directions.³ The written documentation reflects that the school-based members of the team replied that the student uses picture communication symbols and choice boards to communicate his intent, and that it can be observed whether he follows the expected routines, as well as directions, such as going to wash his hands.
18. A review of the audio recording of the meeting reflects that the complainant expressed concerns that the school-based members of the IEP team were relying upon their observations of the student and their professional judgement in order to determine the student's progress, and he questioned their qualifications to make those decisions. The audio recording documents that the complainant expressed the opinion that the team should rely upon the results of formal assessments as a basis for monitoring progress and that the student cannot be making sufficient progress if he is not performing at grade level expectations. The school-based members of the IEP team explained that they are measuring the student's progress in light of his abilities, and they invited the complainant

³ The IEP includes goals for the student to follow directions with verbal and gestural prompts to complete specific tasks in order to improve his academic and functional skills. In order to decide whether progress is being made on the goals, the team must determine whether the student is following directions.

to observe the student in the classroom in order to verify the information they were reporting on the student's progress.

May 10, 2018 IEP Team Meeting

19. The IEP team met again on May 10, 2018.
20. Neither the written documentation of the meeting nor the audio recording of the meeting reflects that the complainant continued to raise concerns about how the student's progress towards achievement of annual goals is to be measured. A review of the audio recording of the meeting documents that the complainant raised several questions about how the program was designed to increase the student's independence, and that the school-based members of the team addressed these questions.

CONCLUSIONS:

Allegation #1 Provision of Documents Prior to the May 25, 2017 IEP Team Meeting

In this case, the complainant alleges that the student's work samples were considered at the May 22, 2017 IEP team meeting and that he was not provided with copies of the documents at least five (5) business days before the meeting.

Based on the Findings of Facts #1 - #8, the MSDE finds that there is no information or documentation that, prior to the meeting, the team intended to review student work samples at the IEP team meeting. Therefore, there was no obligation to provide the complainant with those documents prior to the meeting, in accordance with COMAR 13A.05.01.07.

However, there was an obligation to provide other documents, such as the draft IEP, that were to be reviewed at the meeting. Based on the Findings of Facts #1 - #4, while this office finds that documents to be reviewed at the IEP team meeting were provided to the complainant, they were not provided at least five (5) business days before the meeting, in accordance with COMAR 13A.05.01.07. Therefore, the MSDE finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #4 - #7, the MSDE finds that there is no documentation that the violation impacted the complainant's participation in the May 25, 2017 IEP team meeting. Therefore, no student-specific corrective action is required.

Allegation #2 Consideration of Concerns About Progress Monitoring

Based on the Findings of Facts #4 and #8 - #18, the MSDE finds that there is no documentation that the team considered the concerns expressed by the complainant on May 22, 2017 about the manner in which progress is being monitored until March 15, 2018, as required by 34 CFR §300.324. Therefore, this office finds that a violation occurred.

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Notwithstanding the violation, based on the Findings of Facts #4 and #16 - #20, the MSDE finds that, since March 15, 2018, the team has considered and addressed the complainant's concerns. Therefore, no student-specific corrective action is required.

ALLEGATION #3 RECORDS ACCESS

FINDINGS OF FACTS:

21. On May 19, 2017, the complainant requested amendment of information in the student's February 22, 2017 IEP, asserting that it contained inaccurate and misleading information. The complainant requested that it be amended to reflect that the meeting started prior to his being brought in to participate by telephone.
22. On May 31, 2017, the school staff refused the request to amend the documentation of the meeting and informed the complainant of the right to a hearing to dispute the accuracy of the documentation. However, the school staff did not inform the complainant of the procedures for obtaining such a hearing.
23. On June 1, 2017, the complainant sent correspondence to the principal requesting a hearing to challenge the contents of the February 22, 2017 IEP.
24. On June 16, 2017, the complainant filed a State complaint with the MSDE (State complaint #17-158), alleging that the PGCPS did not provide an opportunity for hearing to challenge information in the record in response to his June 1, 2017 request.
25. On June 19, 2017, the MSDE sent correspondence to the complainant and the PGCPS informing them of the initiation of the investigation of State complaint #17-158.
26. On June 20, 2017, the complainant made another request to the PGCPS for amendments to be made to the documentation of the February 22, 2017 IEP team meeting.
27. On June 26, 2017, the PGCPS provided the complainant with information on the procedures for a hearing to dispute the accuracy of the student's educational record. The information reflected that the request had to be made within five (5) school days of the principal's decision to deny the request for amendment of the record.
28. On July 3, 2017, the MSDE issued a Letter of Findings to both the complainant and the school system as a result of the investigation of State complaint #17-158. In that Letter of Findings, the MSDE reported that a violation of the requirements was identified based on the fact that the PGCPS did not provide the complainant with the procedures for obtaining a hearing until after the time period to request the hearing under the school system's procedures had expired. The MSDE required the PGCPS to provide the

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complainant with a hearing to dispute the accuracy of the documentation in order to remediate the violation.

29. On July 17, 2017, the PGCPS staff sent the complainant an email explaining that the hearing was being scheduled to complete the corrective action from State complaint #17-158 and in response to his June 20, 2017 request for amendment of the documentation. On the same date, the complainant requested that the PGCPS staff provide him with a separate written response to the June 20, 2017 request for amendment before providing him with a hearing on the matter.

30. On July 24, 2017, the PGCPS staff sent the complainant an email, and stated the following:

MSDE recommended that we use the hearing forum to respond to your June 20, 2017 amendment request since we will already be meeting at a hearing to address the information that you feel is inaccurate and misleading, as your newest request is in regards the same document as your previous amendment request.⁴

31. On November 3, 2017, the complainant provided the PGCPS with a request for access to, and an explanation of, any records documenting the MSDE's recommendation. The complainant also requested any information that was obtained from the MSDE through telephone and in-person conversations. The complainant further requested access to any documents that contain recommendations for responding to his June 20, 2017 request in a manner other than through a hearing, and he gave the school system staff ten (10) days to respond to his requests.

32. On November 6, 2017, the PGCPS acknowledged receipt of the request, but it has not responded to the complainant's November 3, 2017 request for access to records.

33. On November 14, 2017, an IEP team meeting was held to complete corrective action required as a result of the investigation of the complainant's State complaint #18-015. This corrective action included having the IEP team consider the complainant's concerns about transportation services. The team updated the present levels of performance on the IEP based on the results of assessments that had been conducted and considered the

⁴ The MSDE provided technical assistance to the PGCPS in the completion of corrective action required as a result of the investigation of State complaint #17-158. That technical assistance included a recommendation that the hearing that was being scheduled should provide the complainant with the opportunity to contest all aspects of the documentation of the February 22, 2017 IEP team meeting, and thus should address the requests for amendment made by the complainant on May 19, 2017 and June 20, 2017.

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- complainant's concerns about the being informed of changes in the bus route that result in changes to pick up and drop off times.
34. On December 6, 2017, a PGCPS hearing was held in order for the complainant to dispute the accuracy of documentation of the February 22, 2017 IEP team meeting. The hearing decision reflects that the school system's documentation of the meeting was found to be accurate.
 35. On January 25, 2018, the IEP team met to consider reevaluation and complete the student-specific corrective action required as a result of the investigation of the complainant's State complaint #18-009. This corrective action included providing the complainant with access to the student's educational record in response to his May 17, 2017 request for access to all reports of assessments of the student's fine motor skills functioning. It also included ensuring that the IEP team reconsidered the complainant's request for direct occupational therapy services following his review of the documents.
 36. The written documentation of the January 25, 2018 IEP team meeting states that the complainant refused to participate in a discussion about the student's fine motor skills, contending that the school system was withholding documents from him.⁵ At the meeting, the team decided that an assistive technology assessment would be conducted.
 37. On February 20 and 27, 2018, the complainant filed another State complaint with the MSDE (State complaint #18-095), in which he alleged that he was not provided with the opportunity to participate in the February 22, 2017 IEP team meeting because it had started prior to his being brought in to participate by telephone.
 38. On March 15, 2018, the IEP team reconvened to consider the results of the assistive technology assessment recommended on January 25, 2018, and to complete the correction action required as a result of the investigation of State complaint #18-009. The documentation of the meeting reflects that, prior to the meeting, the complainant was provided with copies of all of the occupational therapy assessments and that he was invited to review the entire record at the school, but that he declined the offer. The team considered the assessment data and reviewed and revised the IEP.

⁵ On October 10, 2017, the MSDE provided the complainant with a copy of the occupational assessment report that he had requested from the PGCPS on May 17, 2017. The copy that the MSDE provided to the complainant was a paper copy that was obtained from the educational record. On December 13, 2017, the school staff provided the complainant with an unsigned electronic version of the same document in order to complete corrective action required as a result of the investigation of State complaint #18-009. The complainant asserts that the documents provided by the MSDE and the school staff, respectively, are not the same, despite attempts that have been made by the MSDE and the school-based members of the IEP team to explain that they contain the same information presented in different formats.

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39. On March 17, 2018, the complainant provided the MSDE with a copy of his June 20, 2017 request to the PGCPS for amendment of the documentation of the February 22, 2017 IEP team meeting, and stated that the school system “hasn’t denied it as of the date of this email.”
40. On April 20, 2018, the MSDE issued a Letter of Findings in State complaint #18-095 finding that the complainant participated in the February 22, 2017 IEP team meeting. The decision was based on the documentation of the meeting that reflects that the complainant participated in the meeting, and a PGCPS hearing decision affirming the accuracy of that documentation.

CONCLUSIONS:

The PGCPS was required to respond to the complainant’s request for access to any documentation that was maintained of the provision of such technical assistance that contains personally-identifiable information, pursuant to the IDEA and the Family Educational Rights and Privacy Act (FERPA).⁶

Based on the Findings of Facts #21 - #32, the MSDE finds that the PGCPS has not responded to a request for access to records made in November 2017, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #33 - #40, the MSDE finds that the violation did not impact the complainant’s ability to participate in IEP team meetings that have been held since the request was made. Therefore, no student-specific corrective action is required.

ADDITIONAL ISSUE – TRANSPORTATION:⁷

FINDINGS OF FACTS:

41. On May 10, 2018, the IEP team conducted the annual IEP review and revised the IEP based on information about the student’s progress. The IEP team also discussed that, the student’s safety vest has come loose during transportation, and that since the assignment of a new bus aide, the student has had incidents of spitting, urinating, and smearing feces while on the bus that are impacting other students on the bus.
42. The bus lot supervisor reported that the bus staff have been trained on the use of the safety vest used to secure the student during transportation, but are not trained to address

⁶ However, the requirements do not address the sharing of the content of in-person or telephone conversations.

⁷ This issue was identified during the course of the investigation.

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the types of behaviors exhibited by the student. The complainant requested that a staff member be dedicated to work exclusively with the student on the bus since he has that level of support in school and has not demonstrated the behaviors in that setting. The team did not accept or reject the request, but discussed that there are a large number of students on the bus and that some of them may need to be reassigned to another bus. The team also discussed the possibility of obtaining special undergarments for the student's use on the bus that he cannot remove.

43. The bus lot supervisor agreed to review the video recordings of the student's bus to determine whether a new bus route should be added in order to decrease the number of students on the bus. The IEP team decided that the bus staff will be re-trained on securing the safety vest and that the bus aide will be in close proximity to the student while on the bus.
44. The bus lot supervisor also agreed to examine the safety vest to determine whether it is the correct size for the student, and the IEP team agreed that another safety vest will be ordered for him and that transportation staff will search for another safety vest that might be used until a new one can be obtained.

CONCLUSION:

Based on the Findings of Facts #41 - #44, the MSDE finds that the student has not had appropriate equipment and personnel on the bus to address his transportation needs, in accordance with 34 CFR §§300.101, .156, and .323. Therefore, this office finds that a violation occurred.

ADDITIONAL DISCUSSION:

On October 17, 2014, the MSDE issued a Letter of Findings as a result of an investigation of a previous State complaint filed by the complainant (State complaint #15-011). As a result of that investigation, a violation was identified because the student had not been provided with proper safety equipment during transportation, and the PGCPS was required to take corrective action.

On April 24, 2015, the MSDE issued a Letter of Findings as a result of an investigation of another State complaint filed by the complainant (State complaint #15-057). As a result of that investigation, the MSDE identified a violation because the students on the bus had not been seated on the bus in a manner that was consistent with instructions from the manufacturer of the safety equipment being used with the student. The MSDE also identified a violation because the bus attendant was not seated on the student's bus in a location that allowed proper reaction to the student's behavior, consistent with the PGCPS Transportation Handbook, and corrective action was required.

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Based on the Findings of Facts #41 - #44, the MSDE finds that, despite the MSDE's requirement of corrective actions in the past in order to ensure that the student is provided with appropriate transportation services, this office continues to find violations.

CORRECTIVE ACTIONS/TIMELINES:

1. The MSDE requires the PGCPS to provide documentation by September 1, 2018 that a response has been provided to the complainant's November 3, 2017 request for access to any records documenting the MSDE's guidance regarding the PGCPS hearing.
2. The MSDE requires the PGCPS to provide documentation by October 1, 2018 that the following action has occurred:
 - a. That the PGCPS Associate Superintendent of Special Education and Student Services, the PGCPS Executive Director of Special Education, the PGCPS Director of Transportation Services, the PGCPS nonpublic liaison with the XXXXXXXXXXXXXXXXXXXX, and the XXXXXXXXXXXX transportation liaison with the PGCPS have reviewed the audio recording of the May 10, 2018 IEP team meeting for the student;
 - b. That the PGCPS has made arrangements for Dr. Linda Bluth, Special Initiative Specialist, MSDE, who is a national transportation expert, to conduct an observation of the student during bus transportation for the purpose of making recommendations for addressing the student's transportation needs; and
 - c. That an instructional specialist in the area of physical therapy within the PGCPS Office of Special Education has conducted an assessment of the safety equipment being used with the student and an observation of its use with the student, and has made recommendations for ensuring the safe use of the equipment.
3. The MSDE requires the PGCPS to provide documentation by October 1, 2018 that the following action has occurred:
 - a. That the PGCPS has developed a plan to ensure that the student is consistently provided with appropriate safety equipment on the bus, consistent with recommendations from observations conducted. The plan must include ensuring that procedures are in place for each bus incident involving the student to be properly documented, and that the video of the student's bus is reviewed by both the PGCPS Special Education and Transportation Offices for a one week period following every incident that occurs, in order to determine whether proper procedures are being followed and whether additional action is needed to ensure the student's safety;

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- b. That the PGCPS has conducted an in-service training of the bus lot supervisor for the Laurel/Greenbelt lot in order to ensure that the student is consistently provided with appropriate safety equipment on the bus; and
 - c. That the IEP team, with participation by the PGCPS Special Education and Transportation Offices, has considered the complainant's request for a staff member to be dedicated to work exclusively with the student on the bus and has made a decision that is consistent with the data. If the IEP team determines that a staff member is not required to work exclusively with the student, it must determine the number students who can safely be assisted by a bus aide on the student's bus.
4. The MSDE requires the PGCPS to provide documentation by November 1, 2018 of the following:
- a. That the IEP team's decisions are being implemented and that all staff working with the student on the bus have been trained to address the student's specific behaviors;
 - b. The steps that have been taken to ensure that parents are provided with all documents to be considered by the IEP team at least five (5) business days before each IEP team meeting;
 - c. The steps that have been taken to ensure that parent concerns are addressed through the IEP team process in a timely manner; and
 - d. The steps that have been taken to ensure that all requests for access to the student's educational record are responded to in a timely manner.

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 recur.

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 from Dr. Nancy Birenbaum, Compliance Specialist, MSDE at (410) 767-7770.

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

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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
Kerry Morrison
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Dori Wilson
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