



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

January 9, 2019

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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: #19-064

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 November 15, 16, 19, 20, 26, and 27, 2018, the MSDE received a complaint from Mr. XXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son, the above-referenced student. In those 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 student has consistently been provided with the transportation services needed in order to access the amount of special education instruction required by the Individualized Education Program (IEP) since November 2017, in accordance with 34 CFR §§300.101 and .323.¹

¹ This allegation includes concerns about lack of proper notification of changes in the bus schedule as well as late bus arrivals.

2. The PGCPS has not ensured that behavior data has been collected and reviewed, as required by the IEP, since November 2017,² in accordance with 34 CFR §§300.101 and .323.
3. The PGCPS has not provided a response to a March 12, 2018 request for the location of records, in accordance with 34 CFR §300.616.
4. The PGCPS has not provided access to the educational record in response to requests made on April 27, 2018 and September 12, 2018, in accordance with 34 CFR §300.613.

BACKGROUND:

The student is thirteen (13) 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 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, a nonpublic, separate, special education school, where he is placed by the PGCPS.

ALLEGATION #1 PROVISION OF TRANSPORTATION SERVICES

FINDINGS OF FACTS:

1. The documentation of the student's school attendance reflects that, since November 2017, the student has arrived to school late on fifteen (15) days as a result of the late arrival of the school bus in the morning. It also reflects that on one (1) day, the student was unable to be safely transported on the bus due to his behavior, that on another day, the student was dismissed from school early due to the lack of proper safety equipment on the bus, and that one another day, he missed school because the bus did not arrive within the scheduled time to pick him up in the morning.
2. There is documentation that the complainant has expressed concern at IEP team meetings about not being provided with sufficient notice of changes to the student's bus schedule, and the potential impact on the student's safety if an adult is not present when he is returned home from school in the afternoon. The documentation reflects that there is disagreement between the complainant and the transportation staff over how the complainant should be informed of changes to the schedule. There is also documentation that the school system staff have agreed to explore whether the number of students

² Although the complainant alleged that the violation occurred since August 27, 2017, he was informed, in writing, that only those violations that are alleged to have occurred within one year of the filing of the complaint can be addressed through the State complaint investigation procedure.

assigned to the student's bus route can be reduced in order to ensure that he arrives at school prior to the school day.

3. Since October 17, 2014, the MSDE has conducted five (5) State complaint investigations in which violations were identified with respect to the student's bus transportation (State complaints #15-011, #15-057, #18-009, #18-015, #18-169). As a result of those investigations, this office has found that the student has not been provided with bus transportation on a consistent basis, that when bus transportation has been provided, the student has not consistently been transported to school in a timely manner, and that he has not been consistently provided with appropriate safety equipment during transportation. The MSDE has required that the school system take corrective action for the student and similarly-situated students, including requiring the school system to ensure that the student is provided with an educational placement where he will be transported to school prior to the start of the school day and has appropriate safety equipment on the bus. The MSDE has also provided technical assistance to the PGCPs from a national transportation expert, who has conducted on-site observations of the student and made recommendations for ensuring the student's safety during transportation. However, this office continues to identify noncompliance in these areas.

CONCLUSION:

Based on the Findings of Facts #1 - #3, the MSDE finds that the student continues to not be consistently provided with transportation services required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

ALLEGATION #2 COLLECTION AND REVIEW OF BEHAVIOR DATA

FINDINGS OF FACTS:

4. The Behavioral Intervention Plan (BIP) identifies five (5) targeted behaviors of the student that are to be addressed. It requires the collection and review of data on the behaviors as follows:

Record the frequency of target behaviors and the time in which they occur daily. Review data at least monthly.

5. There is documentation that the school staff collect data on the student's behaviors each day, and that the behavior data is shared with the complainant. However, only three (3) of the behaviors are recorded on one (1) week, and the other two (2) are recorded on the following week so that each behavior is recorded on a daily basis every other week and not every week. The school's website documents that, as part of the educational program, the school staff regularly evaluate the progress of each student, and that for students with a BIP, behavior specialists are assigned to regularly monitor treatment

effectiveness. In addition, the student's IEP documents that there is a behavior specialist who works with the student and that the school staff monitor the student's behaviors and the effectiveness of the interventions that are utilized, and that this information is considered by the IEP team.

CONCLUSION:

Based on the Findings of Facts #4 and #5, the MSDE finds that there is documentation that the school staff collect and review the student's behavior data. However, based on those Findings of Facts, the MSDE finds that the school staff have not recorded the behavior specifically as required by the BIP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

ALLEGATION #3 RESPONSE TO REQUEST FOR THE LOCATION OF RECORDS

FINDINGS OF FACTS:

6. At a May 25, 2017 IEP team meeting, the team documented that the complainant's concerns included that the student "is not able to tie his shoes, or tie anything and he needs to be trained to do that." The team further documented that the complainant expressed concern that "the student was not able to write within the lines and like a student of his grade level." The complainant reported that he shared information from the occupational therapist with the student's developmental pediatric physician, who informed the complainant that he did not observe the student having difficulty remaining focused when working on an electronic tablet. The documentation of the May 25, 2017 IEP team states the following with respect to input from the complainant about the student's typewriting skills:

Learning how to use modern technology equipment such as computers and tablets quickly is one of [the student's] strengths. He learned how to use computers and electronic tablets with minimal or no adult support. We find him as a self-learner when he uses many technology devices. His education program should be revised to make use of his strength and aptitude to use technology. He needs to be trained to type words and sentences on the computer keyboard faster and with reduced errors.

7. The documentation of the May 25, 2017 IEP team meeting also reflects that the student's teacher reported that when color-coded visual supports were faded, as required by the goal to improve written language skills, the student was not able to use correct capitalization or spacing with consistency. Based on this information, the goal was revised to remove the requirement to fade out the visual supports when typing.

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8. On August 16, 2017, during the summer break and five (5) PGCPS business days before an IEP team meeting scheduled for August 23, 2017, the complainant sent the school staff a request to access numerous documents, including documentation containing information about the student's fine motor skills.
9. On August 23, 2017, the IEP team considered the results of a 2017 occupational therapy assessment. This assessment was recommended by the IEP team on May 25, 2017 to address the complainant's concern that the student requires direct occupational therapy services to improve fine motor skills.³
10. On August 23, 2017, the IEP team documented its consideration of the report of the 2017 occupational therapy assessment, which states that the student was observed to participate in instruction on tying his shoe laces, writing his name, and typing, that he demonstrated difficulty following directions, but was able to follow one step directions with one-to-one adult support. The report states that the student is "able to write his name and feed himself independently," and that he "is also able to manage his clothing in the bathroom for toileting tasks." It further states that "participation and engagement in academic and functional/self-care tasks appears to be compromised by behavior and sensory regulation needs," and contains a recommendation that the school staff "continue with individualized instruction for individualized/specific skills acquisition for shoelace tying, writing his name, and typing." It also contains recommendations to explore the use of a calming strategy, sensory strategies, a "move and sit cushion," and short pencils/broken crayons to facilitate a tripod pencil grasp.
11. The documentation of the August 23, 2017 IEP team meeting reflects that the complainant expressed concern that the evaluator did not consider separate typing data that was maintained by the student's teacher when conducting the evaluation. The documentation of the meeting reflects that the IEP team agreed with the complainant's input that the student needs to continue working on improving his typing skills, and based on the teacher's report of the student's progress, the requirement to fade out visual supports was removed from the annual goal to improve this skill.
12. The documentation of the August 23, 2017 IEP team meeting reflects that the complainant also expressed concern that the evaluator did not interview the parents when

³ Prior to August 2016, the IEP required direct occupational therapy to address fine motor skills. Based on information from the occupational therapist that the student's lack of progress on IEP goals was the result of his difficulty with focusing on instruction and not fine motor skills weakness, the IEP team discontinued the provision of direct occupational therapy in August 2016 and decided that the student's skills could be improved with the use of Discrete Trial Training, a method of teaching in simplified and structured steps.

Through the investigation of State complaint #17-026, the MSDE found that, in January 2016, the student was not making progress to achieve an IEP goal to improve self-management skills with the provision of direct occupational therapy services. The MSDE found that this lack of progress was not addressed until the August 2016 IEP team meeting when the team decided to provide Discrete Trial Training instead of direct occupational therapy services.

conducting the evaluation even though the assessment was conducted in order to address their concerns. However, the report of the 2017 occupational therapy assessment states that the evaluator was provided with information about the specific concerns raised by the complainant at the May 25, 2017 IEP team meeting.

13. At the August 23, 2017 IEP team meeting, the complainant further expressed concern that he was not provided sufficient time to thoroughly complete the parent portion of the sensory profile used in the occupational therapy assessment. The 2017 occupational therapy assessment report states that information contained in the student's educational record, as well as a review of a sensory profile and an observation of the student, was used to develop the report. The report states that the complainant provided information for the sensory profile, but that "specific scores could not be obtained secondary to unanswered questionnaire items as well as the age parameters.⁴ However, the information was sufficient for the evaluator to identify differences in the student's functional performance from typically developing peers. The report states the following:

Overall [the student] appears to have some sensory sensitivities; particularly with activities which involve movement. He also appears to demonstrate more difficulty in loud/noisy/distracting environments. He appears to have low registration; requiring more input to register proprioceptive input as he doesn't seem to notice the input and requires increased force of input to be aware of the input. Lastly, [the student] does not demonstrate the ability to communicate his needs or have established sensory-behavior based coping strategies in place to assist him in being available for learning.

14. The revised IEP includes a statement that the previous fine motor assessment, conducted in 2011, identified needs related to the inability to sit up, trunk control, endurance, and tone. It states that the student is now "much stronger and able to display these characteristics." The IEP also includes information from the school-based members of the team that "the student is able to circle answers on a worksheet, color, and write his name legibly," and that "motor concerns do not seem to be impacting his tasks." It also states that the student's "inability to comply with directions is what is affecting his handwriting," and that he is "able to physically access [the] classroom and manage his daily materials with prompting." In addition, the IEP states that the student "is able to navigate software on his iPad," and that he "utilizes typing and a color-coded keyboard to complete writing tasks within [the] classroom for programmatic tasks."
15. At the August 23, 2017 IEP team meeting, the team decided to continue to explore sensory strategies to assist with calming behaviors. The IEP revised as a result of the

⁴ The sensory profile is a 125 item questionnaire that addresses a student's ability to process, modulate and respond to sensory information, which can be used with children aged three to ten years old. At the time of the completion of the sensory profile, the student was twelve years old.

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August 23, 2017 IEP team meeting requires the use of a word processor for writing assignments, visual cues to reduce the language load and engage the student, use of a scribe, visual and graphic organizers, extended time, multiple breaks, a multi-sensory learning environment, social skills instruction, repeated directions, short, simple directions, modified paper, and color coded directions. It also requires continued Discrete Trial Training, close adult supervision, structured routines, reinforcers, motivators, reduced stimuli, uncluttered environment, labeled work spaces with limited visual stimuli, and numerous other supports.

16. At the August 23, 2017 IEP team meeting, the complainant expressed concern that there be a mechanism in place to monitor the student's progress with the supports that were recommended in the 2017 occupational therapy assessment. The IEP requires that the student's progress be monitored and that reports of the progress be issued on a quarterly basis.
17. On September 27, 2017, the MSDE issued a Letter of Findings as a result of the investigation of a previous complaint filed by the complainant (State complaint #18-009). The MSDE found that the complainant was not provided with access to the 2011 occupational therapy assessment prior to the August 23, 2017 IEP team meeting in response to his request for all reports of assessments of the student's fine motor skills. The MSDE required the PGCPS to provide the complainant with the document and convene an IEP team to consider his concerns about the student's need for direct occupational therapy services.
18. On October 10, 2017, the MSDE provided the complainant with a copy of the 2011 occupational therapy assessment, which contained the signature of the evaluator.
19. On October 12, 2017, the complainant responded to the MSDE acknowledging receipt of the 2011 occupational therapy assessment and indicating that he believes that the PGCPS was attempting to withhold the report from him.
20. On December 13, 2017, the PGCPS sent the complainant copies of the reports of the occupational therapy assessments that had been conducted, including the report of the 2011 occupational therapy assessment, and indicated that the documents were also available for his review in the student's educational record.
21. On December 18, 2017, the complainant responded to the PGCPS that he was unsure whether the school system had sent him all previous occupational therapy assessment reports and that the 2011 report that was provided by the school system did not include the evaluator's signature.
22. On December 21, 2017, the complainant sent the MSDE correspondence asserting that the PGCPS had not completed the corrective action from the investigation of his State

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- complaint #18-009 by the required date of November 1, 2017, including providing him with access to the 2011 occupational therapy assessment report.
23. On December 22, 2017, the MSDE responded to the complainant that there was documentation that, not only had the PGCPS provided him with a copy of the 2011 occupational therapy assessment report, but that the MSDE had done so as well. In that correspondence, the MSDE also informed the complainant that there was documentation of attempts by the school system staff to schedule an IEP team meeting to consider his concerns about the student's fine motor skills needs, and that he had requested that the meeting take place in January 2018.
 24. On December 22, 2017, the PGCPS sent the complainant correspondence reminding him that the IEP team was scheduled to convene on January 25, 2018 in order to complete the corrective action required as a result of the investigation of his State complaint #18-009. In that correspondence, the PGCPS staff explained that the 2011 occupational therapy assessment report that they provided to him was "developed and signed electronically," and offered to address any questions about the report at the upcoming IEP team meeting.
 25. On January 4, 2018, the complainant submitted to the MSDE copies of the versions of the 2011 occupational therapy assessment report that were provided to him by both the MSDE and the PGCPS, and asserted that they are not identical.
 26. On January 5 and 10, 2018, the MSDE sent the complainant correspondence explaining that the two occupational therapy assessment reports were identical in content, but were in two different formats (one electronic and one with the signature of the evaluator).
 27. On January 25, 2018, the IEP team convened and gave the complainant the opportunity to express concerns about the decision regarding the student's need for direct occupational therapy services, as was required as a result of the investigation of State complaint #18-009. At that meeting, the complainant expressed the belief that the school system staff were withholding the 2011 occupational therapy assessment report from him. The school system staff denied the allegation and requested that the complainant explain what was provided to him by the MSDE that was not provided by the PGCPS. The complainant did not provide additional information in response. At the meeting, the team recommended an assistive technology assessment to address the complainant's concern about whether there are additional assistive technology supports to from which the student would benefit.
 28. On January 26, 2018, the PGCPS staff, again, provided the complainant with the 2011 occupational therapy assessment report, both in the electronic format and with the evaluator's signature. In the correspondence forwarding the report, the PGCPS staff stated that she now realized that there are two versions of the same report, the one with the evaluator's signature, which was provided by the MSDE, and the electronic version

provided by the PGCPS. The PGCPS staff also reiterated the previous offer to schedule a time for the complainant to review the student's educational record where the documents are maintained by the school system.

29. On March 12, 2018, the complainant responded to the PGCPS staff's January 26, 2018 correspondence indicating that he was confused about the 2011 occupational therapy assessment report, and making requests that include the following:

Identify any and all individuals involved in the withholding of documents, to the best of your knowledge. Describe the role of each individual in the process.

Identify any and all individuals who may have potentially [been] involved in the withholding described in the previous request. Describe what you think could be the role of each individual in the process.

Explain what is [an] electronic signature in your review.

Explain what is [a] signed signature in your review and provide [a] clear definition.

Please identify the exact location, with page number and paragraph number where [the] electronic signature exists.

Please explain how you realized that additional reports exist and provide an estimated number of additional realizations. Identify the custodian of the reports and specify the location where the reports are maintained.

30. The complainant further stated the following in his March 12, 2018 correspondence:

English is not my native language due to my national origin being other than that of the United States. Providing [a] clear response per requests in this letter will help me better understand the content of the Email. You may provide me with copies of the requested records via email using my email address at the top of this letter. Failure to provide the copies of the records will effectively prevent me from exercising my right to inspect and review the records.

31. On March 15, 2018, the complainant was again given the opportunity to address any concerns about the occupational therapy assessments that had been conducted when the IEP team convened and reviewed the occupational therapy assessment reports as well as the results of the assistive technology assessment. Based on the assessment results, the

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team decided that the student would be provided with additional software and the use of “STICKY keys on the iPad.”

32. On May 10, 2018, the IEP team again convened and reviewed the effectiveness of the various strategies and modifications that had been trialed in order to improve the student’s ability to understand the expectations and attend to tasks.
33. During the course of conducting an investigation of a previous State complaint filed by the complainant (State complaint #18-009), the complainant indicated that English is not his native language and requested “an accommodation” that a qualified staff contact him by telephone to discuss the allegations. When asked whether he required an English language interpreter, the complainant stated the following:

Based on the circumstances, no interpreter is required. What is mainly required is cooperation from the investigation staff. It is going to be much easier for me to explain some of the things over the phone for the benefit of the Student. I would like to use both written and oral communication with the investigation staff for processing of the State complaint.

CONCLUSIONS:

Based on the Findings of Facts #6 - #33, the MSDE finds that both this office and the PGCPS have made numerous attempts to address the complainant’s belief that the results of a 2011 occupational therapy assessment have been withheld from him. Based on those Findings of Facts, this office finds that the PGCPS has provided the complainant with information on where the student’s assessment reports are located, in accordance with 34 CFR §300.616. Therefore, this office does not find that a violation occurred.

Based on those Findings of Facts, the MSDE finds that the PGCPS has explained in writing to the complainant that there is one 2011 assessment report that has been maintained in two different formats, and has provided him with the opportunity to review and discuss the assessment results with him. However, the complainant has declined the offer to verbally discuss the assessment results with the school system staff, despite his indication to the MSDE that this would ensure effective communication with him.

This office understands that the complainant disagrees with the IEP team decisions about the student’s need for direct occupational therapy services. However, the MSDE has conducted investigations into the IEP team’s decisions about the student’s need for occupational therapy services through State complaints #18-009, #18-015, #18-095, and #19-026. The continuation of assertions about the authenticity of the copies of documents that have been provided while refusing to inspect and review the educational record is not an effective way to overturn the IEP team’s decisions. The complainant is encouraged to accept the school system staff’s offer to review documents with him if he continues to have questions about the documents, and is

reminded that he maintains the right to request mediation or to file a due process complaint to obtain a hearing in order to resolve any dispute about the student's education program.

ALLEGATION #4 ACCESS TO RECORDS

FINDINGS OF FACTS:

34. On April 27, 2018, the complainant requested copies of numerous documents from the school system staff, including documents generated as a result of meetings among the school staff in which the parents did not participate that were held from January 1, 2017 to April 26, 2018.
35. By May 14, 2018, the school staff provided the complainant with copies of the requested documents that exist, explaining that some of the requested documents did not exist.
36. On September 12, 2018, the complainant made another request for copies of numerous documents from the school system staff, including documents generated as a result of meetings among the school staff in which the parents did not participate that were held from April 27, 2018 to September 11, 2018.
37. By September 17, 2018, the school staff provided the complainant with copies of the requested documents that exist, explaining that some of the requested documents did not exist.
38. On December 18, 2018, the school staff provided the complainant with clarification that they do not create documents as a result of meetings among the school staff in which the parents do not participate, which is why such documents were not included in the responses to the April 27, 2018 and September 12, 2018 requests.

CONCLUSION:

Based on the Findings of Facts #34 - #38, the MSDE finds that the complainant has been provided with access to all of the documents he requested on April 17, 2018 and September 12, 2018 that exist, in accordance with 34 CFR §300.616. Therefore, this office does not find that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

The PGCPS is required to provide the MSDE with documentation by March 1, 2019 that each of the student's targeted behaviors are being recorded on a daily basis, as required by the BIP.

The PGCPS is required to provide the MSDE with documentation by April 1, 2019 that the IEP team, including staff from the PGCPS Transportation and Nonpublic Offices, has convened for

the student and all students who are assigned to the student's bus. The PGCPS must ensure that the IEP team for each student considers whether there is an educational placement in which the IEP for the student can be implemented that is closer to each of the students' homes than the XXXXXX
XXXXXXXXXXXXXXXXXXXXXX.

If there is an educational placement closer to any of the students' homes, the PGCPS must provide documentation by May 1, 2019 of the steps taken to expedite the transfer of these students to such placements.

If there is not an educational placement in which the IEP can be implemented that is located closer to any of the student's homes, the PGCPS must provide a plan by May 1, 2019 for how the future loss of services missed as a result of late bus arrivals will be remediated for each student on an ongoing basis. The PGCPS must also provide documentation of implementation of this plan on a quarterly basis until one (1) year from the date of this Letter of Findings. In addition, if there is no closer educational placement available for the student who is the subject of this investigation, the PGCPS must provide documentation by May 1, 2019 that a protocol has been developed for notifying the complainant verbally and in writing of any changes to the bus schedule prior to the change, and that the complainant has been provided with a copy of the protocol.

The PGCPS must also provide a monthly report to the MSDE of whether any changes have been made to the student's bus schedule, and documentation of implementation of the protocol when changes occur, until one (1) year from the date of this Letter of Findings.

The MSDE is working with the PGCPS on a system-based corrective action plan to improve transportation to students with disabilities, which includes a focus on IEP team decision-making regarding transportation as a related service.

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.

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

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on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

As indicated above, 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 Early Intervention/
Special Education Services

MEF/am

c: Monica Goldson
Gwendolyn Mason
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