




September 28, 2021




Ms. Trinell Bowman  
Associate Superintendent-Special Education  
Prince George's County Public Schools  
John Carroll Elementary School  
1400 Nalley Terrace  
Landover, Maryland 20785

RE:   
Reference: #22-009

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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 July 30, 2021 and August 2, 2021, the MSDE received correspondence from Mr.  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 a response was provided to a reasonable request for explanation and interpretation of documents in the education record made on May 25, 2021, in accordance with 34 CFR §300.613.
2. The PGCPS did not provide documents to be considered by the Individualized Education Program (IEP) team at least five (5) business days before the May 28, 2021 IEP team meeting, in accordance with COMAR 13A.05.01.07.

3. The PGCPS did not provide written notice that the speech therapist would attend the May 28, 2021 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
4. The PGCPS has not ensured that the IEP was reviewed at least annually since June 9, 2020, in accordance with 34 CFR §300.324.
5. The PGCPS did not ensure that access was given to documents in the education record in response to requests made on June 16 and 23, 2021 within required timelines, in accordance with 34 CFR §300.613.

### **BACKGROUND:**

The student is sixteen (16) 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.

The student is placed by the PGCPS at [REDACTED] a nonpublic, separate, special education school, which he attended from July 1, 2019 until the Statewide closure of schools as a result of the national COVID-19 pandemic.

### **FINDINGS OF FACTS:**

1. There is an electronic mail message (email), dated Friday, May 21, 2021 at 5:01 p.m., from the school staff to the complainant, forwarding documents to be considered at an IEP team meeting scheduled for Friday, May 28, 2021 at 9:00 a.m. The email states that the documents being forwarded included a draft IEP and Behavioral Intervention Plan (BIP).
2. There is an email, dated Sunday, May 23, 2021, from the complainant to the school staff, indicating that he could not access the documents sent by email on May 21, 2021 because they were password protected.
3. There is an email, dated Monday, May 24, 2021, from the school staff to the complainant indicating that the documents sent on May 21, 2021 were being resent and requesting that the complainant provide information about which documents were password protected. The email states that the school staff sent the following:
  - a. By email on 3/30/21 – Meeting Invite, Receipt of Documents, Consent for Alternate Programming & Non consent for Seclusion/Restraint, Parents Rights & Responsibilities, Parents Guide to Habilitative Services, SECAC & FSC Flyer, Updated Procedural Safeguards;

- b. By email on 5/8/21 – Meeting Invite, Parent Receipt of Documents, Consent for Alternate Programming & Non consent for Seclusion/Restraint;
  - c. By US mail on 5/14/21 - Meeting Invite, Parent Receipt of Documents, Consent for Alternate Programming & Non consent for Seclusion/Restraint; and
  - d. By email on 5/21/21 – Draft IEP, Draft BIP.
4. The May 24, 2021 email from the PGCPS further states:

The documents I was referring to in the email sent Friday are listed below:

  - a. Meeting Invite;
  - b. Parent Receipt of Documents; and
  - c. Consent for Alternate Programming & Non Consent for Seclusion/Restraint.
5. There is an email, dated Tuesday, May 25, 2021, from the complainant to the school staff, asking whether there were any other documents sent by email not described in the May 24, 2021 email to him.
6. There is no documentation that the school staff responded to the complainant's May 25, 2021 email.
7. A review of the audio recording of the May 28, 2021 IEP team meeting reflects that, at the meeting, the IEP team considered the results of a speech/language assessment conducted by a PGCPS speech/language therapist. The PGCPS speech/language therapist who conducted the assessment participated in the May 28, 2021 IEP team meeting and the data from the assessment was used in reviewing the IEP.
8. The notice of the May 28, 2021 IEP team meeting, dated April 29, 2021, states that the purposes of the meeting were to review the IEP, address a Functional Behavioral Assessment (FBA) or BIP, consider Extended School Year services, consider postsecondary goals and transition services, and conduct the annual IEP review and transition planning. The notice lists those expected to participate in the meeting, which included the speech/language pathologist at the nonpublic school in which the student is enrolled. The notice does not include the PGCPS speech/language therapist who

conducted the speech/language evaluation that was considered at the May 28, 2021 IEP team meeting.

9. A review of the audio recording of the May 28, 2021 IEP team meeting reflects that the IEP team reviewed a draft IEP that was proposed by the school system. After two (2) hours had passed, the complainant indicated that the time allotted for the meeting had expired, and that the team would have to reconvene to address additional questions he had about the draft IEP. The complainant indicated that the only day he was available was May 31, 2021, which did not work for the school staff because it was a holiday. The school staff suggested the team reschedule the meeting on another date, and proposed June 7, 2021. However, the complainant indicated that he was unable to determine his availability to return and would have to contact the school staff on a later date to schedule the continuation of the meeting.
10. There is documentation that an IEP team reconvened on July 14, 2021. A review of the audio recording of the meeting reflects that the IEP team met for two hours to address the complainant's questions about the proposed IEP, but again did not have sufficient time to complete its review and agreed to reconvene to do so on another date. The documentation also reflects that at the meeting, the team discussed the student's participation in extracurricular activities identified by the complainant, and decided to consider accommodations that can be provided in order for the student to participate in those activities when it reconvenes.
11. There is correspondence from the school system staff to the complainant, dated July 15, 2021, which documents that on that date, the PGCPs provided the complainant with documents he requested on June 16, 2021. These documents included those related to extracurricular activities.
12. There is correspondence from the school system staff to the complainant, dated July 30, 2021, which documents that on that date, the PGCPs provided the complainant with documents he requested on June 23, 2021. These documents included those related to correspondence between the school system staff and the family and among the school staff related to a complaint filed by the complainant against the school system with the United States Department of Education, Office for Civil Rights.
13. The July 30, 2021 response from the school system to the complainant states:

Please be advised that we have withheld emails between the staff members you listed in the request and attorneys in the Office of General Counsel, which contain advice regarding pending legal issues. This attorney-client communication is privileged or confidential by law

per General Provisions Article Section 4-301(1). We have also withheld emails under Maryland Code, General Provisions Article Section 4-344, which permits us to withhold pre-decisional materials that contain confidential opinions, deliberations, advice and recommendations reflecting the mental processes of the agency or those working on the agency's behalf. Accordingly, these materials are protected under the broader common law deliberative process privilege. You are entitled to judicial review of these denials pursuant to General Provisions Article Section 4-362 and administrative review pursuant to General Provisions Article Section 4-1B-01 et seq.

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1                      Response to a Request for Interpretation of Documents**

The public agency must permit parents to inspect and review any education records relating their children that are collected, maintained, or used by the public agency. The public agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or due process hearing or resolution session, and in no case more than forty-five (45) days after the request is made. This right to access includes the right to a response from the public agency to reasonable requests for explanation and interpretations of the records (34 CFR §300.613).

In this case, the complainant alleges that the PGCPS did not ensure that he was provided with a response to his request that the school system confirm whether any documents had been sent to him in addition to those described in the school staff's May 24, 2021 email.

Based on the Findings of Facts #1 - #6, the MSDE finds that, while the school staff did not respond to the complainant's request to confirm which documents had been sent to him, there is no indication that the complainant requested assistance understanding the content of the documents that had been sent, in accordance with 34 CFR §300.613. Therefore, this office does not find that a violation occurred with respect to this allegation.

#### **Allegation #2                      Provision of Documents Prior to the May 28, 2021 IEP Team Meeting**

An IEP is to be developed by an IEP team with parent participation. Therefore, the public agency must provide the parent with an opportunity to attend and participate in IEP team meetings. In Maryland, this includes providing the parent with a copy of each assessment, report, data chart, draft IEP, or other document the IEP team plans to discuss at the meeting at least five (5) business days before the meeting (34 CFR §300.322 and COMAR 13A.05.01.07).

A business day is Monday through Friday, except for federal or State holidays, when a public agency is open for business, whether or not students are required to be in attendance for instruction. The first (1<sup>st</sup>) of the five (5) business days begins the business day after the parents receive the documents (Maryland Rule §1-203 Maryland Rules of Civil Procedure).

In this case, the complainant alleges that the PGCPS did not ensure that he was provided with a draft IEP and BIP to be discussed at the May 28, 2021 IEP team meeting at least five (5) business days before the meeting because the documents sent on May 21, 2021 were password protected and he could not access them until the password was removed on May 24, 2021.

Based on the Findings of Facts #1 - #6, the MSDE finds that, even if the documents were accessible on May 21, 2021, they were not provided to the complainant within the required timelines, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Findings of Facts #9 and #10, the MSDE finds that the IEP team is continuing to review the IEP. Therefore, this office finds that the violation has not impacted the complainant's ability to participate in the IEP review.

### **Allegation #3            Notice of IEP Team Participants**

Ensuring that the parent has the opportunity to participate in an IEP team meeting includes making sure that the parent is notified of who will be in attendance at the meeting. In Maryland, this notice must be in writing and provided to the parent at least ten (10) days before the meeting (34 CFR §300.322 and COMAR 13A.05.01.07).

In this case, the complainant alleges that he was not provided with notice that the PGCPS speech/therapist would be in attendance at the May 28, 2021 IEP team meeting.

Based on the Findings of Facts #7 and #8, the MSDE finds that the PGCPS did not ensure that the invitation to the May 28, 2021 IEP team meeting included information that the speech/language pathologist who conducted a recent speech/language assessment would be reporting her findings for the IEP team's consideration at the meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #9 and #10, the MSDE finds that the IEP team is continuing to review the IEP. Therefore, this office finds that the violation has not impacted the complainant's ability to participate in the IEP review.

### **Allegation #4            Annual IEP Review**

The public agency must ensure that the IEP is reviewed by the IEP team at least annually to determine whether the annual IEP goals are being achieved (34 CFR §§300.324).

In this case, the complainant alleges that a review of the IEP did not occur between June 9, 2020 and June 9, 2021.

Based on the Findings of Facts #8 and #9, the MSDE finds that the IEP review began within one (1) year of the June 9, 2020 IEP review. Based on the Findings of Facts #9 and #10, the MSDE

finds that the PGCPS took reasonable steps to ensure that the IEP review was completed prior to June 9, 2021. However, in order to ensure that the IEP team meetings are held on dates convenient to the complainant and to address all of his questions about the proposed IEP, the team has not been able to complete the review, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this allegation.

**Allegation #5                      Access to Education Records**

As stated above, the public agency must provide parents with access to documents in the education record without unnecessary delay and before any meeting regarding an IEP, or due process hearing or resolution session, and in no case more than forty-five (45) days after the request is made (34 CFR §300.613).

In this case, the complainant alleges that the PGCPS did not provide him with access to documents in the student's education record in a timely manner in response to requests he made on June 16 and 23, 2021.

Based on the Findings of Facts #10 - #13, the MSDE finds that the PGCPS did not ensure that the complainant was provided with requested documents prior to an IEP team meeting in which one of the issues to be discussed related to the documents requested, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #10, the MSDE finds that the IEP team is continuing to meet to discuss extracurricular activities. Therefore, this office finds that the violation has not impacted the complainant's ability to participate in the discussion about extracurricular activities.

In addition, the complainant alleges that the PGCPS did not have the right to withhold documents in response to his June 23, 2021 request because the parties are not involved in any legal action for which the asserted privilege would apply.

As stated above, the school system did not respond to the request within the required timelines under the IDEA, in accordance with 34 CFR §300.613. However, based on the Findings of Facts #12 and #13, the MSDE further finds that the school system provided a basis for withholding some documents and provided the complainant with the opportunity to contest that decision. Therefore, this office does not find that an additional violation occurred under the IDEA related to the June 23, 2021 request for documents.

**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<sup>1</sup> 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 Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770 or by email at nancy.birenbaum@maryland.gov.

### **Student-Specific**

The MSDE requires the PGCPS to provide documentation that a process is in place for the PGCPS Nonpublic Specialist to schedule all IEP team meetings for the student, ensure all required information is provided in the notice of the meetings, ensure that all documents to be considered at those meetings are provided to the complainant at least five (5) business days before the meetings, and that all documents are provided within required timelines following IEP team meetings.

### **System-Based**

The MSDE also requires the PGCPS to provide documentation of the steps taken within the school system to ensure that all requests for access to records are responded to within required timelines.

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.

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<sup>1</sup> 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.

<sup>2</sup> 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 Early Intervention/  
Special Education Services

MEF:gl

c: Monica Goldson  
Barbara Vandyke  
Keith Marston  
Gail Viens  
Nancy Birenbaum  
Gerald Loiacono