

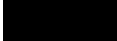


**Mohammed Choudhury**  
State Superintendent of Schools

October 15, 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: #22-013

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 August 16, 2021, the MSDE received correspondence from  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 has not ensured that the Individualized Education Program (IEP) has included a statement of the student’s present levels of academic and functional performance, including how the student’s disability affects his involvement and progress in the general education curriculum, since May 28, 2021, in accordance with 34 CFR §§300.320 and .324.

2. The PGCPS has not ensured that the IEP team considered the results of the most recent evaluation of the student when reviewing and revising the IEP, since May 28, 2021, in accordance with 34 CFR §300.324.
3. The PGCPS did not ensure that proper procedures were followed when including exclusion, seclusion and physical restraint on the student's Behavioral Intervention Plan (BIP) on May 28, 2021, in accordance with COMAR 13A.08.04.

**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.

**ALLEGATIONS #1 AND #2**

**STATEMENT OF PRESENT LEVELS OF PERFORMANCE AND CONSIDERATION OF MOST RECENT EVALUATION SINCE MAY 28, 2021**

**FINDINGS OF FACTS:**

1. The IEP reflects that the most recent evaluation was conducted on February 5, 2021. The IEP and written summary of that meeting reflects that the IEP team considered assessments that had previously been administered and information from the student's parents and school staff. The previous assessments included a November 2012 psychological assessment, a November 2017 academic assessment, a March 2018 assistive technology assessment, a Functional Behavioral Assessment (FBA) conducted in November 2016, a 2012 speech/language assessment, and occupational therapy assessments conducted in August 2017 and April 2019.
2. The written summary of the February 5, 2021 IEP team meeting states that the school staff reported having observed behaviors that have previously been demonstrated and are addressed in the Behavioral Intervention Plan (BIP). The parents reported that, since the initiation of virtual learning, the student has been observed to close his laptop and push it away. The school staff reported that with the support of the student's mother to redirect him to virtual learning, the student has been able to participate in instruction and make sufficient progress on the IEP goals.
3. The written summary of the February 5, 2021 IEP team meeting states that the complainant indicated that a speech/language assessment had not been conducted recently and that the ones that had been conducted "were old." The speech/language therapist reported that, based on the student's performance with the speech/language therapy that is provided, the IEP goals in this area remain appropriate. The IEP team decided that based on the complainant's concern, an updated speech/language assessment

would be conducted. The IEP team did not recommend that any other assessments be conducted.

4. The IEP reflects that on May 28, 2021, the IEP team considered the results of the speech/language assessment conducted on May 3, 2021, which indicates that the student demonstrates “significant below-average social communication, receptive and expressive vocabulary, and language skills.”
5. The statement of present levels of performance on the May 28, 2021 IEP include information from the May 3, 2021 speech/language assessment. The IEP revised on May 28, 2021 includes goals for the student to improve his skills in the areas of need identified in the May 3, 2021 speech/language assessment. The IEP requires the provision of services, including related speech/language therapy to assist the student in achieving the goals.
6. The May 28, 2021 IEP and written summary of the meeting reflects that the student’s disability results in attention difficulties, executive functioning difficulties, processing speed difficulties, academic performance difficulties, inflexibility/rigidity, language deficits, poor coping skills, low frustration tolerance, and impulsivity. The documents reflect that the student’s disability impacts his ability to benefit in all areas of instruction without “significant supervision, modifications, and accommodations available in a therapeutic setting.”
7. A review of the November 7, 2012 report of an assessment of the student’s cognitive and social/emotional functioning reflects that the needs identified on May 28, 2021 are consistent with the assessment results. The IEP developed on May 28, 2021 includes supports and services designed to address these areas of need.
8. The IEP reflects that on May 28, 2021, the IEP team considered data from classroom observations, classwork, and the results of classroom-based assessments used for instructional purposes to determine the student’s present levels of academic performance. The IEP revised on May 28, 2021 includes goals for the student to improve his skills in the areas of need identified in the data. The IEP requires the provision of services, including special education instruction and supports, to assist the student in achieving the goals.
9. The IEP reflects that on May 28, 2021, the IEP team considered data from the FBA conducted on November 17, 2016 and the school staff’s reports that when the student was last present for in-person instruction, he demonstrated needs consistent with the assessment results. These needs included behaviors such as impulsivity, distractibility, food seeking, aggression, and difficulty with toileting. The IEP reflects the positive behavioral interventions that were reported by the school staff as being successful in addressing those behaviors.
10. The May 28, 2021 IEP also reflects that the IEP team considered information from the parents and school staff that, since initiation of virtual learning, the student has been observed to close his laptop and push it away, but that his mother is able to redirect him back to instruction. The IEP and written summary of the meeting reflect that the team

decided to add a goal for the student to learn coping strategies to help regulate emotions/frustration tolerance and to continue to provide the current behavior supports, including the services of a therapeutic behavior aide. The IEP team documented its decision that when the student returns to in-person learning, another FBA will be conducted to obtain data about his current functioning in the school building, and that services such as those designed to be provided in the school building, such as daily toileting reports, will resume at that time.

11. The May 28, 2021 IEP and written summary of the IEP team meeting reflect that the team considered information from the occupational therapist and data from the school staff working with the student before he began attending the [REDACTED] during the 2019-2020 school year. The documents reflect that the team decided that the student continues to benefit from the occupational therapy consultation to support the school staff with addressing the student distractibility and impulsive behavior consistent with the data.
12. A review of the student's education record reflects that the IEP team previously considered the results of occupational therapy assessments conducted in 2017 and 2019. The team also considered the school staff's reports that discreet trial training was more effective in addressing the student's needs identified in those reports than direct occupational therapy. There is no documentation that the IEP team was provided with data at the May 28, 2021 IEP team meeting which would serve as a basis for reconsidering the IEP team's previous decisions with respect to the need for direct occupational therapy services.

### **DISCUSSION/CONCLUSIONS:**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the data. In order to do so, the IEP must include a statement of the student's present levels of performance based on the data, measurable annual goals designed for the student to make progress in the general curriculum based on the present levels of performance, and the special education instruction and related services required to assist the student in achieving the goals. The data that must be considered when developing the student's IEP includes the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101, .320, and .324).

#### **Allegation #1                      Statement of Present Levels of Performance**

In this case, the complainant alleges that the IEP in effect since May 28, 2021 has not included a statement of the student's present levels of academic achievement and functional performance because it does not reflect the student's performance on the following assessments:

- a. A November 2017 academic assessment;
- b. Occupational therapy assessments conducted in 2017 and 2019;
- c. A November 2012 psychological assessment; and

- d. A November 2016 Functional Behavioral Assessment (FBA).

Based on the Findings of Facts #1 - #12, the MSDE finds that the IEP includes a statement of the student's present levels of academic achievement and functional performance consistent with the data, in accordance with 34 CFR §§300.320 and .324. Therefore, this office does not find that a violation occurred with respect to this allegation.

### **Allegation #2                      Consideration of Most Recent Evaluation**

In this case, the complainant alleges that the IEP team has not considered the results of the most recent evaluation when reviewing and revising the IEP since May 28, 2021, which include the following:

- a. A November 2017 academic assessment;
- b. Occupational therapy assessments conducted in 2017 and 2019;
- c. A November 2012 psychological assessment; and
- d. A November 2016 FBA.

Based on the Findings of Facts #1 - #12, the MSDE finds that the IEP team has considered the results of the most recent evaluation data when reviewing and revising the IEP, in accordance with 34 CFR §§300.320 and .324. Therefore, this office does not find that a violation occurred with respect to this allegation.

### **ALLEGATION #3    INCLUSION OF BEHAVIOR INTERVENTIONS ON BIP**

#### **FINDINGS OF FACTS:**

13. The BIP developed for the student on May 28, 2021 indicates that physical restraint and seclusion may be used.
14. There is no documentation that the IEP team considered the use of restraint or seclusion for the student at the May 28, 2021 IEP team meeting, or that written parent consent for the use of physical restraint and seclusion for the student was obtained.
15. On September 10, 2020, the MSDE issued a Letter of Findings as a result of the investigation of State complaint #21-001. As a result of that investigation, this office determined that a violation occurred because the BIP in effect prior to the May 28, 2021 BIP included the use of physical restraint and seclusion without evidence of parental consent to the use of those interventions. The MSDE required the PGCPs to remove these interventions from the student's BIP.

#### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that physical restraint and seclusion are used only when there an emergency situation in which it was necessary in order to protect the student or others from

imminent, serious, physical harm after less intrusive, nonphysical interventions have failed or been determined inappropriate (COMAR 13A.08.04.05).

Once physical restraint or seclusion has been used or school personnel have made a student-specific determination that it may be needed for such a situation, these interventions may be included in the IEP or BIP to address a student's behavior in an emergency situation (COMAR 13A.08.04.05).

However, in order to include such interventions in the IEP or BIP, the school personnel must review available data to identify any contraindications based on medical history or past trauma, including consultation with medical or mental health professions, as appropriate. The school personnel must also identify the less intrusive, nonphysical interventions that will be used to respond to the student's behavior until these interventions are used in an emergency situation, and must obtain written consent from the parent (COMAR 13A.08.04.05).

Based on the Findings of Facts #13 - #15, the MSDE finds that the PGCPS did not ensure that written parent consent was obtained before including behavior interventions on the student's BIP or that the determination to include them was based on the specific needs of the Student. Therefore, this office finds that a violation occurred with respect to this allegation.

### **CORRECTIVE ACTIONS/TIMELINES:**

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.<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.

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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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### **Student-Specific**

The MSDE requires the PGCPS to provide documentation that the use of physical restraint and seclusion have been removed from the student's BIP.

### **System-Based**

The MSDE further requires the PGCPS to provide documentation of the steps taken to ensure that the IEP and BIP for students it places at the [REDACTED] do not include the use of physical restraint and seclusion in the future unless proper procedures are followed when doing so.

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.

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

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