




Mohammed Choudhury
State Superintendent of Schools

November 23, 2021




Ms. Trinell Bowman
Associate Superintendent-Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 2078

RE: 
Reference: #22-034

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 September 20, 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 allegation that the PGCPS did not follow proper procedures when revising the student’s Individualized Education Program (IEP) in May 2021, in accordance with 34 CFR §300.324.

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.

FINDINGS OF FACTS:

1. On October 1, 2020, the IEP team convened for the student to resolve Corrective Action related to a prior State complaint. During the meeting, the IEP team discussed the student's ability to participate in extracurricular activities at the school the student would attend if not disabled (the student's "home school"). The IEP team determined that the student could participate in extracurricular activities at the student's home school, if the parents chose for him to do so, outside of the school day. The IEP team suggested activities such as the Special Olympics for the student, but did not determine whether it was appropriate for the student to participate in any extracurricular activity as part of his educational program, and if so, what supports and supports may be provided to the student to allow him to benefit from participation. The IEP team documented the following determination with regard to the student's participation in extracurricular activities when determining his least restrictive environment:

"During the school day and during transportation time Insaaf will not have access to non-disabled peers. Parents will continue to be encouraged to introduce Insaaf to extracurricular activities in his home environment within his ability."

2. On February 5, 2021, the IEP team convened for the student to, in part, discuss the student's involvement in extracurricular activities. The student's parent shared that the student could participate in extracurricular activities and requested that the IEP team determine the supports necessary for the student to participate. The IEP team responded that participation in extracurricular activities, and support for the student during activities, was the responsibility of the parents.
3. On May 28, 2021, the IEP team met to complete an annual review of the student's IEP. The IEP team included the following information in the Student's IEP:

"The IEP team determined Insaaf will not participate with non-disabled peers during the instructional day as his school program does not have any non-disabled peers. He is enrolled in a therapeutic school program to address his educational and social-emotional-behavioral needs."

4. A review of the audio recording of the May 28, 2021 IEP team meeting does not support that the IEP team discussed the extent to which the student would participate with his nondisabled peers in extracurricular activities.
5. On July 14, 2021 the IEP team met, in part, to further consider the student's ability to participate in extracurricular activities. While the parent made multiple specific proposals regarding the student's participation at his neighborhood school, the IEP team did not document its consideration of the appropriateness of the parent's proposals. The IEP team determined that it would reconvene to determine if the student could participate in any of the proposed activities with the provision of supplementary aids and supports.

DISCUSSION/CONCLUSIONS:

Based on Findings of Facts #1- #5 the MSDE finds that the IEP team did not consider the parent's concerns related to the student's ability to participate in extracurricular activities, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred.

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 below¹

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.² Dr. Birenbaum can be reached at (410) 767-7770 or via email at nancy.birenbaum@maryland.gov.

¹ 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.

² 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 MSDE requires the PGCPS to provide documentation that the IEP team has convened to consider the Parent's concerns related to the student's ability to participate in extracurricular activities. If the team determines that there was a negative impact as a result in the delay in considering these concerns, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings. The PGCPS must ensure that the complainant is provided with written notice of the team's decisions.

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

MEF:gl

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