




**Mohammed Choudhury**  
State Superintendent of Schools

November 15, 2021




Ms. Trinell Bowman  
Associate Superintendent–Special Education  
Prince Georges County Public Schools  
1400 Nalley Terrace  
Landover, Maryland 20785

RE:   
Reference: #22-038

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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.


**ALLEGATION:**

On October 4, 2021, the MSDE received a complaint from Mrs.  hereafter, “the complainant,” on behalf of her 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 ensure that proper procedures were followed to identify the student as a student with a disability and conduct an evaluation under the IDEA, since November 2020, in accordance with 34 CFR §§300.8, .101, .111, .304 - .306, .503, and COMAR 13A.08.04.05(C)(1).

**BACKGROUND:**

The student is thirteen (13) years old and has not been identified as a student with a disability under the IDEA.

He attends  and has a Section 504 Plan (504 Plan) under the Rehabilitation Act of 1973 that requires the provision of accommodations.

**FINDINGS OF FACTS:**

1. The student has a 504 Plan based on his diagnosis of ADHD which includes supports such as extended time for assignments and assessments, repeated directions, close proximity to the teacher, redirection through verbal cues and proximity, small group for testing, the use of headphones, and frequent check-ins between the complainant and teachers.
2. The electronic communication (email) dated November 5, 2020, from the complainant to school staff reflects that the complainant requested an IDEA evaluation to determine the student's eligibility as a student with a disability requiring specialized education.

**November 17, 2020 IEP team meeting**

3. On November 17, 2020, the IEP team convened to address the complainant's request for an IDEA evaluation. The Prior Written Notice (PWN) reflects that the school based members of the IEP proposed to continue to implement the supports required by the 504 Plan prior to considering an IDEA evaluation.

**March 2021 SIT Meeting**

4. In March 2021, school staff met with the complainant at a Student Improvement Team (SIT) meeting to discuss the student's attendance. The meeting notes reflect that the student had seventy-four (74) absences at the time of the meeting. The meeting notes reflect that the complainant attributed the absences to technical difficulties with distance learning and anxiety.
5. The SIT team developed a Student Intervention Plan for the student on that date which included strategies to assist the student with his difficulty attending school. Some of those strategies included the use of alarm reminders, check-ins by the complainant during the school day during virtual instruction, help sessions with the student, complainant and guidance counselor, and a weekly communication log between the complainant and the school staff.
6. On March 18, 2021, the complainant initiated another IDEA evaluation via email to school staff.

**April 6, 2021 IEP team meeting**

7. On April 6, 2021, the IEP team convened in response to the complainant's March 18, 2021 referral for an IDEA evaluation. The PWN reflects that the IEP team members considered information that, due to attendance issues, the team had very little data to determine the student's present levels of academic achievement. The team noted that the student had missed one hundred and six (106) math classes and one hundred and three (103) reading classes since the beginning of the school year.

8. The PWN reflects that the IEP team also considered information that the student's work and assessment data which was collected during the times he was in attendance, demonstrated that the student is able to complete work at a "comparative level to his peers" and that the student is "at or near grade level in several areas of math based on diagnostic assessments related to math interventions."
9. The data reflects that the student achieved a 16% on the second math benchmark assessment, and a 45% on the second reading benchmark assessment. Additionally, the student's grade report at that time reflected that the student had an "E" in Reading, a "D" in science, an "E" in Math, and an "E" in Social Studies.
10. The PWN reflects that the IEP team again denied the complainant's request for an IDEA evaluation. The school-based IEP team members proposed to continue monitoring the student's daily performance, attendance and completion of assignments in order to collect additional data. The IEP team also proposed reconvening an IEP team meeting six (6) weeks from that date to review the collected data, as well as refer the student to the 504 Plan team to review and revise his 504 Plan as appropriate.

#### **April 19, 2021 504 Plan meeting**

11. On April 19, 2021, the 504 Plan team convened. The meeting notes reflect that the complainant provided documentation from the student's doctor indicating that the student was being treated for anxiety, poor muscle tone, stress, fatigue, asthma and depression. The complainant reported that she became concerned about the student's anxiety when he started middle school, and that it had increased over time.
12. The 504 Plan meeting notes reflect that the team added frequent breaks and modified assignments to the student's 504 Plan and recommended that the team continue to monitor the communication logs regarding attendance and assignment completion.

#### **May 18, 2021 IEP team meeting**

13. On May 18, 2021, the IEP team convened as a follow up to the April 6, 2021 IEP team meeting. The written summary of the IEP team meeting held on May 18, 2021 reflects that the student had "missed most of his core content instruction this year," but teachers reported that the student was able to complete grade level assignments on the days when he was present in school.
14. Attendance records reflect that, while the student's attendance had improved somewhat since the implementation of the attendance contract, the student continued to have significant absences and grade reports reflect that, while his grade in math had improved somewhat, he continued to have a "D" in Reading.
15. The written summary of the IEP team meeting held on May 18, 2021 reflects that the school based members of the IEP team refused to assess the student for eligibility as a student with a disability under the IDEA and instead proposed to continue monitoring the interventions included on the student's Section 504 Plan and conduct a Functional

Behavior Analysis (FBA) to address the student's inability to attend all classes, complete assignments and complete assignments in a timely manner.

16. There is no documentation that the FBA has been completed or reviewed.
17. The student's progress report dated October 19, 2021 reflects that the student had two "D's", an "E" and a "C" in his core academic subjects, and is continuing to have missing and incomplete assignments in English.

### **DISCUSSION/CONCLUSION:**

A critical aspect for the provision of FAPE is a school district's "child find" obligation, requiring states, through local education agencies like school districts, to ensure that "all children residing in the state who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located and evaluated."

(34 C.F.R. §300.111(a)(i)).

In this case, the complainant alleges that the student's poor grades, attendance issues due to "anxiety," and inability to complete or turn in assignments, together with his ADHD diagnosis, should be cause to trigger an IDEA evaluation. The PGCPs, however, contends that they do not have data to suspect that the student may be eligible as a student with a disability under the IDEA.

While the PGCPs did collect data and attempt to provide strategies to assist with the student's attendance and work completion, there is no documentation that they drew upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. Based on Findings of Facts #1-#17, the MSDE finds that the PGCPs did not ensure that proper procedures were followed to identify the student as a student with a disability, since May 18, 2021, in accordance with 4 CFR §§300.8, .101, .111, .304 - .306, .503, and COMAR 13A.08.04.04-5.

Therefore, this office finds that a violation occurred with respect to the 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>

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (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

Ms. Trinell Bowman

November 15, 2021

Page 5

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.

The MSDE requires the PGCPS to provide documentation that it has reconvened the IEP team to consider information from a variety of sources when making a determination to proceed with an IDEA evaluation to determine if the student requires special education services as a student with a disability under the IDEA.

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:dee

c: Monica Goldson  
[REDACTED]  
Diane Eisenstadt  
Nancy Birenbaum

Barbara VanDyke  
Monica Wheeler  
Brian Morrison

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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.