



Mohammed Choudhury
State Superintendent of Schools

December 17, 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: [REDACTED]
Reference: #22-044

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 October 18, 2021, the MSDE received correspondence from Mr. [REDACTED] 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 the Individualized Education Program (IEP) developed for the student identified and addressed his academic, speech/language, assistive technology and fine, gross, and visual motor skills on February 26, 2021, in accordance with 34 CFR §300.324;
2. The PGCPS has not provided Prior Written Notice (PWN) of the IEP team's February 26, 2021 decisions, in accordance with 34 CFR §300.503;
3. The PGCPS did not ensure that the student's IEP reflected the need for a visual schedule, in conformity with the decisions of the IEP team since February 26, 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 February 26, 2021, the IEP team met to review and revise the student's IEP, as appropriate, and to consider additional information needed to complete an evaluation of the student.
2. The IEP team reviewed results of the most recent informal academic assessments completed for the student. The IEP team discussed the student's present level of academic achievement and functional performance in each academic area. The complainant indicated that the parents continued to be concerned about the student functioning below grade level, but did not make a specific proposal regarding the student's academic needs.
3. The IEP team also reviewed input from the student's occupational therapist related to the student's occupational therapy needs and progress in this area. There was no proposal from the complainant or the other members of the IEP team that formal assessments were required to assess the student's fine, gross or visual motor needs. The IEP team discussed the student's need for a visual schedule that would also be provided to the parents and recommended that this support be included in the student's IEP.
4. While there is documentation that the school staff have utilized a visual schedule with the student, there is no documentation that the Student's IEP includes the provision that the visual schedule will be provided to the parents and the student.
5. During a review of the student's occupational therapy needs, the IEP team discussed the student's seating position during instruction. The occupational therapist noted that she had made suggestions to the student's parents regarding his seating position and location during virtual instruction, but no proposal was made during the IEP team meeting regarding the need for a designated seating position or space for the student.
6. The IEP team referenced the student's participation in virtual instruction, but there were no concerns raised during the meeting from the complainant or other members of the IEP team related to the assistive technology needs of the student related to his ability to access instruction.

7. The IEP team determined that a cognitive assessment be completed for the student based on the complainant's proposal and his belief that the existing data was outdated. The IEP team agreed to conduct the assessment and this decision was included in the prior written notice developed following the IEP team meeting.
8. During the discussion of the need for a cognitive assessment, the team mentioned academic testing as an alternative to the cognitive assessment, but no proposal or concern was raised regarding the need for updated formal academic testing.
9. The IEP team discussed a pending speech/language assessment for the student that was recommended at a previous IEP team meeting. The complainant indicated that he would be providing consent for the assessment in the near future, and that he continued to have concerns regarding the student's ability to respond to questions. The complainant also asked if the assessment would be conducted virtually or in-person. In response, the PGCPS staff explained that there were limited opportunities to complete assessments in-person due to the COVID-19 pandemic, that they would forward his request to the assessment team, and that the decision would be made by the assessor. The prior written notice developed following the IEP meeting reflects the IEP team decision to forward the parent's request.
10. A review of the audio recording reveals that while the team mentioned the student's transportation and recent health diagnosis, there was no proposal or concerns raised by the IEP team regarding the appropriateness of the student's IEP related to these issues.

DISCUSSION/CONCLUSIONS:

Allegation 1: Identifying and Addressing the Student's Needs

Based on Findings of Facts #1-#3, #5, #8, and #9, the MSDE finds that the IEP team utilized the data available to them at the IEP team meeting, and sought additional data when appropriate, to identify and address the student's needs in the areas of assistive technology, fine motor, gross motor, visual motor, speech and language, and academics, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #2: Prior Written Notice

In his complaint, the complainant alleges that he was not provided with prior written notice of the IEP team's decisions regarding the use of the visual schedule, the appropriateness of the student laying down or working in a designated area, the decision to conduct the speech/language assessment virtually, the basis for conducting the cognitive assessment, and the decisions not to evaluate the student in the areas of academics, transportation, and health.

Based on Findings of Facts #2, #5, and #10 the MSDE finds that the IEP team did not propose, accept, or reject proposals related to the student's seating or designated work space or to evaluate the student in the areas of academics, transportation, and health, and that no prior notice was required under 34

CFR §300.503. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on Findings of Facts #7 and #9, the MSDE finds that the complainant was provided with prior written notice of the IEP team's decisions regarding the cognitive and speech/language assessments, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on Findings of Facts #3 and #4, the MSDE finds that the complainant was not provided with prior written notice of the IEP team's decision to utilize a visual or written schedule with the student and provide it to his parents, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Allegation #3: Inclusion of a Visual Schedule in the Student's IEP

Based on Finding of Fact #3, the MSDE finds that the IEP developed for the Student on February 26, 2021 did not include the support of the written or visual schedule consistent with the decision of the IEP team, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation has occurred with respect to this allegation. Notwithstanding this violation, based on Finding of Fact #10, the MSDE finds that although the support was not included in the student's IEP, there is documentation that the support has been provided to the student consistent with the IEP team decision and that there has been no impact on the student's ability to access instruction as a result.

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.¹

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.

Ms. Trinell Bowman

December 17, 2021

Page 5

The MSDE requires the PGCPs to provide documentation that the student's IEP has been revised to reflect the IEP team's decisions following the February 26, 2021 IEP team meeting and that the parent has been provided with prior written notice of each 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 Free Appropriate Public Education 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