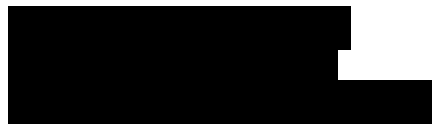




Mohammed Choudhury
State Superintendent of Schools

January 11, 2022



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: #22-056

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 November 12, 2021, the MSDE received correspondence from [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 reflected IEP team decisions on November 3, 2021, in accordance with 34 CFR §300.324; and
2. The PGCPS has not provided Prior Written Notice of the IEP team's November 3, 2021 decisions, in accordance with 34 CFR §300.503; and
3. The PGCPS did not follow proper procedures when responding to a request for access to the student's record on October 13, and November 1, 2021, 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.

FINDINGS OF FACTS:

1. On October 13, 2021 the complainant sent correspondence to the director of the PGCPS transportation department requesting access to video recordings of the student being transported on the school bus on October 11, 2021.
2. On November 1, 2021 the complainant sent correspondence to the director of the PGCPS transportation department requesting access to video recordings of the student being transported on the school bus on October 29, 2021.
3. There is documentation that the complainant was permitted access to review the requested videos on December 17, 2021.
4. On November 3, 2021, the IEP team met for the student to review and revise his IEP, as appropriate, including a discussion of the student's transportation needs.
5. A review of the audio recording of the November 3, 2021 IEP team meeting demonstrates that the IEP team made the following determinations, but the decisions of the IEP team

and the basis for the decisions were not included in the prior written notice¹ generated following the IEP team meeting and the IEP developed for the student:

- The parents proposed and the IEP team accepted a process by which the student would enter and exit the bus with his bookbag. The IEP team determined that the parents will not board the bus at pick up or drop off. The parents will meet the bus attendant at the bus door to drop off and pick up the student's book bag. The bus attendant will hand the book bag to the parents and not the student, during pick up and drop off at the parents' house. During pick up and drop off at the student's school, the attendant will hand the book bag to and from the student's behavioral aide. The team further determined that the student's bus driver will not retrieve the student's book bag and will instead be stored away and retrieved by the bus attendant.
- The IEP team determined that reports of behavioral incidents on the bus would be written within one day.
- The IEP team further determined that the student's social worker will engage with the student and his family to develop and deliver a common set of words to assist the student on the bus to allow for reinforcement of safe behaviors when the student is at home.
- The IEP team also determined that the information gathered regarding the student's behaviors on the bus would be included in the ongoing assessment of the student's behavior.

6. A review of the audio recording and the prior written notice generated following the November 3, 2021 IEP team meeting demonstrates that the IEP team made the following determinations, but these decisions are not reflected in the IEP developed for the student and provided to the parent following the IEP team meeting:

- The IEP team determined that the student would be provided with fidgets to assist with his behavior on the bus.
- The IEP team determined that reports of a behavioral incidents on the bus would be provided to the parent within two days of the incident
- The IEP team determined that the student would not sit directly behind the driver on the school bus
- IEP team determined that the student would be provided with "safe hands" social stories to assist with his behavior on the bus.

7. During the November 3, 2021 IEP team meeting, the parent proposed that surveillance video would be recorded in the student's bus daily. The school staff explained that this

¹ Following the IEP team meeting, the PGCPSS provided the complainant with a "bus plan" that reflects some but not all of the supports and strategies recommended by the IEP team. This "bus plan" was not incorporated into the student's IEP, but is referenced in the student's prior written notice.

was not a support that was provided to students, but was a practice in use on all buses. The IEP team therefore, did not include the use of surveillance video on the student's IEP or in the prior written notice generated following the IEP team meeting.

8. During the November 3, 2021 IEP team meeting, the parents also proposed that due to the COVID-19 pandemic, the school staff should measure the student's ability to consistently wear a face mask while in the school building. The IEP team refused this proposal from the parent but agreed to report any "significant incidents" related to wearing a mask. The prior written notice generated following the IEP team meeting does not reflect this decision of the IEP team.
9. During the November 3, 2021 IEP team meeting, the parents also proposed that when additional support is provided to the student through staff with specialized training, the support should be provided in the afternoon when most behavioral problems are present. The IEP team rejected this proposal. The prior written notice generated following the IEP team meeting does not reflect this decision of the IEP team.
10. During the November 3, 2021 IEP team meeting the parents also proposed that the staff responsible for collecting the student's bookbag should ensure that the student's medication was attached to his bookbag. A review of the audio recording of the November 3, 2021 IEP team meeting demonstrates that the IEP team did not respond to the parents' concern. The prior written notice generated following the IEP team meeting does not reflect a decision of the IEP team in response to the parent's proposal.

DISCUSSION/CONCLUSIONS:

Allegation 1: Developing the Student's IEP

In his complaint the complainant alleges that IEP developed for the student does not reflect the IEP team decisions regarding the process by which the student handles his bookbag and enters and exits the bus, the student's seating position on the bus, the use of a common set of words with the student related to the bus, the use of social stories, the use of surveillance video on the bus, and creating and sharing bus behavioral reports with the parents.

Based on Findings of Facts #4 and #5, the MSDE finds that the IEP developed for the student does not reflect the IEP team decisions regarding the process by which the student handles his bookbag and enters and exits the bus, the student's seating position on the bus, the use of a common set of words with the student related to the bus, the use of social stories, the use of information gathered regarding the student's behaviors on the bus, and creating and sharing bus behavioral reports with the parents on November 3, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on Finding of Fact #7 the MSDE finds that the IEP team did not make a decision related to the use of surveillance video on November 3, 2021, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

In his complaint, the complainant also alleges that the IEP team did not respond to his proposal that school and bus staff check the student's bookbag for his medication. Based on Finding of Fact #10, the MSDE finds that the PGCPS did not ensure that the IEP team responded to the parents' concerns on November 3, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Allegation 2: Prior Written Notice

In his complaint the complainant alleges that he was not provided with prior written notice of IEP team decisions regarding the process by which the student handles his bookbag and enters and exits the bus, the use of a common set of words with the student related to the bus, the use of surveillance video on the bus, the use of information gathered regarding the student's behaviors on the bus, the tracking of mask wearing behavior for the student, the utilization of staff with specialized training to assist the student on the bus, and creating bus behavioral reports following the November 3, 2021 IEP team meeting.

Based on Findings of Fact #6, #8 and #10, the MSDE finds that the complainant was not provided with prior written notice of IEP team decisions related the process by which the student handles his book bag and enters and exits the bus, the use of a common set of words with the student related to the bus, the use of information gathered regarding the student's behaviors on the bus, the tracking of mask wearing behavior for the student, the utilization of staff with specialized training to assist the student on the bus, and creating bus behavioral reports with the parents following the November 3, 2021 IEP team meeting, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to this allegation.

Based on Finding of Fact #7 the MSDE finds that the IEP team did not make a decision related to the use of surveillance video on November 3, 2021, and that no prior written notice was necessary, 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.

Allegation #3: Access to the Student's Educational Record

Based on Finding of Fact #1-#3, the MSDE finds that the complainant was not provided with access to the student's educational record in a timely matter, following his requests on October 13, and November 1, 2021, in accordance with 34 CFR §300.621. 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.²

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.³ Dr. Birenbaum can be reached at (410) 767-7770 or via email at nancy.birenbaum@maryland.gov.

The MSDE requires the PGCPS to provide documentation that it has provided the complainant with prior written notice of the IEP team meeting held on November 3, 2021. The MSDE further requires that the PGCPS convene an IEP team meeting to ensure that the IEP developed on November 3, 2021 is consistent with the decisions of the IEP team, and offer the complainant the opportunity to provide additional input to the IEP team regarding the student's transportation needs following his review of the requested videos.

The MSDE further requires the PGCPS to provide documentation that the IEP team has convened and determined whether the violations had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, 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.

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

² 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.

³ 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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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
Darnell Henderson
Nancy Birenbaum
Gerald Loiacono