



Mohammed Choudhury  
State Superintendent of Schools

November 15, 2022

[REDACTED]

Ms. Trinell Bowman  
Associate Superintendent-Special Education  
Prince George's County Public Schools  
John Carroll Administration Building  
1400 Nalley Terrace  
Hyattsville, Maryland 20785

RE: [REDACTED]  
Reference: #23-049, 23-051, 23-052, 23-056

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), has completed the investigations of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigations.

**ALLEGATIONS:**

On September 27, 2022, September 29, 2022, September 30, 2022, and October 3, 2022, the MSDE received complaints from Mr. [REDACTED] hereafter, "the complainant," on behalf of the above-referenced student. In those correspondences, 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 above-referenced student.

The MSDE investigated the allegations that the PGCPS did not follow proper procedures when responding to a request for access to the student's record on May 27, 2022, July 29, 2022, September 13, 2022, September 14, 2022, September 16, 2022, September 19, 2022, or September 20, 2022, or provide explanations or interpretations of the student's education records when requests were made on August 31, 2022, September 8, 2022, September 21, 2022, in accordance with 34 CFR §300.613.

Additionally, based on complaint 23-056, the MSDE investigated the allegation that the PGCPS did not follow proper procedures when responding to a request for information from the student's mother, in accordance with 34 CFR§300.101 and COMAR 13A.05.01.09.

**BACKGROUND:**

The student is seventeen (17) 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] school.

**FINDINGS OF FACTS:**

1. On May 27, 2022, the complainant sent email correspondence to the PGCPs requesting access to specific student records. Following consideration of the request, the PGCPs determined that this request was made pursuant to the Maryland Public Information Act (MPIA), and was responded to accordingly.
2. On July 29, 2022, the complainant sent correspondence to Ms. Trinell Bowman, Associate Superintendent for Special Education, PGCPs, requesting access to specific email records. Following consideration of the request, the PGCPs determined that this request was made pursuant to the Maryland Public Information Act (MPIA), and will be responded to accordingly.
3. On August 31, 2022, the complainant sent correspondence to Mr. [REDACTED] [REDACTED], PGCPs, requesting explanations and interpretations of video recordings made on specific dates. Following consideration of the request, the PGCPs determined that this request was made pursuant to the Maryland Public Information Act (MPIA), and will be responded to accordingly.
4. On September 8, 2022, the complainant again sent correspondence to Mr. [REDACTED] requesting explanations and interpretations of video recordings made on specific dates. Following consideration of the request, the PGCPs determined that this request was made pursuant to the Maryland Public Information Act (MPIA), and will be responded to accordingly.
5. On September 13, 2022, the complainant sent correspondence to Ms. Bowman requesting access to specific email records. Following consideration of the request, the PGCPs determined that this request was made pursuant to the Maryland Public Information Act (MPIA), and will be responded to accordingly.
6. On September 14, 2022, the complainant sent correspondence to Ms. Bowman requesting access to specific email records, excluding medical information regarding the student between specific dates. Following consideration of the request, the PGCPs determined that this request was made pursuant to the Maryland Public Information Act (MPIA), and will be responded to accordingly.
7. On September 16, 2022, the complainant sent correspondence to Ms. Bowman requesting access to specific email communications relating to transition activities regarding the student. Following consideration of the request, the PGCPs determined that this request was made pursuant to the Maryland Public Information Act (MPIA), and will be responded to accordingly.
8. On September 19, 2022, the complainant sent correspondence to the Principal of [REDACTED] [REDACTED] and [REDACTED] [REDACTED] of Autism Services, [REDACTED] requesting access to specific records regarding the student's progress and transition services. Following consideration of this request, the PGCPs determined that this request addresses IDEA concerns.

9. On September 21, 2022, the complainant sent correspondence to Trena Johnson Bowlding, Specialist, Nonpublic Office, PGCPs, requesting access to speech therapy logs, attendance data, restraint, seclusion, and exclusion data regarding the student. Following consideration of this request, the PGCPs determined that this request addresses IDEA concerns.
10. There is documentation that the complainant was provided the documentation requested on September 19 and 21, 2022, on September 21, 2022.
11. On September 20, 2022, the student's mother requested access to specific documents relating to student behavior data from the student's records, as well as asking questions from the student's service provider.
12. There were IEP team meetings convened for the student on September 15, 2022, and September 22, 2022. The purpose of both meetings was to address corrective actions regarding prior MSDE complaint findings. The meeting on September 15, 2022, was addressing protocol for health concerns and the second meeting on September 22, 2022, was addressing transition concerns relating to the inclusion of a therapeutic behavior aide as a part of the student's transition plan.
13. There is documentation that the records requested by the student's mother were provided to her on November 3, 2022, after the September 22, 2022 meeting. There is documentation that information responding to the student's mother's questions was also sent on November 3, 2022.
14. The student's IEP dated May 18, 2022, includes a supplementary aid and service requiring "home to school communication." The manner in which this is to be delivered is the following:  
  
*School staff will provide school to home communication via [REDACTED] communication book which is provided daily and are available via email for parent questions or concerns. Additionally, behavior data is collected daily and sent weekly.*
15. The description of the manner in which staff is to respond to parent email questions or concerns is not clearly defined, while the manner and frequency of communication via the student's communication book and behavior data is clearly defined.
16. The MSDE does not have authority to investigate MPIA allegations or provide correction for MPIA violations.

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

Based on Findings of Facts #1 to #7 and #16 the MSDE does not have the authority to investigate or provide correction for requests for access to records made on May 27, 2022, July 29, 2022, September 13, 2022, September 14, 2022, September 16, 2022, requests for explanations or interpretation made on August 31, 2022 or September 8, 2022. The complainant may file a complaint with the Public Access Ombudsman or the MPIA Compliance Board regarding alleged violations of the MPIA. Information on how to file a complaint can be found at [https://www.marylandattorneygeneral.gov/Pages/OpenGov/piacb\\_procedures.aspx](https://www.marylandattorneygeneral.gov/Pages/OpenGov/piacb_procedures.aspx).

The Family Educational Rights and Privacy Act (FERPA) requires public agencies to permit parents to inspect and review any educational records relating to their children that are collected, maintained, or used by the agency. The public agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing or resolution meeting, and in no case more than forty-five (45)

days after the request has been made (34 CFR §99.10). The IDEA parallels this requirement at 34 CFR §300.613.

While the period of time that is reasonable to respond to a parent's request for access to the educational record may vary depending on factors such as the nature of the records requested, their location, and volume, the forty-five (45) day limitation is absolute. The Family Policy Compliance Office (FPCO), the federal agency responsible for compliance with FERPA, has held that there is no condition or limitation to the right of a parent to access the record, even in instances where the public agency rightly believes that parent requests for access to the record are repetitive or duplicative of past inquiries. The FPCO has held that a public agency did not have the authority to deny a parent's request for access, no matter how frequently she asked to review the record [emphasis added] (*Huntsville (AL) School District*, 24 IDELR 82 (FPCO 1996)).

Based on Finding of Facts #8 through #10, the PGCPSS did follow proper procedures in responding to a request for access to the student's record on September 19, 2022 and September 21, 2022, in accordance with 34 CFR §300.613. However, based on Finding of Facts #11, the PGCPSS did not follow proper procedures when responding to a request for access to the student's record from the student's mother on September 20, 2022, in accordance with 34 CFR §300.613. As such, the student's mother did not have access to the requested information prior to the IEP team meeting convened on September 22, 2022, and the MSDE finds a violation for that allegation.

**Additional Violation:**

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes*, Federal Register, Vol. 64, No. 48, p.12479, March 1999).<sup>1</sup>

**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.

The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.<sup>2</sup> This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Diane Eisenstadt, Compliance Specialist, Family Support and

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<sup>1</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

<sup>2</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency 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.

Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>3</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

The MSDE requires the PGCPS to provide documentation that it has convened an IEP team meeting prior to January 15, 2023, to discuss the issues and concerns discussed at the September 22, 2022, IEP team meeting after having provided the opportunity for the student's mother to review the student's behavior records, as she requested, prior to the meeting. The IEP team will make any agreed upon changes based on the review of the record, as appropriate.

The MSDE further requires the PGCPS to provide clarification of the manner in which the email communication between the school and home will be implemented when the IEP team meeting is convened.

The PGCPS will provide the complainant with prior written notice (PWN) of the results of the IEP team meeting. The PWN from the meeting will also be provided to the MSDE.

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 (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:ab

c: Monica Goldson  
Barbara VanDyke  
Keith Marston  
Darnell Henderson  
Alison Barmat  
Diane Eisenstadt

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<sup>3</sup> The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.