



January 31, 2023

[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: #23-109

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services (DEI/SES), 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 December 2, 2022, MSDE received a complaint from Mr. [REDACTED] hereafter, "the complainant," on behalf of 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 above-referenced student.

MSDE investigated the allegation that the PGCPS did not ensure that the student has been provided with toileting assistance and an appropriate safety vest for use during transportation, as required by his Individualized Education Program (IEP) on November 16 and 17, 2022, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is seventeen years old, is identified as a student with Autism under the IDEA, and he 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. The student's IEP, in effect on November 16, 2022, was most recently reviewed by the IEP team on October 27, 2022. The IEP requires that he be reminded to use the bathroom every 20 minutes, that he be provided with assistance with cleaning after a bowel movement, and that he be provided with a

change of clothing in the event that he has a toileting accident. The student's IEP also requires that he receive daily transportation on a bus with the use of a safety vest and that a backup vest would be available at his school.

2. There is documentation that on November 16, 2022, the student's bus was late arriving to pick him up from school to take him to his home. There is further documentation that the student had a bowel movement while waiting for the bus, but that the school staff did not provide him with toileting assistance prior to him loading the bus. There is no documentation that the student was provided with reminders to use the bathroom prior to the arrival of the bus.
3. There is no documentation that the school staff provided the student with the backup vest for use during transportation on November 17, 2022.

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). In this case, the parent alleges that the PGCPD did not provide the student with the toileting supports required by his IEP and as a result, the student, his clothing, and his safety vest were soiled.

Based on Findings of Facts #1-#3, MSDE finds that there is no documentation that the student was provided with the toileting and transportation services required by his IEP, on November 16 and 17, 2022, in accordance with 34 CFR §§300.101 and .323. 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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with 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 Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

¹ 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, 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 MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

Student-Specific

MSDE requires the PGCPs to provide documentation by April 1, 2023, that the IEP team has met to review and revise the student's IEP to include a discussion of the toileting supports necessary to ensure that the student is safely and hygienically transported to and from school. The IEP team must determine whether the violation identified above 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.

The PGCPs must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

Similarly-Situated Students

MSDE requires the PGCPs to provide documentation by April 1, 2023, of the steps it has taken to ensure that transportation staff assigned to the student's bus route properly implement the requirements for implementing transportation services. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DC:gl

c: Monica Goldson
Keith Marston
Darnell Henderson
Alison Barmat
Diane Eisenstadt
Gerald Loiacono