



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

March 10, 2017

XXX  
XXX  
XXX

Ms. Trinell Bowman  
Director of Special Education  
Prince George's County Public Schools  
1400 Nalley Terrace  
Landover, Maryland 20785

RE: XXXXX  
Reference: #17-079

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 January 10, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX 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.

The MSDE investigated the following allegations:

1. The PGCPS has not ensured that prior written notice of the Individualized Education Program (IEP) team’s decisions following the meetings held since August 2016 was provided, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12;

XXX

Ms. Trinell Bowman

March 10, 2017

Page 2

2. The PGCPS did not ensure that the student was provided with behavioral supports and special education instruction, since August 2016, as required by the IEP, in accordance with 34 CFR §§300.101 and .323;
3. The PGCPS did not ensure that reports of the student's progress towards achievement of the annual IEP goals have been made, since August 2016, in accordance with 34 CFR §§300.101, .320 and .323;
4. The PGCPS did not follow proper procedures when disciplinarily removing the student from school, since August 2016, as required by 34 CFR §300.530;
5. The PGCPS did not ensure that proper procedures were followed when denying the request to audio record the December 19, 2016 IEP team meeting, in accordance with 34 CFR 300.324, MSDE Memorandum, *Audio Recording of Individualized Education Program (IEP) Team Meetings* (February 7, 2006), and PGCPS policy;
6. The PGCPS did not ensure that the IEP team meetings convened during the 2016-2017 school year included the required participants, in accordance with 34 CFR §300.321;
7. The PGCPS did not ensure that copies of documents the IEP team intended to consider at IEP team meetings were provided at least five days in advance of the meetings held during the 2016-2017 school year, in accordance with COMAR 13A.05.01.07D(3); and
8. The PGCPS has not ensured that the IEP addresses the student's behavioral needs, since August 2016, in accordance with 34 CFR §§300.320 and .324.

#### **INVESTIGATIVE PROCEDURES:**

1. On January 10, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS.
2. On January 17, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant, and identified the allegations for investigation.
3. On January 19, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the school system review the alleged violations.
4. On January 24, 2017, Mr. Loiacono contacted Mr. Kevin Blackson, Compliance Specialist, PGCPS, to arrange a document review and site visit.

XXX

Ms. Trinell Bowman

March 10, 2017

Page 3

5. On February 15, 2017, Mr. Loiacono and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXX to review the student's educational record and interviewed the following school staff:

- a. Mr. XXXXXXXXXXX, Vice Principal;
- b. Ms. XXXXXXXXXXX, Special Education Chairperson; and
- c. Mr. XXXXXXXXXXX, Special Education Case Manager.

Mr. Blackson attended the site visit as a representative of the PGCPs and to provide information on the school system's policies and procedures, as needed.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

- a. IEP, dated March 1, 2016;
- b. IEP, dated January 9, 2017;
- c. Prior Written Notice (PWN), dated December 8, 2016;
- d. PWN, dated December 19, 2016;
- e. PWN, dated January 10, 2017;
- f. PWN, dated February 26, 2017;
- g. IEP Team Meeting Sign-In Sheets, dated December 8, 2016, December 18, 2016 and January 9, 2017;
- h. "Documentation of FAPE During Disciplinary Removal", dated December 2016 to February 2017;
- i. Suspension Documents, dated October to December 2016;
- j. Functional Behavior Assessment (FBA), revised January 9, 2017;
- k. Behavior Intervention Plan (BIP), revised January 9, 2017;
- l. IEP team manifestation determination worksheet, dated December 8, 2016;
- m. IEP team manifestation determination worksheet, dated February 23, 2017;
- n. PGCPs "Notice of the Use of Audiotape or Recording Devices During IEP Team Meetings", undated; and
- o. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on January 10, 2017.

### **BACKGROUND:**

The student is 16 years old and attends XXXXXXXXXXXX. He is identified as a student with a Specific Learning Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. a).

**ALLEGATION #1: PRIOR WRITTEN NOTICE OF IEP TEAM'S DECISIONS**

**FINDINGS OF FACTS:**

1. There is no documentation that the complainant was provided with prior written notice of the IEP team decisions made at the December 8, 2016, December 19, 2016 or January 9, 2017 IEP team meetings (Review of student's record).

**DISCUSSION/CONCLUSIONS:**

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, and an explanation of the action (34 CFR §300.503).

Based on Findings of Fact #1, the MSDE finds that there is no documentation that the complainant was provided with prior written notice of the IEP team's decisions following the December 8, 2016, December 19, 2016, or January 9, 2017 IEP team meetings. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATIONS #2-4 AND #8: DISCIPLINARY REMOVAL PROCEDURES, ADDRESSING THE BEHAVIORAL NEEDS OF THE STUDENT AND IMPLEMENTATION OF THE STUDENT'S IEP AND BEHAVIOR INTERVENTION PLAN (BIP)**

2. The student's IEP, developed on March 1, 2016 requires home school communication through an agenda book, implementation of a BIP and twenty-one hours and forty minutes per month of instruction outside of the general education classroom (Doc a.)
3. From August 2016 to December 2016, the student was involved in five documented incidents that resulted in disciplinary removals, as follows:
  - October 17, 2016 - three days for a "school disruption;"
  - November 3, 2016 - three days for "school disruption/disrespect;"
  - November 28, 2016 - three days for "continued class disruption/ disrespect/ insubordination/excessive use of profanity;"
  - December 1, 2016 - three days for "Destruction of school property;" and
  - December 14, 2016 - two days for "school disruption/class cutting" (Doc. i).
4. The progress reports dated October 31, 2016 report that the student was not making progress on his IEP goals. There is no documentation that school staff attempted to

XXX

Ms. Trinell Bowman

March 10, 2017

Page 5

schedule an IEP team meeting following the creation of the progress reports. There is also no documentation that the complainant was provided with the progress reports created reports of the student's progress towards IEP goals since August 2016 (Doc. a, Review of student's record).

5. On December 8, 2016, following the student's return to school from one of his disciplinary removals, an IEP team meeting was held. At that meeting, the IEP team decided that the student's behavior was not a manifestation of his disability, but recommended that a Functional Behavioral Assessment (FBA) be conducted and a BIP be developed to ensure that the behavior does not recur. The IEP team determined that because services were not offered to the student on the actual days of removal, the student would be offered "FAPE services" before school on Wednesday mornings. While the student's FBA and BIP were updated, there is no documentation that they were reviewed by the IEP team or that the BIP was provided to the student's teachers for implementation (Doc. c, j and k, and l).
6. On January 9, 2017, the student's IEP was amended to remove the requirement for specialized instruction to be provided in a separate special education classroom. The IEP team did not, however, document the basis for this revision (Doc. b).
7. On February 8, 2017, the student was arrested for an incident that occurred outside of school. He was disciplinary removed from XXXXXXXXX School following that incident, with a recommendation for expulsion. On February 16, 2017 The IEP team met to discuss services for the student, and to make a manifestation determination. The IEP team determined that the student would receive "FAPE services" at his high school in the mornings before the school day, pending his placement in an alternative school, consisting of 120 minutes a week of instruction in math, reading and writing. The team further determined that the incident was not a manifestation of his disability because the behavior did not have a direct and substantial relationship to the child's disability. While the IEP team stated that the FBA and BIP for the student had been updated on January 9, 2017, and that the BIP had been implemented, there is no documentation to support this conclusion (Doc. f, h).
8. There is documentation that services were been offered to the student at his high school pending his expulsion, and that he attended at least one of the scheduled sessions (Doc. h).
9. There is no documentation that the student was provided with the behavioral supports required by his IEP, that the BIP was implemented by school staff or that the student was provided with the required instruction outside of the general education classroom (Doc. a, Review of student's record).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #2: Implementation of the Student's IEP**

The public agency must ensure that each student is provided with the special education instruction, supports and supplementary aids and services required by the student's IEP (34 CFR §300.101).

Based on the Findings of Facts #1, #6, and #9, the MSDE finds that there is no documentation that the services and supports required by the student's IEP were provided since the beginning of the 2016-2017 school year. Therefore this office finds that a violation occurred with respect to this allegation.

### **Allegation #3: Periodic Reports of the Student's Progress**

As stated above, the public agency must ensure that each student is provided with the special education instruction and supplementary aids and services required by the student's IEP (34 CFR §300.101 and .323).

Based on Finding of Fact #4, the MSDE finds that there is no documentation that the complainant was provided with periodic reports of the student's progress, since August 2016. Therefore this office finds that a violation occurred with respect to this allegation.

### **Allegation #4: Procedures When Disciplinarily Removing the Student.**

A student with a disability may be disciplinarily removed from the current educational placement, to the extent that removal is applied to students without disabilities, for up to ten school days for each incident that results in disciplinary removal. In Maryland, for each period of removal after a student with a disability has been removed for the cumulative equivalent of ten school days in a school year, school personnel must consult with at least one of the student's teachers to determine what services to provide to enable the student to appropriately progress in the general curriculum and advance toward achieving the annual IEP goals. If the IEP team determines that a removal constitutes a change in placement, it must determine the services required to allow the student to make progress towards IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

In addition, once a change in educational placement occurs for a student with a disability as a result of a disciplinary removal, State and federal regulations require the provision of specific protections to the student. These protections include the requirement that the IEP team convene within ten business days of the removal to develop or review and revise, as appropriate, an existing plan to address the behavior that resulted in the removal, to determine whether the student's behavior was a manifestation of the disability, and whether the behavior resulted as a failure to implement the student's IEP (34 CFR §300.530 and COMAR 13A.08.03).

XXX

Ms. Trinell Bowman

March 10, 2017

Page 7

If the student's behavior is found to be a manifestation of the disability, the student must be returned to the educational placement from which the student was removed unless the parent and public agency agree to a change in placement. If the student's behavior is not found to be a manifestation of the disability, the IEP team must determine the extent to which services are necessary during the period of removal in order to enable the student to progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

Based on Findings of Facts #3, #5, #7 and #9, the MSDE finds that the IEP team met following the tenth day of removal for the student in both December 2016 and February 2017, and determined that the student's behavior was not a manifestation of his disability.

However, based on Findings of Facts #3, #5, #7 and #9, the MSDE finds that there is no documentation to support the IEP team's decision that the behavior that resulted in the February 2017 disciplinary removal was not a manifestation or that the BIP had been updated. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

In addition, based on Findings of Facts #5 and #7, the MSDE finds that the school system did not ensure that the student was provided with special education instruction following the tenth day of removal in December 2016, and that a violation occurred with respect to this aspect of the allegation.

Notwithstanding this aspect of the violation, based on the Finding of Fact # 5, this office finds that services were provided to the student to make up for the loss of services after he returned from that disciplinary removal. Therefore, no corrective action is required to remediate that violation.

#### **Allegation #8: Addressing the student's needs**

In order to provide a student with a Free and Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability and enable the student to progress through the general education curriculum, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324).

XXX

Ms. Trinell Bowman

March 10, 2017

Page

Based on the Findings of Facts, #3-5, the MSDE finds that the IEP team did not meet to address the student's lack of progress on his goals or to discuss behavioral interventions following his removals from school prior to December 8, 2016. Furthermore, based on Finding of Fact #6, the MSDE finds that the documentation does not support the IEP team's decision to change the student's educational placement in January 2017. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

**ALLEGATION #5: AUDIO RECORDING OF THE IEP TEAM MEETING**

**FINDINGS OF FACTS**

10. The parties agree that the December 8, 2016 IEP team meeting was scheduled on an expedited basis, and the complainant received at least two days, but not ten days notice of the meeting (Doc. c, interview with school staff, interview with complainant).
11. The complainant notified school staff at the beginning of the December 8, 2016 IEP team meeting that she intended to record the IEP team meeting. She did not notify school staff prior to the meeting of her intent to record (Interview with complainant).
12. The PGCPS policy for audio recording of IEP team meetings states that the school staff must be notified two days prior to the IEP team meeting of the intent to record. The policy further states that IEP meetings held for an "emergency matter" will not be rescheduled for the purpose of providing time for notice of the intent to record. The school staff report that the complainant has recorded subsequent IEP team meetings (Doc. n).

**DISCUSSION/CONCLUSIONS:**

The IDEA does not address the use of audio or video recording devices at IEP team meetings, and no other federal statute either authorizes or prohibits the recording of an IEP team meeting by either a parent or a school official. Therefore, the State Education Agency (SEA) or local public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings (Appendix A to Part 300 – Notice of Interpretation, Federal Register, Special Edition, p. 111, July 1, 2006).

The MSDE does not have a policy that limits or prohibits the use of audio recording devices at IEP team meetings, but requires that local policies be consistent with the intent of IDEA and that they be applied consistently. The PGCPS has developed a policy requiring two business days notice prior to the meeting date if a parent intends to create an audio recording of an IEP team meeting.

Based on Findings of Facts #10-12 the MSDE finds that the PGCPS followed proper procedures when denying the request for audio recording of the December 8, 2016 IEP team meeting. Therefore, this office does not find that a violation occurred with respect to the allegation.



**ALLEGATION #7:                   REQUIRED IEP TEAM MEMBERS**

**FINDINGS OF FACTS**

13.       The December 8, 2016, and December 19 2016 IEP team meetings were attended by the IEP chairperson, who is a certified special educator. The IEP chairperson was not, however, the student's special educator. There were no other special educators present at the meeting. The student's general education teacher and school psychologist was present at both meetings (Doc. g).
14.       There is documentation that other IEP team meetings conducted during the 2016-2017 school year had the required participants (Doc. g).

**DISCUSSION/CONCLUSIONS:**

The IEP team must include the student's parent, at least one regular education teacher of the student if the student is, or may be, participating in the regular education environment, at least one special education teacher of the student, a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency, an individual who can interpret the instructional implication of evaluation results, at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, and the student when appropriate (34 CFR §300.321).

Based on Findings of Facts #13 and #14, the MSDE find that the IEP team meeting on December 8, 2016 was not conducted with the required IEP team members. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the PGCPS to provide documentation by April 1, 2017 of the following:

- a.       The behavioral supports and instruction outside of the general education setting designed to assist the student in making progress on his behavioral goals, are being consistently provided to the student, in accordance with his IEP since the date of this Letter of Findings.
- b.       The complainant has been provided with copies of the prior written notice of the IEP team's decisions since August 2016.
- c.       The complainant has been provided with updates of the student's progress on IEP goal.

XXX

Ms. Trinell Bowman

March 10, 2017

Page 10

The MSDE further requires that the PGCPS to provide documentation by April 15, 2017 of the following:

- The IEP team has been convened, with all required team members, to address the student's lack of progress.
- The FBA has been completed for the student and a BIP be developed by the IEP team to address his behavior.
- The IEP team has determined the compensatory services to remediate the violations identified through this investigation.

### **School-Based**

The MSDE requires the PGCPS to provide documentation by June 1, 2017 of the steps it has taken to ensure that XXXXXXXX School staff are properly implementing the requirements for the following:

- Providing prior written notice of the decisions made by IEP teams;
- Providing reports of student's progress towards IEP goals on a periodic basis to parents;
- Delivering services following disciplinary removals of a student;
- Developing an IEP to address the behavioral needs of a student;
- Implementing IEPs including behavioral supports, instruction outside of the general education setting and Behavior Intervention Plans; and
- Conducting IEP team meetings with the required IEP team members.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the PGCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter, if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

XXX

Ms. Trinell Bowman

March 10, 2017

Page 1

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/Early Intervention Services

MEF:gl

- c: Kevin Maxwell
- Gwen Mason
- LaRhonda Owens
- Debrah Anzelone
- XXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- Dori Wilson
- Anita Mandis
- Gerald Loiacono
- Nancy Birenbaum