



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

May 11, 2017

Ms. Ronnetta Stanley
Loud Voices Together
P.O. Box 1178
Temple Hills, Maryland 20757

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

RE: XXXXX
Reference: #17-111

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 March 2, 2017, the MSDE received a complaint from Ms. Ronnetta Stanley, hereafter, “the complainant,” on behalf of the above-referenced student, Mrs. XXXXXXXXXXX, his mother, and Mr. XXXXXXXXXXX, his grandfather. 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 has not ensured that proper procedures were followed in August 2016, in response to a request to inspect and review the student’s educational records, in accordance with 34 CFR §300.613.

2. The PGCPS has not developed an Individualized Education Program (IEP) that addresses all of the student's needs, since March 2016, in accordance with 34 CFR §§300.320 and .324.
3. The PGCPS has not ensured that the consultative speech and language services have been consistently provided, as required by the IEP, since the start of the 2016 - 2017 school year, in accordance with 34 CFR §§300.101 and .323.
4. The PGCPS has not ensured that, since the start of the 2016 - 2017 school year, the parent has been provided with quarterly reports of the student's progress towards mastery of the annual IEP goals, as required by the IEP, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On March 3, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS; Dr. LaRhonda Owens, Supervisor of Compliance, PGCPS; Ms. Gail Viens, Deputy General Counsel, PGCPS; and Ms. Deborah Anzelone, Special Education Instructional Specialist, PGCPS.
2. On March 8 and 13, 2017, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On March 13 and 27, 2017, April 7 and 26, 2017, and May 2, 2017, the complainant provided additional documentation to the MSDE.
4. On March 20, 2017, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
5. On April 10, 2017, Ms. Austin and Ms. Linda Koban, Compliance Specialist, MSDE conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXX) to review the student's educational record, and interviewed the following school system staff:
 - a. Ms. XXXXXXXXXXX, Special Education Teacher, XXXXXXXXX;
 - b. Mr. XXXXXX, Special Education Chairperson, XXXXXXXXX
 - c. Ms. India Parson, Speech and Language Instructional Specialist, PGCPS; and
 - d. Ms. Lourdes Pinder, Occupational Therapist, PGCPS.

Ms. Jodi Kaseff, Office of Special Education, Compliance, PGCPS, participated in the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.

At the site visit, the PGCPS provided the MSDE with documentation for consideration, and the MSDE requested the PGCPS to provide additional documentation for consideration.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEPs and Amended IEPs, dated March 21, 2016, June 27, 2016, September 7, 2016, October 10, 2016, November 9, 2016, January 19, 2017 and February 24, 2017;
 - b. Prior Written Notices, dated February 9, 2016, March 14, 2016, June 23, 2016, September 19, 2016, October 10, 2016, November 16, 2016, January 26, 2017, and February 23, 2017;
 - c. Sign-in sheets of attendees at IEP team meetings convened on September 7, 2016, November 9, 2016, October 3, 2016, January 19, 2017, and February 17, 2017;
 - d. Reports of the student's progress towards achievement of the annual IEP goals, dated June 13, 2016, October 31, 2016, November 1, 2016, January 26, 2017, and March 23 and 30, 2017;
 - e. Electronic mail (email) communications between the student's mother, grandfather and school staff, from October 2016 to March 2017;
 - f. The school staff's log of parent contacts, from March 2016 to March 2017;
 - g. The PGCPS log documenting individuals who review the student's records, bearing the signature of the complainant and the student's grandfather on April 3, 2017;
 - h. Samples of the daily progress reports maintained by the school staff, from September 2016 to April 2017;
 - i. Notice and Consent for Assessment, signed by the student's grandfather on October 3, 2016;
 - j. Correspondence from the school staff to parents and guardians concerning a staffing vacancy, dated February 22, 2017;
 - k. Receipt of Parental Rights and Procedural Safeguards Notice, signed by the student's grandfather on August 27, 2016, and February 16, 2017;
 - l. Functional Behavioral Plan, dated February 9, 2017;
 - m. Behavior Intervention Plan, dated February 16, 2017.
 - n. The PGCPS calendar for the 2016 - 2017 school year;
 - o. The report of a Speech and Language Evaluation conducted by the XXXXXX XXXXXXXXXXXXX on January 28, 2016;
 - p. The report of an Occupational Therapy Evaluation conducted by the XXXXXX XXXXXXXXXXXXX on January 26, 2016;
 - q. The student's grade reports for the first (1st), second (2nd) and third (3rd) quarters of the 2016 - 2017 school year;
 - r. The occupational therapist's log of services provided on behalf of the student, from October 2016 to March 2017;

- s. Samples of the student's handwritten work, and typed work, produced in August 2016, September 2016, December 2016, and January through April 2017;
- t. Order of the Circuit Court for Prince George's County, Maryland appointing guardianship to the student's grandfather, dated March 18, 2016; and
- u. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on March 2, 2017.

BACKGROUND:

The student is twelve (12) years old, is identified as a student with an Other Health Impairment under the IDEA, relating to Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education and related services. The student attended Arrowhead Elementary School from the start of the investigation period until the end of the 2015 - 2016 school year, and has been attending XXXXXXXXXXXXXXXX since the start of the 2016 - 2017 school year (Doc. a).

During the period of time addressed by this investigation, the student's mother and his grandfather were provided with written notice of the procedural safeguards (Docs. a and k).

**ALLEGATION #1 REQUEST TO INSPECT AND REVIEW THE STUDENT'S
EDUCATIONAL RECORDS**

FINDINGS OF FACTS:

1. The student's grandfather is his legal guardian. He is listed as the parent on each of the student's IEPs in effect since the start of the investigation period (Docs. a and t).
2. On August 30, 2016, the student's grandfather sent an email to the school staff requesting to review the student's "entire" educational record. The student's grandfather requested to conduct the review on September 2, 2016, and also requested the school staff to "kindly acknowledge" his request (Doc. e).
3. On February 20, 2017, the student's grandfather sent another email to the school staff repeating his request to review the student's educational record (Doc. e).
4. On March 6, 2017, the school staff initiated discussion with the student's grandfather, via email exchanges, to make arrangements for him to review the student's educational record. There is no documentation of a response by the school staff prior to this date (Doc. e and interview with the school staff).
5. On April 3, 2017, the student's grandfather reviewed the student's educational record (Doc. g).

Ms. Ronnetta Stanley
Ms. Trinell Bowman
May 11, 2017
Page 5

6. The IEP team convened meetings on September 7, 2016, November 9, 2016, October 3, 2016, January 19, 2017, and February 17, 2017 (Docs. b and c).

DISCUSSION/CONCLUSIONS:

The definition of “parent” under the IDEA includes a biological or adoptive parent of the student, a foster parent, a guardian generally authorized to act as the student’s parent, or authorized to make educational decisions for the student, an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the student lives, or an individual who is legally responsible for the student’s welfare, and an appointed surrogate parent (34 CFR §300.30).

The parent of a student with a disability must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a Free and Appropriate Public Education (FAPE) to the student (34 CFR § 300.501).

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.

Based on the Finding of Fact #1, the MSDE finds that the grandfather serves as the parent under the IDEA. Based on the Findings of Facts #2 - #5, the MSDE also finds that, while the grandfather made an initial request to review the student’s educational record in August 2016, which was repeated in February 2017, the PGCPS did not take steps to comply with the request until March 2017. Therefore, the MSDE finds that the PGCPS did not follow proper procedures due to the delay in its response, and finds a violation occurred.

Based on the Finding of Fact #2, #4 and #6, the MSDE finds that, during the approximate six (6) months delay between the date of the grandfather’s initial request to review the student’s education record, and the date he was permitted to review the record, the IEP team convened five (5) meetings. Therefore, the MSDE also finds that the violation negatively impacted the parent’s participation in the IEP team meetings.

ALLEGATION #2 **IEP THAT ADDRESSES THE STUDENT’S SPEECH AND LANGUAGE NEEDS, FINE MOTOR NEEDS, AND BEHAVIORAL NEEDS, SINCE MARCH 2016**

FINDINGS OF FACTS:

7. The IEP in effect in March 2016, the start of the investigation period, was developed in March 2016. At that time, the student was nearing the end of fifth (5th) grade at XXXXXXXXXXXXXXXXXXXX. The IEP team discussed the student’s current functioning, including his resistance and “struggle with wanting to write,” removals from the classroom due to disruptive behavior, and concerns about his pragmatic language skills (Docs. a and b).
8. The March 2016 IEP identifies that the student has needs in the area of written language expression where he was performing at the beginning of the fifth (5th) grade level. The March 2016 IEP states that he has difficulty with spelling, grammar, punctuation, writing his thoughts in paragraph form, making sense of his sentences, and writing the number of words appropriate for his grade level. The IEP includes a goal requiring the student to improve his ability to write informative paragraphs that convey information clearly (Doc. a).
9. The March 2016 IEP also identifies that the student has needs in the area of speech and language pragmatics. More specifically, the IEP indicates that the student needs assistance with improving his skills for initiating and maintaining on topic conversation, expanding on conversation, adjusting language based on the different situations, using appropriate facial gestures and expressions during communication, and interpreting nonverbal facial cues and body language. The March 2016 IEP requires monthly consultations by a speech and language pathologist to provide the school staff with strategies and recommendations to support the student’s pragmatic language needs. It also notes that the student is participating in a “social group” with his peers (Doc. a).
10. The March 2016 IEP also identifies that the student has needs in the area of fine motor skills. It indicates that the student has decreased fine motor skills and decreased motor planning skills, making handwriting a “stressor” for the student. The IEP also reflects that the student’s work fluctuates in legibility, and is affected by his interest in the topic, his attention, his pencil control, and the rate of his writing. The March 2016 IEP includes the requirement for an occupational therapist to provide consultations, at least monthly, with the school staff and the student, in order to develop, review, and monitor strategies to improve the student’s attention, focus, and participation in the classroom, including, specifically, with his organization, written work production and completion of tasks (Doc. a).

11. The March 2016 IEP includes information about the student's level of functioning obtained from the results of an independent speech and language assessment and an independent occupational therapy assessment that the student's mother privately obtained in January 2016. The report of the independent occupational therapy assessment includes recommendations by the private evaluator to address the student's sensory processing and fine motor skills development, including direct occupational therapy services, and numerous accommodations, modifications and supplementary supports. The report of the independent speech and language assessment also includes recommendations by the private evaluator to address the student's pragmatic communication needs, including direct speech and language therapy services, and numerous accommodations, modifications and supplementary supports (Docs. a, o and p).
12. The prior written notice from the March 2016 IEP team meeting documents that the IEP team at XXXXXXXXXXXXXXXXXXXX discussed the reports of the independent speech and language and occupational therapy assessments. The IEP developed by the team at the March 2016 meeting reflects some of the recommendations from these private reports. However, there is no documentation that the IEP team considered all of the recommendations within these private reports and whether to accept or reject each recommendation (Docs. b, o and p, review of the student's education record, and interview with the school system staff).
13. The March 2016 IEP identifies that the student has behavioral needs in the area of self-management. It provides the following information about his functioning in this area:
 - He requires prompts to initiate nonpreferred tasks, staying organized, completing tasks, and "demands a lot of attention from his teachers."
 - He has difficulty waiting, will "impulsively call out" and interject multiple times during instruction, and "tends to work quickly and carelessly when given any assignment."
 - He has "verbal and physical outbursts that are disruptive to the class," and impact his completion of assignments and tasks.
 - "At times, he can be redirected easily, other times, he becomes volatile and his behavior escalates to physical aggressions towards others and objects."

The March 2016 IEP states that the student's "poor impulse control, physical aggression, and escaping from instructional areas impedes his academic performance and hinders his learning with great frequency and intensity" (Doc. a).

14. The March 2016 IEP includes two (2) behavioral goals focusing on the student's need to improve his self-management skills. One (1) goal addresses his need to complete work, and the second goal addresses his need to comply with directions, refrain from physical aggression and verbal defiance, and remain in his designated area. To further address the student's behavioral needs, the IEP also requires accommodations, including extended

time, multiple breaks, and reduced distractions, as well as supplementary supports, including preferential seating, strategies to regulate his emotions, frequent reminders of rules, reinforcement of positive behavior with verbal and nonverbal communication, opportunities to meet with a school psychologist or counselor, and the support of a “crisis teacher” on a daily basis. In addition, the IEP requires that the student will have the opportunity to meet with a psychologist or counselor, “on an as needed basis” (Doc. a).

15. There is documentation that the school staff conducted a Functional Behavior Assessment (FBA) and developed a Behavior Intervention Plan (BIP) in February 2016. However, there is no documentation that the IEP team reviewed the results of the FBA or approved of a BIP (Docs. a, b, l and m).
16. To assist the student with achieving the annual IEP goals, the March 2016 IEP requires that he be provided with five (5) hours of specialized instruction each week in the general education classroom (Doc. a).
17. In June 2016, the school staff documented that the student had achieved the self-management behavioral goal addressing work completion, and that he was making sufficient progress towards achieving the self-management behavioral goal requiring him to comply with directions and to refrain from physical aggression. The school staff also documented that the student was making sufficient progress towards mastery of the written language expression goal, noting his ability to write at least five (5) paragraphs consisting of three to four (3 - 4) sentences (Doc. d).
18. On June 7, 2016, the IEP team convened to discuss the student’s transition from elementary school to middle school and his current progress. The IEP team discussed that the student’s writing had improved and that he was no longer demonstrating difficulty with writing. The IEP team also discussed that, while the student previously displayed “a lot of unacceptable behaviors” earlier in the school year, his behavior “has progressed in a positive direction.” The school staff reported that the student now communicates with them before behavior occurs, is able to express his feelings, explain his behavior, and identify positive solutions. The student’s grandfather reported that the student was receiving outside therapy and was taking medication to help with his behavior (Doc. b).
19. At the June 7, 2016 IEP team meeting, the IEP team discussed that, while the student continues to require crisis support, the middle school that he would attend if not disabled, XXXXXXXXXXXXXXX (XXXXXXXXXX), does not provide crisis support. They discussed other middle schools that included a behavior specialist on staff who could provide crisis support to the student. The IEP team amended the IEP to require weekly counseling sessions to help with the student’s adjustment to middle school and any behavioral concerns, and referred the student to the Central Office staff for assistance with determining the appropriate school location that can implement his IEP (Doc. b).

20. The student began the 2016 - 2017 school year attending XXXXXXXXXX (Docs. a and b, and interview with the parties).
21. On September 7, 2016, the IEP team convened with the participation of the Central Office staff. The IEP team discussed that the student had made a successful transition to XXXXXXXX, and that he had not required crisis intervention. The IEP team determined that the student no longer required crisis intervention support, but that he does require additional adult support in the classroom for assistance him with his focus, transitions, and behavioral and “emotional regulation.” They also decided that the student will be provided with the support of weekly check-ins with a trusted adult to discuss his daily routine and problem solving for making good decisions. The IEP team increased the student’s counseling services to twice a month, and determined that the student’s needs can be met at XXXXXXXXXX (Docs. a and b).
22. On October 3, 2016, the IEP team convened to review current data on the student’s behavior. The school staff reported that the student was not exhibiting any interfering behaviors at the time. The IEP team agreed to continue the data collection in order to conduct an FBA. The student’s grandfather provided consent for the FBA, and the IEP team agreed to reconvene after the end of the first (1st) quarter to review the data and consider whether the student requires a BIP. The IEP team decreased counseling services, from weekly to twice per month, to address the student’s coping skills, self-advocacy, and social skills. In addition, the prior written notice document of the decisions made at this meeting reflects that the IEP team determined that the independent speech and language assessment and independent occupational therapy assessment obtained by the parent “should be reviewed to determine the need for updated assessments or additional services” (Docs. a and b).
23. In October 2016, the school staff decided to provide the student with a portable word processor device to trial his use of the device for written assignments. The school staff documented that the student’s trial use of the device “was not successful as he is not motivated to use it.” However, the device malfunctioned, and the school staff were unable to obtain any of the work produced by the student using the device in order to determine his actual use of the device. The school system staff documented the student’s preference for using paper and pencil to complete written work, and documented the student’s self-report that when he becomes fatigued from writing, he needs to “rest and shake his hands as he takes a short break,” and that he does not need the device (Docs. d, e and r).
24. At the end of the first (1st) quarter of the 2016 - 2017 school year, the school staff documented that the student was successfully complying with adult directives and refraining from verbal defiance at the rate of 90 to 95 percent, and that he is a “cooperative learner,” enjoys working in groups, and actively engages with peers. The school staff also documented that the student was making sufficient progress towards mastery of all of the IEP goals (Doc. d).

25. On November 9, 2016, the IEP team reconvened with the participation of the Central Office staff. They discussed that the student was “doing well” as reflected by his grades earning him a place on the honor roll, and that he was being successful without the use of the “electronic note taker” device. They also discussed that there were “minimal concerns” about his behavior, and determined not to conduct an FBA or develop a BIP. The IEP team determined that the student’s current placement at XXXXXXXXXX was appropriate to meet his needs, and rejected a change in placement (Docs. a and b).
26. In January 2017, the school staff documented that the student was making sufficient progress towards mastery of the IEP goals (Doc. d).
27. On January 5, 2017, the occupational therapist spoke with the student’s grandfather by telephone. They discussed the student’s present levels of performance in the area of fine motor skills, the outcome of his trial use of a portable word processor, and supplementary services for consultation to support the student’s challenges in the area of self-advocacy skills and to implement strategies for organization and writing (Doc. r).
28. On January 19, 2017, the IEP team convened to conduct the annual review of the student’s program. The January 2017 IEP developed at this meeting reflects that the student continues to have needs in the areas of written language expression, speech and language pragmatics and fine motor skills. To address these areas, the January 2017 IEP includes a revised goal in the area of written language expression, and continues the requirement for monthly consultations by a speech and language pathologist to support the student’s pragmatic needs, and by an occupational therapist to address the student’s organization, work completion and self-advocacy skills (Doc. a).
29. At the January 2017 IEP meeting, the IEP team determined that the student’s disability “causes him to have difficulty with focusing to complete tasks[s], organizing, and to complete assignments in a timely manner.” However, the IEP developed on January 19, 2017 no longer identifies that the student has any behavioral needs in the area of self-management, nor does it reflect that behavior is an area affected by the student’s disability any longer.¹ The IEP developed by the team no longer includes additional adult support or strategies to regulate emotions as supplementary supports, nor counseling as a related service. The IEP retained the supplementary supports of check-ins with a teacher or guidance counselor, as needed, to discuss problem-solving and strategies to use when upset or angry, opportunities, as needed, for the student to meet with a school counselor or psychologist, and daily reminders to self-check his behavior. (Docs. a and b).

¹ The January 2017 IEP includes *no* information in the present levels of performance section about the student’s behavior (Doc. a).

30. The prior written notice document from the January 2017 meeting does not state the basis for the IEP team’s decisions that the student no longer has behavioral needs relating to his self-management skills, or the need for additional adult support, strategies to regulate his emotions, and counseling services (Docs. a and b).
31. At the January 2017 IEP team meeting, the student’s mother expressed her belief that the student requires additional occupational therapy services to address his fine motor skills used for handwriting. In response, the school staff “asked [the mother] to contact her insurance to inquire if they could assist with providing assistance to address [the student’s] handwriting.”² The student’s mother also expressed her belief that the student requires assistive technology to complete writing assignments. The IEP team agreed to request a consultation by the Central Office staff specializing in assistive technology, but the school staff did not document the basis for refusing the parent’s request for additional occupational therapy services (Doc. b).
32. On February 16, 2017, the IEP team convened at the request of the student’s mother and grandfather. The IEP team discussed that the student has been on the honor roll since kindergarten, and is interested in becoming a computer programmer or computer engineer. The student’s mother expressed her continued disagreement with the amount of occupational therapy services required by the IEP, and her belief that the student requires additional services to address his handwriting, referencing the recommendations within the report of the independent occupational therapy assessment that she privately obtained. The school system staff documented that the student demonstrates “functional penmanship” that meets the demands of his 6th grade level, and that he can use a classroom computer for “lengthy” written assignments.³ The IEP team did not agree to the mother’s request for increased occupational therapy services, noting that the student will continue to receive the same monthly consultation services by an occupational therapist to assist with strategies for organization, written work production, and task completion. The school staff “explained” that the recommendations in the private assessment report were reviewed and considered “at the time the report was reviewed by the previous IEP team” at XXXXXXXXXXXXXXXXXXXXXXX (Docs. a and b).

² Following the meeting, the school system staff sent the student’s grandfather information about websites that provide practice for keyboarding skills, practice in penmanship, and checklists to use for editing writing activities (Doc. e).

³ In an email dated March 9, 2017, the school staff discussed prompting the student to request use of the classroom computer if needed for long writing assignments (Doc. e).

33. In early March 2017, the Central Office staff specializing in assistive technology completed a consultation. As part of the consultation, the Central Office staff interviewed the student who reported hand fatigue when writing long assignments. She also interviewed four (4) school system staff who have observed the student in the school setting. Following the consultation, the student was provided with a portable electronic keyboard to use, at school and home, to gather data to assist in determining whether he requires the device in order to access the general education curriculum. This device is the same device that was provided to the student for a brief period in October 2016 (Doc. e).
34. In March 2017, the school staff documented that the student was making sufficient progress towards mastery of the written language expression goal. They noted that his work is “commendable and he is consistently engaged and task oriented” (Doc. d).
35. A review of the log notes maintained by the occupational therapist, from October 2016 to March 2017, documents that the occupational therapist provided monthly, and sometimes twice per month, consultative services monitoring the student’s classroom performance, and providing the school staff with many recommendations and strategies to address the student’s organization, written work production, and task completion (Doc. r).
36. A review of handwritten work produced by the student during the 2016 - 2017 school year indicates that the student has legible handwriting. However, the work samples also reflect writing that is inconsistent in the sizing of letters and word spacing (Doc. s).
37. The student has earned As and Bs since the start of the 2016 - 2017 school year, and has been on the honor roll (Doc. q).
38. From September 2016 through April 2017, the school staff maintained a daily progress report to track and record the student’s behavior throughout the school day (behavior reports). The behavior reports were regularly sent home to the student’s grandfather, and were regularly returned to school with the grandfather’s signature. The behavior reports document that the student consistently arrived on time and brought materials to class, completed classwork, behaved “appropriately” with peers and adults, turned in homework, and recorded homework (Doc. h, and review of the student’s educational record).
39. The school system staff report that the student was not consistently provided with monthly consultations by a speech and language pathologist (Interview with the school system staff).

Ms. Ronnetta Stanley
Ms. Trinell Bowman
May 11, 2017
Page 13

40. There is no documentation that the IEP team at XXXXX has reviewed the reports of the independent occupational therapy assessment and independent speech and language assessment privately obtained by the parent. The IEP team at XXXXXXXX agreed in October 2016 to review the reports in order to determine the need for additional services or updated assessments (Doc. b, interview with the school staff, and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a 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 the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

In this case, the complainant has expressed concern about the student's social, emotional, and behavioral needs, speech and language needs relating to pragmatic skills, and his fine motor needs relating to handwriting.

Behavioral Needs Relating to Self-Management Skills

Based on the Findings of Facts #7, #13, #14, #19 and #21, the MSDE finds that, from the start of the investigation period until January 2017, the student's IEP included goals, supplementary services, and counseling as a related service, designed to address the student's behavioral needs relating to self-management skills.

Based on the Findings of Facts #28 and #29, the MSDE finds that, in January 2017, the IEP team determined that the student no longer has any behavioral needs, and removed several behavior related supports from the IEP. However, based on the Finding of Fact #30, the school staff did not document the basis for these decisions.

Based on the Findings of Facts #17, #18, #21, #22, #24 - #26, #37 and #38, the MSDE finds that there is documentation that the student was meeting with consistent success in all behavioral areas previously identified of concern. However, as stated above, the parent was not provided with the opportunity to participate in the IEP team meetings because he had not been provided with the opportunity to inspect and review the student's educational record, as requested. Therefore, the MSDE finds that the PGCPS did not ensure proper procedures were followed when developing the IEP, and a violation occurred.

Ms. Ronnetta Stanley
Ms. Trinell Bowman
May 11, 2017
Page 14

Speech and Language Needs Relating to Pragmatic Skills

Based on the Findings of Facts #7, #9 and #28, the MSDE finds that the student's IEP includes monthly consultations by a speech/language therapist as a supplementary service, and counseling as a related service, designed to address the student's identified needs in the area of pragmatic language and social skills.

However, based on the Findings of Facts #11, #12, #22, #32 and #40, the MSDE finds that there is no documentation that the IEP team has considered the recommendations in the private report of the independent speech and language assessment obtained by the parent, or that the parent was provided with the opportunity to participate in the IEP team meetings. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Fine Motor Needs Relating to Handwriting

Based on the Findings of Facts ##7, #10 and #28, the MSDE finds that the student's IEP includes monthly consultations by an occupational therapist as a supplementary service designed to address the student's fine motor needs in the area of written work production.

Based on the Findings of Facts #31 and #32, the MSDE further finds that, in January 2017 and February 2017, the parent requested increased occupational therapy services to address the student's handwriting. Based on the Finding of Fact #31, the MSDE finds that, while the school staff's response directing the parent to contact her insurance company was inappropriate, the IEP team agreed to consult with school system staff specializing in assistive technology in order to determine whether the student's handwriting could be supported by the use of assistive technology. Based on the Findings of Facts #32 and #33, the MSDE finds that the school system staff are currently exploring whether the use of a portable note taking device for lengthy writing assignments will benefit the student, and the student has the option of using the classroom computer for written assignments.

However, based on the Findings of Facts #32 and #40, and as stated above, the MSDE finds that the parent was not provided with the opportunity to participate in the IEP team meetings, and there is no documentation that, in March 2016, the IEP team at Arrowhead Elementary School considered the recommendations in the report of the independent occupational therapy assessment that the parent privately obtained. Based on the Finding of Fact #22, the MSDE finds that, in October 2016, the IEP team at XXXXXXXX MS agreed to review the report of the independent occupational therapy assessment. However, based on the Findings of Facts #32 and #40, the MSDE finds that, in February 2017, the school based members of the XXXXXXXX MS IEP team refused to consider the report and recommendations in the report. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

ALLEGATION #3

**PROVISION OF SPEECH AND LANGUAGE
CONSULTATIVE SERVICES SINCE THE START
OF THE 2016 - 2017 SCHOOL YEAR**

FINDINGS OF FACTS:

41. The IEP in effect since the start of the 2016 - 2017 school year includes the requirement that the student be provided with monthly consultations by a speech and language pathologist with the IEP team in order to provide and implement strategies and recommendations to support the student's needs in the area of pragmatic language (Doc. a).
42. On February 22, 2017, the school staff sent correspondence to parents and guardians of students at XXXXXXXXXXXX informing them that the school is "without the services of a Speech and Language Pathologist." The correspondence noted that "there is a national shortage of Speech-Language Pathologists," and explained that the school staff are working with the Central Office staff in an effort to fill the vacancy (Doc. j).
43. The school system staff acknowledge that the student has not been consistently provided with monthly consultations by a speech and language pathologist since the start of the 2016 - 2017 school year. The school system staff explained that they have had difficulty providing consistent staffing of a qualified speech/language therapist to provide services at the student's school, and throughout the school system. While the school system staff also reported that they have contracts with twelve (12) agencies to identify qualified speech/language therapists, there is no documentation of efforts by the PGCPS to recruit additional qualified speech/language therapists (Docs. b and e, and interview with the school system staff).

DISCUSSION/CONCLUSIONS

The public agency is required to ensure that each student with a disability is provided with the special education instruction, accommodations and supplementary supports required by the student's IEP (34 CFR §§300.101 and .103). Based on the Findings of Facts #41 - #43, the MSDE finds that a violation occurred.

ALLEGATION #4

**IEP PROGRESS REPORTS SINCE THE START OF
THE 2016 - 2017 SCHOOL YEAR**

FINDINGS OF FACTS:

44. The IEP in effect during the investigation period requires notification to the parent, each quarter, of the student's progress towards mastery of the annual IEP goals. The student's

grandfather is his legal guardian, and the IEP identifies the student's grandfather and his mother as parent or guardian (Doc. a).

45. There is documentation that the school staff prepared reports of the student's progress towards mastery of the annual IEP goals in October 2016, November 2016, January 2017, and March 2017 (Doc. d).
46. The first (1st) quarter of the 2016 - 2017 school year ended on October 28, 2016, and the second (2nd) quarter of the 2016 - 2017 school year ended on January 19, 2017 (Doc. n).
47. There is documentation that the IEP team convened meetings during the first (1st) and second (2nd) quarters of the 2016 - 2017 school year,⁴ and that the student's grandfather and his mother (via telephone) participated in each of these meetings. The documentation reflects that the IEP team discussed the student's performance at each meeting (Docs. b and c).
48. There is no documentation that the school staff provided any IEP progress reports to the student's mother or grandfather prior to February 2017 (Interview with the school staff and review of the student's educational record).
49. The school staff's communication log reflects that, on February 9, 2017, the school staff sent the January 2017 IEP progress reports to the student's grandfather "via the student" (Doc. f).
50. On February 20, 2017, the student's grandfather sent an email to the school staff confirming his receipt of the January 2017 IEP progress reports. The grandfather reported that "this is the first progress report received all year." In a separate email sent on the same date, the student's grandfather requested the November 2016 IEP progress report (Doc. e).
51. On February 24, 2017, the school staff sent an email to the student's grandfather and mother. The email indicates that the October 2016 and November 2016 IEP progress reports were included as attachments to the email (Doc. e).
52. On March 6, 2017, the school staff sent an email to the student's grandfather asking whether he received the documents that he requested. On the same date, the student's grandfather reported that he "never received" the email with the attachments, and indicated that the size of the attachments may have been an interfering factor (Doc. e).

⁴ The IEP team convened on October 3, 2016, November 9, 2016, and January 19, 2017 (Docs. a - c).

53. On March 7, 2017, the school staff sent an email to the student's grandfather and mother stating that the documents would be sent individually to the student's grandfather by the end of the week, and asking whether the student's mother had received the documents. The student's mother reported that, while she received the October 2016 and November 2016 progress reports, she did not receive the "February 2017" progress reports⁵ (Doc. e).
54. On March 9, 2017, the school staff sent an email to the student's mother and grandfather that included the October 2016, November 2016, and January 2017 IEP progress reports (Doc. e).

DISCUSSION/CONCLUSIONS:

The IEP must include a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parents. The public agency must provide all services as described in the IEP (34 CFR §§300.101, .320 and .323).

Based on the Findings of Facts #44 - #46, and #48, the MSDE finds that there is no documentation that the school staff provided written IEP progress reports to the student's mother or grandfather after the first (1st) and second (2nd) quarters of the 2016 - 2017 school year. Based on the Findings of Facts #49 - #54, the MSDE finds that between February 9, 2017 and March 9, 2017, the school staff provided the student's mother and grandfather with the October 2016, November 2016, and January 2017 IEP progress reports. Therefore, the MSDE finds that there was a delay in providing the quarterly IEP progress reports, and finds a violation occurred.

Notwithstanding the violation based on the Finding of Fact #45, the MSDE finds that the student's progress was reviewed with the student's mother and grandfather during the IEP team meetings in November 2016 and January 2017. Therefore, the MSDE finds that there is no impact on the student, and does not require any student-based corrective action.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the PGCPS to provide documentation, by July 15, 2017, of the following: that the IEP team has convened and taken the following actions:

1. The IEP team has convened and given the parents the opportunity to express their concern, and address each of the concerns. If the IEP is revised as a result of addressing the concerns, the IEP team must also determine the

⁵ There is no documentation that February 2017 progress reports were developed. This was understood to be a request for the January 2017 IEP progress reports (Interviews with the parties).

Ms. Ronnetta Stanley
Ms. Trinell Bowman
May 11, 2017
Page 18

compensatory services or other remedy for the delay in the provision of services.

2. The IEP team has reviewed the independent speech and language assessment and the independent occupational therapy assessment, and determined whether to accept or reject the recommendations included in each report. If the IEP is revised based on the review of this data, the IEP team must also determine the compensatory services or other remedy for the delay in the provision of services.
3. The IEP team has determined whether the violation related to the failure to provide speech and language consultation services had a negative impact on the student's ability to benefit from the special education services. If the IEP team finds a negative impact, the PGCPS must provide documentation that the IEP team has determined the remedy to redress the violation.

The PGCPS must ensure that the parent is provided with written notice of the IEP team's decisions.

The MSDE also requires that the PGCPS provide documentation by January 1, 2018, that the student is consistently being provided with speech and language consultation services required by the IEP.

The PGCPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of the parent's refusal of such compensatory services or other remedy.

School-Based

The MSDE requires the PGCPS to provide documentation by July 15, 2017, of the steps it has taken, including training, to ensure that the XXXXXXXX MS staff comply with the IDEA and related State requirements relating to the violations identified in this Letter of Findings.

Systemic

The MSDE requires the PGCPS to provide documentation by the start of the 2017 - 2018 school year, of the steps taken to recruit qualified speech/language therapists, and every quarter of the 2017 - 2018 school year until the vacant positions are filled.

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.

Ms. Ronnetta Stanley
Ms. Trinell Bowman
May 11, 2017
Page 19

TECHNICAL ASSISTANCE:

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

Please be advised that both the complainant and the PGCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts 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.

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 consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parents 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 a due process complaint.

Sincerely,

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

MEF/sa

c:	XXXXXXXXXX	Jodi Kaseff
	XXXXXXXXXX	XXXXXXXXXX
	Kevin Maxwell	Dori Wilson
	Gwendolyn Mason	Anita Mandis
	LaRhonda Owens	K. Sabrina Austin
	Deborah Anzelone	Bonnie Preis

