



Karen B. Salmon, Ph.D.
State Superintendent of Schools

October 19, 2018

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

RE: XXXXX
Reference: #19-026

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 August 22 and 23, 2018, the MSDE received a complaint from Mr. XXXXXXXXXXXXXXXX, hereafter, "the complainant," on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the Prince George's County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that access to documents was provided in response to a request made on August 16, 2017, prior to an Individualized Education Program (IEP) team meeting on August 23, 2017, in accordance with 34 CFR §300.613.
2. The PGCPS did not ensure that the logs of the speech/language therapy services provided from May 1, 2017 to August 3, 2017, which were requested on August 16, 2017, were maintained in the student's educational record until August 25, 2017, in accordance with 34 CFR §§300.610 - .627, COMAR 13A.08.02, and the *Maryland Student Records System Manual*.

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3. The PGCPS did not ensure the provision of a report of an occupational therapy assessment at least five (5) business days before the August 23, 2017 IEP team meeting in which it was considered, in accordance with COMAR 13A.05.01.07.
4. The PGCPS did not ensure the provision of Prior Written Notice of the decisions made by the IEP team on August 23, 2017, in accordance with 34 CFR §300.503.
5. The PGCPS did not ensure that the IEP revised on August 23, 2017 contained a statement of the student's present levels of performance in the area of fine motor skills, in accordance with 34 CFR §300.320.
6. The PGCPS did not ensure that a sensory profile was completed with parental input, and considered by the IEP team, consistent with the decision made by the IEP team on August 23, 2017, in accordance with 34 CFR §§300.101 and .323 and COMAR 13A.05.01.06E.
7. The PGCPS did not ensure that the IEP team considered the parent request to monitor the effectiveness of services that were recommended in the report of the occupational therapy assessment that was considered by the team on August 23, 2018 and accepted by the team, in accordance with 34 CFR §300.324.
8. The PGCPS did not ensure that the IEP team considered information about the student's typing skills when determining his need for occupational therapy services on August 23, 2017, in accordance with 34 CFR §§300.304 and .324.

BACKGROUND:

The student is thirteen (13) 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. He attends the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, a nonpublic, separate, special education school, where he is placed by the PGCPS.

FINDINGS OF FACTS:

1. On August 16, 2017, during the summer break and five (5) PGCPS business days before an IEP team meeting scheduled for August 23, 2017, the complainant sent the school staff a request to access numerous documents, including speech/language therapy service logs and all documentation containing information about the student's fine motor skills.
2. On August 17, 2017, four (4) business days before the August 23, 2017 IEP team meeting, the school staff provided the complainant with a copy of a 2017 occupational therapy assessment to be considered at the August 23, 2017 IEP team meeting.

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3. On August 21, 2017, the school staff provided the complainant with some of the documents requested on August 16, 2017, and indicated that occupational therapy and speech/language therapy logs, bus referrals, and records reflecting the student's handwriting, typing, shoe tying, and other fine motor skills would be provided after the school staff returned from summer break on August 23, 2017.
4. The school system staff report that, it is the practice, both within the PGCPs, and at the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, to have related service providers maintain a record of the services provided to each student, which is kept by the service provider until the end of each periodic progress reporting period, when it is filed in the record.
5. On August 23, 2017, the IEP team considered the results of the 2017 occupational therapy assessment. This assessment was recommended by the IEP team on May 25, 2017 to address the complainant's concern that the student requires direct occupational therapy services to improve fine motor skills.¹
6. At the May 25, 2017 IEP team meeting, the team documented that the complainant's concerns included that the student "is not able to tie his shoes, or tie anything and he needs to be trained to do that." The team further documented that the complainant expressed concern that "the student was not able to write within the lines and like a student of his grade level." The complainant reported that he shared information from the occupational therapist with the student's developmental pediatric physician, who informed the complainant that he did not observe the student having difficulty remaining focused when working on an electronic tablet. The documentation of the May 25, 2017 IEP team states the following with respect to input from the complainant about the student's typewriting skills:

Learning how to use modern technology equipment such as computers and tablets quickly is one of [the student's] strengths. He learned how to use computers and electronic tablets with minimal or no adult support.

¹ Prior to August 2016, the IEP required direct occupational therapy to address fine motor skills. Based on information from the occupational therapist that the student's lack of progress on IEP goals was the result of his difficulty with focusing on instruction and not fine motor skills weakness, the IEP team discontinued the provision of direct occupational therapy in August 2016 and decided that the student's skills could be improved with the use of Discrete Trial Training, a method of teaching in simplified and structured steps.

Through the investigation of State complaint #17-026, the MSDE found that, in January 2016, the student was not making progress to achieve an IEP goal to improve self-management skills with the provision of direct occupational therapy services. The MSDE found that this lack of progress was not addressed until the August 2016 IEP team meeting when the team decided to provide Discrete Trial Training instead of direct occupational therapy services.

We find him as a self-learner when he uses many technology devices. His education program should be revised to make use of his strength and aptitude to use technology. He needs to be trained to type words and sentences on the computer keyboard faster and with reduced errors.

7. The documentation of the May 25, 2017 IEP team meeting also reflects that the student's teacher reported that when color-coded visual supports were faded, as required by the goal to improve written language skills, the student was not able to use correct capitalization or spacing with consistency. Based on this information, the goal was revised to remove the requirement to fade out the visual supports when typing.
8. On August 23, 2017, the IEP team documented its consideration of the report of the 2017 occupational therapy assessment, which states that the student was observed to participate in instruction on tying his shoe laces, writing his name, and typing, that he demonstrated difficulty following directions, but was able to follow one step directions with one-to-one adult support. The report states that the student is "able to write his name and feed himself independently," and that he "is also able to manage his clothing in the bathroom for toileting tasks." It further states that "participation and engagement in academic and functional/self-care tasks appears to be compromised by behavior and sensory regulation needs," and contains a recommendation that the school staff "continue with individualized instruction for individualized/specific skills acquisition for shoelace tying, writing his name, and typing." It also contains recommendations to explore the use of a calming strategy, sensory strategies, a "move and sit cushion," and short pencils/broken crayons to facilitate a tripod pencil grasp.
9. The documentation of the August 23, 2017 IEP team meeting reflects that the complainant expressed concern at that time that the evaluator did not consider separate typing data that was maintained by the student's teacher when conducting the evaluation. The documentation of the meeting reflects that the IEP team agreed with the complainant's input that the student needs to continue working on improving his typing skills, and based on the teacher's report of the student's progress, the requirement to fade out visual supports was not included in the annual goal to improve this skill.
10. The documentation of the August 23, 2017 IEP team meeting reflects that the complainant also expressed concern that the evaluator did not interview the parents when conducting the evaluation even though the assessment was conducted in order to address their concerns. However, the report of the 2017 occupational therapy assessment states that the evaluator was provided with information about the specific concerns raised by the complainant at the May 25, 2017 IEP team meeting.

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11. At the August 23, 2017 IEP team meeting, the complainant further expressed concern that he was not provided sufficient time to thoroughly complete the parent portion of the sensory profile used in the occupational therapy assessment. The 2017 occupational therapy assessment report states that information contained in the student's educational record, as well as a review of a sensory profile and an observation of the student, was used to develop the report. The report states that the complainant provided information for the sensory profile, but that "specific scores could not be obtained secondary to unanswered questionnaire items as well as the age parameters.² However, the information was sufficient for the evaluator to identify differences in the student's functional performance from typically developing peers. The report states the following:

Overall [the student] appears to have some sensory sensitivities; particularly with activities which involve movement. He also appears to demonstrate more difficulty in loud/noisy/distracting environments. He appears to have low registration; requiring more input to register proprioceptive input as he doesn't seem to notice the input and requires increased force of input to be aware of the input. Lastly, [the student] does not demonstrate the ability to communicate his needs or have established sensory-behavior based coping strategies in place to assist him in being available for learning.

12. Despite the occupational therapy assessment having identified sensory needs, the IEP team decided that "the sensory profile will be re-issued since [the] parent feels [he] did not have sufficient time to complete it in a presentable fashion." However, there is no documentation that the profile was resent to the complainant to complete.
13. The revised IEP includes a statement that the previous fine motor assessment, conducted in 2011, identified needs related to the inability to sit up, trunk control, endurance, and tone. It states that the student is now "much stronger and able to display these characteristics." The IEP also includes information from the school-based members of the team that "the student is able to circle answers on a worksheet, color, and write his name legibly," and that "motor concerns do not seem to be impacting his tasks." It also states that the student's "inability to comply with directions is what is affecting his handwriting," and that he is "able to physically access [the] classroom and manage his daily materials with prompting." In addition, the IEP states that the student "is able to navigate software on his iPad," and that he "utilizes typing and a color-coded keyboard to complete writing tasks within [the] classroom for programmatic tasks."

² The sensory profile is a 125 item questionnaire that addresses a student's ability to process, modulate and respond to sensory information, which can be used with children aged three to ten years old. At the time of the completion of the sensory profile, the student was twelve years old.

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14. At the August 23, 2017 IEP team meeting, the team decided to continue to explore sensory strategies to assist with calming behaviors. The IEP revised as a result of the August 23, 2017 IEP team meeting requires the use of a word processor for writing assignments, visual cues to reduce the language load and engage the student, use of a scribe, visual and graphic organizers, extended time, multiple breaks, a multi-sensory learning environment, social skills instruction, repeated directions, short, simple directions, modified paper, and color coded directions. It also requires continued Discrete Trial Training, close adult supervision, structured routines, reinforcers, motivators, reduced stimuli, uncluttered environment, labeled work spaces with limited visual stimuli, and numerous other supports.
15. At the August 23, 2017 IEP team meeting, the complainant expressed concern that there be a mechanism in place to monitor the student's progress with the supports that were recommended in the 2017 occupational therapy assessment. The IEP requires that the student's progress be monitored and that reports of the progress be issued on a quarterly basis.
16. The documentation of the August 23, 2017 IEP team meeting does not reflect that the IEP team considered the student's needs in any other areas at that meeting.
17. On August 29, 2017, the school staff sent the complainant an electronic mail (email) message indicating that that all documents requested on August 16, 2017 had been provided. On September 1, 2017, the school staff informed the complainant that they had not maintained copies of the student's handwriting samples, but provided him with information about his handwriting.
18. On August 31, 2017, the school staff sent the complainant written notice of the decisions made at the August 23, 2017 IEP team meeting.
19. On September 25, 2017, the complainant requested amendment of the documentation of the August 23, 2017 IEP team meeting.
20. On September 27, 2017, the MSDE issued a Letter of Findings as a result of the investigation of a previous complaint filed by the complainant (State complaint #18-009). The MSDE found that the complainant was not provided with access to a 2011 occupational therapy assessment prior to the August 23, 2017 IEP team meeting in response to his request for all reports of assessments of the student's fine motor skills. The MSDE required the PGCPS to provide the complainant with the document and convene an IEP team to consider his concerns about the student's need for direct occupational therapy services.

21. On October 2, 2017, the school system staff agreed to some of the amendments requested by the complainant on September 25, 2017, and refused other requested amendments, informing the complainant of his right to request a hearing to contest the content of the record.
22. On December 13, 2017, the PGCPS sent the complainant correspondence, again, indicating that all of the records requested on August 16, 2017 had been provided, re-sending some of the documents, and requesting information on any specific documents that had not been provided in response to his request.³
23. On December 18, 2017, the complainant responded that he was unable to identify the documents he had requested but had not received.
24. On December 22, 2017, the PGCPS requested that the complainant schedule a time to review all of the records maintained at the school in order to ensure that he had all requested documents.
25. On January 25, 2018 and March 15, 2018, the IEP team convened and gave the complainant the opportunity to express concerns about the decision regarding the student's need for direct occupational therapy services. At the January 25, 2018 IEP team meeting, the team recommended an assistive technology assessment to address the complainant's concern about whether there are additional assistive technology supports to from which the student would benefit. The results were considered at the March 15, 2018 meeting, and the team decided that the student would be provided with additional software and the use of "STICKY keys on the iPad."
26. The documentation of an IEP team meeting held on May 10, 2018 reflects that the IEP team reviewed the effectiveness of the various strategies and modifications that had been trialed in order to improve the student's ability to understand the expectations and attend to tasks.

CONCLUSIONS:

Allegation #1 Access to the Educational Record

In this case, the complainant alleges that he was not provided with access to documents requested on August 16, 2017 prior to an IEP team meeting convened on August 23, 2017 or since that date. During the course of the investigation, the complainant identified two documents

³ While the complainant disputed whether he had been provided with the report of the 2011 occupational therapy assessment, the MSDE verified that the document had, in fact, been provided, when conducting follow up to the corrective action required as a result of the investigation of State complaint #18-009.

that he requested that he alleges have not been provided; specifically samples of the student's handwriting and a sensory profile completed by the teacher. While he has been provided with information from these sources, the complainant believes that the school staff have maintained the source documents and have not provided him with copies of those documents.

Based on the Findings of Facts #1 and #3, the MSDE finds that the complainant was not provided with all requested documents prior to the IEP team meeting, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #5 - #17, and #19 - #25, the MSDE finds that the IEP team has subsequently convened after the complainant was provided with access to the record order to consider his concerns about the student's need for occupational therapy, and there is no documentation that the IEP team considered any other areas of the student's need at the August 23, 2017 IEP team meeting.

Allegation #2 Maintenance of the Educational Record

In this case, the complainant alleges that the school staff are not ensuring that service logs are maintained in the educational record in a timely manner. The complainant asserts that, as a result, when he requested to review service logs before the August 23, 2017 IEP team meeting while school was not in session, the school staff were not able to make them available prior to the meeting.

Based on the Findings of Facts #3, #4, #17, and #22 - #24, the MSDE finds that service logs are maintained in accordance with established procedures. Because there are no specific requirements for maintenance of these documents in a student's educational record, in accordance with 34 CFR §§300.610 - .627, COMAR 13A.08.02, and the *Maryland Student Records System Manual*, this office does not find that a violation occurred.

**Allegation #3 Provision of the Assessment Report Prior to the IEP Team's
Consideration at the August 23, 2017 IEP Team Meeting**

In this case, the complainant alleges that he was not provided with a copy of the 2017 occupational therapy assessment report that was considered by the IEP team on August 23, 2017 at least five (5) business days before the meeting.

Based on the Finding of Fact #2, the MSDE finds that a copy of the report was not provided to the complainant at least five (5) business days before the meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #2, #20, and #25, the MSDE finds that the complainant was provided with the document four (4) business days before the meeting, and that the IEP team convened again after August 23, 2017 meeting to consider his concerns about the student's need for occupational therapy. Therefore, this office does not require additional corrective action to remediate the violation.

Allegation #4 Provision of Prior Written Notice

In this case, the complainant alleges that he was not provided with prior written notice of the decisions made by the IEP team on August 23, 2017.

Based on the Finding of Fact #18, the MSDE finds that there is documentation that the complainant was provided with prior written notice, in accordance with 34 CFR §300.503. Based on the Findings of Facts #19 and #21, the MSDE finds that, the school staff's agreement to make some of the complainant's requested amendments to the written notice does not negate the fact that the notice was provided in a timely manner. Therefore, this office does not find that a violation occurred.

Allegation #5 IEP Content

In this case, the complainant alleges that the IEP revised on August 23, 2017 did not contain a statement of the student's present levels of performance in the area of fine motor skills.

Based on the Finding of Fact #13, the MSDE finds that the IEP does contain a statement of the student's present levels of performance in the area of fine motor skills, in accordance with 34 CFR §300.320. Therefore, this office does not find that a violation occurred.

Allegation #6 Completion of a Sensory Profile

In this case, the complainant alleges that the IEP team decided on August 23, 2017 that a sensory profile would be completed with his input, but that this was not done.

Based on the Finding of Fact #12, the MSDE finds that the PGCPS did not ensure that another sensory profile form was provided to the complainant, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #11 - #14, the MSDE finds that the evaluator found that there was sufficient data, including initial input from the complainant, to identify the student's sensory needs, and those needs have been addressed in the IEP, in accordance with 34 CFR §300.324. Therefore, this office finds that the violation did not negatively impact the student's ability to benefit from the education program.

Allegation #7 Consideration of Request to Monitor Effectiveness of Services

In this case, the complainant alleges that the IEP team did not address his request that the student's response to the services determined necessary on August 23, 2017 be monitored to ensure that they were effective in addressing the student's needs.

Based on the Findings of Facts #15 and #26, the MSDE finds that the IEP revised as a result of the August 23, 2017 IEP team meeting includes a mechanism for monitoring the student's progress with the provision of IEP services, and that the IEP team has reviewed the effectiveness of the services, in accordance with in accordance with 34 CFR §§300.324. Therefore, this office does not find that a violation occurred.

Allegation #8 Consideration of Concerns About the Student's Typing Skills

In this case, the complainant alleges that the IEP team did not consider his concern that the 2017 occupational therapy assessment reviewed at the August 23, 2017 IEP team meeting did not address the student's typing skills.

Based on the Findings of Facts #5 - #15, the MSDE finds that the 2017 occupational therapy assessment addressed the student's typing skills, that the IEP team considered the complainant's concerns about the student's needs, and that the IEP addresses those needs consistent with the data from the evaluator, the complainant, and the student's teacher, in accordance with 34 CFR §§300.304 and .324. Therefore, this office does not find that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

The PGCPS is required to provide the MSDE with documentation by November 1, 2018 that it has either provided the complainant with the sensory profile completed by the teacher or informed the complainant that they did not maintain this document. It must also provide the complainant with another sensory profile for him to complete. If the complainant requests that the IEP team convene to consider any additional input about the student's sensory needs by December 1, 2018, the PGCPS must provide documentation by February 1, 2019 that the IEP team has convened to do so.

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 from Dr. Nancy Birenbaum, Compliance Specialist, MSDE at (410) 767-7770.

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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 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 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/am

c: Kevin W. Maxwell
Gwendolyn Mason
Barbara Vandyke
Kerry Morrison
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Dori Wilson
Anita Mandis
Nancy Birenbaum