




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

November 2, 2020




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

RE: 
Reference: #21-014

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 September 11, 2020, the MSDE received correspondence from Mr.  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 has not ensured access to the educational record in response to requests made on April 24, 2020, May 29, 2020, and June 1, 2020, in accordance with 34 CFR §300.613.
2. The PGCPS has not ensured that copies of the speech/language therapy logs and Work Place Review documents were provided, consistent with the decision of the Individualized Education Program (IEP) on June 9, 2020, in accordance with 34 CFR §§ 300.101, .103, and .323.

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services.

The student is placed by the PGCPS at [REDACTED] a nonpublic, separate, special education school, which he attended from July 1, 2019 until the Statewide closure of school buildings as a result of the national COVID-19 pandemic.

FINDINGS OF FACTS:

1. An electronic mail message (email) and attached correspondence, dated April 24, 2020, documents that on that date, the complainant requested access to any and all education records created between March 13, 2020 and April 23, 2020 and any and all education records which were modified between March 13, 2020 and April 23, 2020.
2. An email and attached correspondence, dated May 29, 2020, documents that on that date, the complainant requested access to any and all education records created between April 24, 2020 and May 28, 2020 and any and all education records which were modified between April 24, 2020 and May 28, 2020.
3. An email and attached correspondence, dated June 1, 2020, documents that on that date, the complainant requested access to transition plans that were in effect for the student from July 1, 2019 to May 31, 2020, logs of transition activities from July 1, 2019 to May 31, 2020, and data collected during transition activities from July 1, 2019 to May 31, 2020.
4. An email, dated June 3, 2020, documents that on that date, the school staff sent the complainant correspondence stating that there were no educational records created between April 24, 2020 and May 28, 2020, and no records modified between April 24, 2020 and May 28, 2020. The email further stated that the transition plan from the student's IEP was being provided with the email, and explained that the progress report embedded in the transition plan goals that were being attached serve as the log of transition activities and provides the data collected regarding those activities from July 1, 2019 to May 31, 2020. Attached to the email were copies of the documents.
5. A June 9, 2020 IEP and the audio recording of the IEP team meeting document that on that date, the IEP team convened to conduct the annual IEP review. At that meeting, the transition coordinator reported on the student's progress with transition activities. In addition to the transition documents provided on June 3, 2020, the complainant acknowledged at the meeting that the transition coordinator had provided him with photographs of the student engaged in transition activities. However, the complainant requested that he also be provided with all notes taken by the transition coordinator during the provision of transition activities, and the team discussed that those documents would be provided. A review of the audio recording reflects that the complainant was able to participate in the discussion of transition planning for the student at the meeting with the documents he had already received.

6. The June 9, 2020 IEP and the audio recording of the IEP team meeting document that on that date, the speech/language therapist reported on the student's progress with speech/language therapy. The complainant requested speech/language service logs, and the IEP team discussed that they would be provided to him.
7. The June 9, 2020 IEP and the audio recording of the IEP team meeting document that on that date, the team did not review the Individualized Continuity of Learning Plan (ICLP) for the provision of services following the closure of school buildings as a result of the COVID-19 pandemic, which was developed in April 2020.
8. An email, dated June 26, 2020, documents that on that date, the school staff responded to the complainant's April 24, 2020 request, stating that the only records that were created between March 13, 2020 and April 23, 2020 were the ICLP and the revision to the ICLP reflecting the complainant's input. The email states that it was the understanding of the school staff that the complainant had already received both documents, but that the documents were being provided again in response to his request. Attached to the email were copies of the documents.
9. A July 6, 2020 IEP and the audio recording of the IEP team meeting document that on that date, the IEP team discussed the student's diagnosis with a seizure disorder and the documentation needed to administer medication. There was no discussion of transition planning or speech/language services at the meeting.
10. An email, dated September 14, 2020, documents that on that date, the school staff sent the complainant the speech/language therapy logs and the transition coordinator's notes contained in forms titled, "Work Place Review." The school staff report that they did not have access to the Work Place Review forms between the June 9, 2020 request and this time because they were maintained in a building that was previously closed to staff due to the COVID-19 pandemic.
11. An email, dated September 23, 2020, documents that on that date, the PGCPs staff re-sent to the complainant the documents sent by the school staff on September 14, 2020. The email indicates that the PGCPs staff member re-sent the documents in response to a September 22, 2020 request from the complainant to have the documents re-sent.
12. An email, dated September 30, 2020, documents that on that date, the complainant responded to the school staff that he had requested access to "the original documents which do not have watermarks." In the email the complainant stated "I am unable to properly read and effectively review the documents you provided."
13. The documents sent to the complainant contain watermark stamps stating

14. A letter from the school staff to the complainant, dated September 30, 2020, documents that on that date, the school staff explained that it has a practice of placing stamped notations on all documents provided to parents “to ensure authenticity and confidentiality when there is identifying information.” The school staff referred to the stamped notations as a “watermark,” and stated that “the watermarked documents are original documents and have not been modified.” The letter indicates that this was explained to the complainant previously on June 15, 2020 when responding to additional requests he had made for documents, and that they would not change the practice of using the watermark on documents provided to parents.
15. The information contained on the documents provided to the complainant can be read despite the stamped notations or “watermarks.”
16. There are IEP documents that reflect that additional IEP team meetings were held on October 1 and 8, 2020.
17. The MSDE issued a Letter of Findings on August 6, 2020 as a result of the investigation of a State complaint that the complainant previously filed (State complaint #20-137). In that Letter of Findings, the MSDE required the PGCPs to develop a communication protocol to ensure timely responses to the complainant’s frequent requests for access to documents contained in the educational record.

DISCUSSION/CONCLUSIONS:

Allegation #1 Access to Records

The public agency must permit parents to inspect and review the educational record without unnecessary delay and before any meeting regarding an IEP, and in no case more than forty-five (45) days after the request is made (34 CFR §.300.613).

In promulgating the IDEA regulations, the United States Department of Education (USDOE) explained that the Family Educational Rights Privacy Act (FERPA) requirements with respect to parental access to educational records apply to the IDEA (*Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46736). The USDOE has held that the FERPA does not require a public agency to maintain those records in a particular manner (*Letter to Anonymous*, 116 LRP 22843, January 14, 2016).

In this case, the complainant alleges that the PGCPs did not ensure that he was provided with access to requested documents in a timely manner and that the documents to which he has been given access are not responsive to his requests because they contain a watermark reflecting that access was provided.

April 24, 2020 Request

Based on the Findings of Facts #1, #5, and #8, the MSDE finds that the PGCPs did not ensure that the complainant was provided with documents requested on April 24, 2020 within forty-five (45) days and prior to the IEP team meeting held on June 9, 2020, in accordance with

34 CFR §.300.613. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #1, #5, #7, and #8, the MSDE finds that the documents that were requested have been provided, and were not addressed during the IEP team meeting held prior to the provision of the documents. Based on the Finding of Fact #17, the MSDE further finds that corrective action has already been required to ensure that documents are provided within required timelines. Therefore, no corrective action is required to remediate the violation.

May 29, 2020 Request

Based on the Findings of Facts #2 and #4, the MSDE finds that the PGCPS responded to the May 29, 2020 request for access to documents within the required timelines. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

June 1, 2020 Request

Based on the Findings of Facts #3 and #4, the MSDE finds that documents containing data collected during transition services, which were requested on June 1, 2020, were provided before the IEP team meeting held within three (3) school days of the request in a timely manner, in accordance with 34 CFR §300.613. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #2 Implementation of Decisions to Provide Speech/Language Logs and Work Place Review Documents to the Complainant

The public agency must ensure that each student with a disability is provided with the special education and supplementary aids and services needed to advance appropriately toward attaining the annual IEP goals, be involved in the general education curriculum, and participate in nonacademic and extracurricular activities (34 CFR §§300.101, .320, and .323).

As stated above, the public agency must permit parents to inspect and review the educational record without unnecessary delay and before any meeting regarding an IEP, and in no case more than forty-five (45) days after the request is made (34 CFR §.300.613).

Based on the Findings of Facts #5 and #6, the MSDE finds that the IEP team decided to provide the complainant with copies of speech/language logs and Work Place Review forms not because it determined that this was necessary for the student to receive a Free Appropriate Public Education (FAPE), but in response to the complainant's request for access to those documents.

Based on the Findings of Facts #5, #6, and #10 - #15, the MSDE finds that, although the documents were eventually provided, despite the watermark, they were not provided to the complainant within forty-five (45) days of his request, in accordance with 34 CFR §.300.613. Therefore, this office finds that a violation occurred.

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Notwithstanding the violation, based on the Finding of Fact #9, the MSDE finds that the violation did not impact the complainant's ability to participate in the education decision-making process because neither transition services nor speech/language services were discussed at the July 6, 2020 IEP team meeting.

In addition, based on the Findings of Facts #10 - #16, the MSDE finds that the complainant was provided with the documents prior to the IEP team meetings that were held following the July 6, 2020 IEP team meeting held prior to the provision of the documents.

The MSDE further finds that based on Finding of Fact #17, corrective action has already been required to ensure that documents are provided within required timelines. Therefore, no corrective action is required to remediate the violation.

TIMELINE:

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.

The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a 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

c: Monica Goldson
Barbara Vandyke
[REDACTED]
Gail Viens
Dori Wilson
Anita Mandis