



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

October 27, 2020

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Dr. Karen B. Salmon
Superintendent
Maryland Department of Education
200 West Baltimore Street
7th floor
Baltimore, Maryland 21201

RE: XXXXX
Reference: #21-020

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.

ALLEGATION:

On September 25, 2020, the MSDE received correspondence from Mr. XXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the MSDE violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the established complaint investigation procedures were not followed to resolve the issue in State complaint #20-137; specifically, the allegation that the July 16, 2019 Individualized Education Program (IEP) team did not include a special education teacher of the student, in accordance with 34 CFR §§ 300.152 and .600.

XXX

Dr. Karen B. Salmon

October 27, 2020

Page 2

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 Prince George's County Public Schools (PGCPS) at XXXXXXXX XXX, a nonpublic, separate, special education school, which he attended from July 1, 2019 until the Statewide closure of schools as a result of the national COVID-19 pandemic.

FINDINGS OF FACTS:

1. On the MSDE website, a document entitled *Special Education State Complaint Resolution Procedures*, documents that there are written State complaint investigation procedures. These procedures require the following:
 - a. Upon receipt of the complaint, the MSDE forwards the complaint to the designated public agency personnel;
 - b. The complainant and the public agency are provided with written notification that acknowledges receipt of the complaint, identifies the allegations subject to the investigation, includes the timeline for resolution, informs the parties of the right to submit additional information and identifies the MSDE staff person assigned to resolve the complaint. The written notification includes a statement that if the public agency offers the remedy to the complainant that is proposed in the letter of complaint, MSDE will consider the matter resolved.
 - c. The MSDE conducts an independent investigation that includes an on-site visit, if necessary, to complete the independent investigation, which must be completed within sixty (60) calendar days of receipt of the complaint. These timelines may be extended for exceptional circumstances or to allow the parties to attempt mediation, in which case, the parties are notified in writing of the extension.
 - d. The MSDE issues a written Letter of Findings to the complainant and the public agency, which includes:
 - i. A statement of the allegations investigated;
 - ii. Findings of facts and conclusions for each allegation investigated, including a statement of whether or not a violation of State or federal law and reasons for the conclusions;
 - iii. The corrective actions the public agency must take if violations are identified;
 - iv. Timelines for completing corrective actions;
 - v. An MSDE contact person for technical assistance in completing the corrective actions; and

- vi. A statement informing the parties that they maintain the right to request mediation or file a due process complaint to resolve the matter subject to the State complaint if they disagree with the MSDE decision.
 - e. If either party disagrees with the conclusions reached, that party has the right to submit additional information if submitted within fifteen (15) calendar days of the date of the Letter of Findings. Pending consideration of the information, the public agency must complete corrective action within the required timeline.
2. An electronic mail message (email) from the complainant to the MSDE forwarding letters dated June 7 and 10, 2020, which was sent after the close of business on June 10, 2020, documents that the complainant filed a State complaint with the MSDE. The State complaint was logged in as received on the next business day, June 11, 2020, and was assigned as State complaint #20-137. The State complaint alleged violations of the IDEA and related requirements with respect to the student by the PGCPs.
3. An email from the MSDE to the complainant documents that, after the close of business on June 10, 2020, the MSDE confirmed receipt of the State complaint with the complainant.
4. An email from the MSDE to the PGCPs documents that, on June 11, 2020, the MSDE provided a copy of the State complaint to the PGCPs.
5. An email from the MSDE staff member assigned to investigate the State complaint, hereafter, "the MSDE complaint investigator," to the complainant documents that, on June 11, 2020, the MSDE complaint investigator attempted to contact the complainant by telephone and email that day to discuss the allegations to be investigated. The MSDE complaint investigator requested documents and to schedule a telephone interview to clarify the allegations to be investigated.
6. An email from the complainant to the MSDE documents that, on June 14, 2020, the complainant submitted additional allegations for investigation. One (1) of the allegations was that the PGCPs did not ensure that the IEP team that convened on July 16, 2019 included a special education teacher of the student. The MSDE complaint investigator requested documents and scheduled a telephone call to discuss the allegations.
7. An email from the MSDE to the complainant documents that, on June 15, 2020, the MSDE confirmed receipt of the June 14, 2020 correspondence.
8. An email from the MSDE to the PGCPs documents that, on June 15, 2020, the MSDE informed the PGCPs of the additional allegations.
9. An email from the complainant to the MSDE complaint investigator documents that, on June 16, 2020, the MSDE complaint investigator conducted a telephone interview with

XXX

Dr. Karen B. Salmon

October 27, 2020

Page 4

- the complainant about the allegations. The email also documents that on that date, the complainant raised an additional allegation for investigation.
10. An email from the MSDE complaint investigator to the complainant documents that, on June 16, 2020, the MSDE complaint investigator confirmed with the complainant that the additional allegation would be addressed through the current State complaint #20-137.
 11. An email from the MSDE to the PGCPS documents that, on June 16, 2020 the MSDE informed the PGCPS of the additional allegation raised on that date.
 12. An email from the complainant to the MSDE documents that, on Sunday, June 21, 2020, the complainant submitted additional allegations for investigation, which were logged in as received by the MSDE on the next business day, June 22, 2020.
 13. An email from the MSDE complaint investigator to the complainant documents that, on June 22, 2020, the MSDE confirmed receipt of the June 21, 2020 correspondence containing the additional allegations for investigation with the complainant.
 14. An email from the MSDE to the complainant and the PGCPS, forwarding a letter addressed to the complainant documents that, on June 23, 2020, the MSDE identified the allegations subject to the investigation. That written correspondence included the timeline for resolution of the State complaint, informed the parties of the right to submit additional information, and identified the MSDE staff person assigned to investigate the complaint. It also included a statement that if the public agency offers the remedy to the complainant that is proposed in the letter of complaint, MSDE will consider the matter resolved.
 15. An email from the complainant to the MSDE documents that, on June 24, 2020 the complainant provided additional clarification of the allegations.
 16. An email from the MSDE complaint investigator to the PGCPS documents that, on June 24, 2020, the MSDE complaint investigator informed the PGCPS of the clarification provided by the complainant on that date and requested a copy of the audio recording of the July 2019 IEP team meeting.
 17. An email from the MSDE to the complainant and the PGCPS, forwarding a letter addressed to the complainant documents that on June 25, 2020, the MSDE revised the allegations for investigation based on the clarification provided by the complainant on June 24, 2020. The June 25, 2020 letter documents that twenty (20) allegations of violations were identified for investigation of State complaint #20-137. This included Allegation #5 that the PGCPS did not ensure that the IEP team that convened on July 16, 2019 included a special education teacher or provider of the student, in accordance with 34 CFR §300.321.

XXX

Dr. Karen B. Salmon

October 27, 2020

Page 5

18. There are IEP documents, emails between the MSDE complaint investigator and the complainant, emails between the MSDE complaint investigator and the PGCPS, and printouts of the results of research that was conducted, which reflect that, from June 23, 2020 through August 3, 2020, the MSDE complaint investigator engaged in the following activities:
 - a. Reviewed IEP documents from the Maryland online IEP system;
 - b. Requested information and documentation from both the complainant and the PGCPS;
 - c. Reviewed documents provided by both the complainant and the PGCPS;
 - d. Reviewed audio recordings of IEP team meetings;
 - e. Reviewed video recording of the student on the bus; and
 - f. Reviewed guidance on IDEA requirements based on legal research.

19. The Letter of Findings, dated August 6, 2020, addressed to the complainant and the PGCPS and an email forwarding it to the parties documents that on that date, the MSDE provided them with a written report that contains the following:
 - a. The allegations investigated;
 - b. Findings of Facts and conclusions for all twenty (20) allegations investigated and a statement as to whether a violation of State or federal law has occurred, including for Allegation #5 that the PGCPS did not ensure that the July 16, 2019 IEP team meeting included a special education teacher or provider of the student. The MSDE concluded that there was no violation with respect to Allegation #5 because the special education transportation services providers of the student participated in the meeting that was held to address the complainant's concern about the transportation services.
 - c. The corrective action required to remediate identified violations and timeline in which the corrective action must be taken. No corrective action was required with respect to Allegation #5 because no violation was identified.
 - d. The name and contact information for an MSDE staff member to contact for technical assistance in completing corrective actions;
 - e. A statement informing the parties that they maintain the right to request mediation or file a due process complaint to resolve the matter subject to the complaint if they disagree with the MSDE decision; and

- f. A statement that the parties had the right to submit additional information within fifteen (15) calendar days of the date of the Letter of Findings if they disagree with the conclusions, and that pending consideration of a request to reconsider the conclusions reached, the PGCPS was required to complete the corrective actions within the stated timeline.

DISCUSSION/CONCLUSION:

The IDEA requires each State to monitor and enforce the implementation of the requirements by local public agencies, and to annually report on performance. A primary focus of these activities includes improving educational results and functional outcomes for students with disabilities (34 CFR §300.600).

In promulgating the IDEA regulations, the United States Department of Education, Office of Special Education Programs (OSEP) stated that the State complaint investigation procedures is critical to each State's exercise of these general supervision responsibilities. The OSEP stated that the State complaint procedures provide an important means of ensuring that the educational needs of students with disabilities are met and provide the State Education Agency (SEA) with a "powerful tool to identify and correct noncompliance" with the IDEA (*Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46601).

The IDEA regulations state that the SEA must have in effect written procedures for resolving complaints, which includes a time limit of sixty (60) days to do the following:

- a. Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
- b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- c. Provide the public agency with the opportunity to respond to the complaint;
- d. Review all information and make an independent determination as to whether the public agency is violating the IDEA;
- e. Issue a written decision to the complainant that addresses each allegation and contains:
 - i. Findings of fact and conclusions;
 - ii. The reasons for the SEA's final decision.

The process must also contain procedures for effective implementation of the final decision, including, if needed, technical assistance activities and corrective actions to achieve compliance (34 CFR §§300.150 - .152). In this case, the complainant alleges that the MSDE did not follow

XXX

Dr. Karen B. Salmon

October 27, 2020

Page 7

established complaint investigation procedures to resolve the issue in State complaint #20-137 that the July 16, 2019 IEP team did not include a special education teacher of the student. He asserts that, as a result, the SEA is not fulfilling its supervisory responsibility for monitoring and enforcing the IDEA requirements.

Based on the Findings of Facts #1 - #19, this office finds that the MSDE has established procedures for conducting independent investigations of noncompliance with the IDEA, and that those procedures were followed, in accordance with 34 CFR §§300.150 - .152. Therefore, this office does not find that a violation occurred with respect to the allegation.

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 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

c: The Honorable Lawrence J. Hogan, Jr.
The Honorable Boyd K. Rutherford
Carol A. Williamson
Trinell Bowman
Linda Bluth
Laurie VanderPloeg
Gregg Corr
Gbenimah Slopadoe