



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

December 4, 2020

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

RE: XXXXX
Reference: #21-028

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 October 16, 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 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 September 22, 27, and 30, 2020, in accordance with 34 CFR §300.613 and COMAR 13A.05.01.11 and 13A.08.02.13.

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2. The PGCPS has not ensured access to the educational record in response to requests made on October 5, 2020, in accordance with 34 CFR §300.613 and COMAR 13A.05.01.11 and 13A.08.02.13.
3. The PGCPS did not provide a copy of the PGCPS Parent Communication Protocol and Maintenance of Communication Log at least five (5) business days before the document was reviewed by the Individualized Education Program (IEP) team on October 1, 2020, in accordance with COMAR 13A.05.01.07.

BACKGROUND:

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

The student is placed by the PGCPS at XXXXXXXXXXXXXXXX, a nonpublic, separate, special education school, which he attended from July 1, 2019 until the Statewide closure of school buildings and initiation of virtual learning as a result of the COVID-19 pandemic.

FINDINGS OF FACTS:

1. An electronic mail message (email), dated September 14, 2020, documents that on that date, the school staff sent the complainant copies of workplace reviews completed by the transition coordinator and speech/language therapy logs. These documents were provided in response to a request made by the complainant at the annual IEP review following reports made of the student's progress from the transition coordinator and speech/language therapist.
2. An email, dated September 22, 2020 forwarding a letter from the complainant to the school staff documents that on that date, the complainant requested access to the following documents:
 - a. Speech/language therapy service logs for the services provided from March 13, 2020 to April 30, 2020;
 - b. Speech/language therapy service logs for the services provided from July 1, 2020 to September 21, 2020;
 - c. Occupational therapy service logs for the services provided from March 13, 2020 to September 21, 2020; and
 - d. Mental health consult and social work consult service logs for the services provided from March 13, 2020 to September 21, 2020.

In his correspondence, the complainant requested that the records be provided without a watermark placed on them.

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3. An email, dated September 23, 2020, documents that on that date, the PGCPS Compliance Specialist sent the complainant the documents he requested of the school staff on September 22, 2020.
4. An email, dated September 27, 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

Please do not include watermark on responsive documents. I am unable to read certain texts and have difficulty to read certain texts when watermark is present. Under the laws and regulations described in this letter, I have right of access to the original records. When watermark is included, it is not original records and they are another records due to modification. Copy provided need to be true copy of the original records without watermarks or other modifications. The records for which access is requested are original records exactly as they are.

5. 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 previous requests he had made for documents, and that they would not change the practice of using the watermark on documents provided to parents.
6. The documents sent to the complainant contain watermark stamps stating

CONFIDENTIAL AND PRIVILEGED
Produced to Legal Guardian Pursuant to a
9.22.20 request.

The information contained on the documents provided to the complainant can be read despite the stamped notations or “watermarks.”

7. An email from the complainant to the school staff, dated September 30, 2020, documents that on that date, the complainant again requested that the school staff send him the documents he requested on September 22, 2020, but without the watermark.

8. An email from the PGCPs Compliance Specialist to the complainant, dated October 1, 2020, documents that on that date, the PGCPs Compliance Specialist responded to the complainant's September 30, 2020 correspondence to the school staff indicating that the school staff had already addressed his request for records and explained the use of the watermark.
9. An email from the PGCPs Compliance Specialist to the complainant and school staff, documents that on October 1, 2020, at 9:14 a.m. the PGCPs Compliance Specialist provided the complainant and the school staff with a copy of a proposed communication protocol (PGCPs Parent Communication Protocol and Maintenance of Communication Log) to be considered later at that day's IEP team meeting. The MSDE required that the PGCPs ensure that the IEP team develop a communication protocol as corrective action resulting from an investigation of the complaint's State complaint #20-137. The Letter of Findings states

The communication protocol must identify the PGCPs Central Office staff who will be: (a) responsible for ensuring that the complainant is provided with all documents before and after IEP team meetings in a timely manner; (b) responsible for accepting all requests for access to the record, amendment of the record, and hearings to contest the content of the record; and (c) copied on all correspondence between the complainant and school and school system staff to ensure that the IEP requirements with respect to communication between the school staff and the complainant are implemented.

The communication protocol must include steps for the maintenance of a comprehensive log of all communications with the complainant and review of the log no less than weekly by a member of the PGCPs Central Office staff who will be responsible for follow up with the school and school system staff and the complainant, as needed, to ensure that the complainant receives timely and appropriate documents and responses.

10. The corrective action resulting from an investigation of the complaint's State complaint #20-137 was required due to the continued violations identified by the MSDE through investigations of State complaints filed by the complainant. These violations include those related to responding to numerous overlapping requests for access to documents that the complainant makes on a regular basis. The corrective action was designed to ensure proper monitoring of these requests so that they are responded to in a timely manner. The corrective action did not require that the protocol address the communication skills of the school or school system staff, as this was not identified as a cause of the violations.

11. A review of the audio recording of the IEP team meeting held on October 1, 2020 reflects that at the meeting, the IEP team began discussing the communication protocol proposed by the school system, and the complainant expressed concern that he had not had sufficient time to review it prior to the meeting. However, the complainant proceeded to discuss the proposed protocol, questioning why it called for the PGCPS Compliance Specialist assigned to the family to have support from the PGCPS Compliance Office in monitoring responses provided to the complainant's requests. The complainant also questioned why there was a change in staff serving as the PGCPS Compliance Specialist assigned to work with the family, and expressed his belief that the previous PGCPS Compliance Specialist was "intercepting" emails regarding his family.
12. A review of the audio recording of the October 1, 2020 IEP team meeting reflects that the PGCPS Compliance Specialist at the meeting explained that the former PGCPS Compliance Specialist is assisting him during the transition and that it was necessary to have assistance from the PGCPS Office of Compliance staff ensure the protocol is implemented when he is not available. The complainant asked about the qualifications for a PGCPS Compliance Specialist and the role of the position. The PGCPS Compliance Specialist at the meeting responded that the role is to ensure that the IEP team is compliant with the IDEA and COMAR requirements. The complainant asked how the PGCPS Compliance Specialist is trained and qualified to implement the communication protocol. At that time, the IEP team decided that the discussion was going beyond the purpose of reviewing the protocol, and the meeting adjourned without any decisions being made about the protocol.
13. An email from the complainant to the PGCPS staff, dated October 5, 2020, documents that on that date, the complainant requested copies of the following:
 - a. School communication log entries from June 1, 2020 to August 28, 2020;
 - b. Online communication log entries from June 1, 2020 to August 28, 2020;
 - c. Any and all records which documented the Behavioral Intervention Plan (BIP) effective July 1, 2020;
 - d. Any and all records which documented occupational therapy service provided from July 1, 2019 to October 2, 2020;
 - e. Any and all records which documented mental health consult service provided from July 1, 2019 to October 2, 2020;
 - f. Any and all records which documented social work consult service provided from July 1, 2019 to October 2, 2020; and
 - g. Any and all records which documented data collected regarding the student during transition activities from July 1, 2019 to May 31, 2020, including work place reviews.

14. On October 8, 2020, the IEP team reconvened. A review of the audio recording of the meeting reflects that the team considered the complainant's concern that a plan be developed for addressing the student's needs related to a seizure disorder. The complainant reported on the specific areas he wanted addressed in the plan and the team decided that a draft plan would be developed for the complainant's review and input. There was no discussion about information related to the documents requested by the complainant on October 5, 2020.
15. An email from the PGCPs staff to the complainant, dated October 13, 2020, documents that on that date, the PGCPs provided the complainant with copies of the following:
 - a. School communication log entries from May 21, 2020 to August 28, 2020;
 - b. The BIP from June 9, 2020 and October 1, 2020;
 - c. Occupational therapy logs from July 10, 2019 to November 19, 2019 and May 12, 2020 to July 16, 2020;
 - d. Social work/mental health consult logs from July 16, 2019 to June 27, 2020;
 - e. Workplace reviews from April 15, 2019 to December 17, 2020; and
 - f. Transition progress reports June 10, 2019 to February 5, 2020.

The email states that a response to the request for an internal communication log will be provided by October 20, 2020.

16. An email from the PGCPs staff to the complainant, dated October 20, 2020, documents that on that date, the PGCPs provided the complainant with a copy of the internal communication log.
17. The MSDE issued a Letter of Findings on November 2, 2020 as a result of the investigation of a State complaint that the complainant previously filed (State complaint #21-014). In that Letter of Findings, the MSDE found that the student was provided with access to documents from the student's educational record, which were the subject of the requests made on September 22, 27, and 30, 2020, despite the presence of a watermark on those documents.

DISCUSSION/CONCLUSIONS:

Allegation #1

Responses to September 2020 Requests for Access

Based on the Findings of Facts #1 - #9 and #17, the MSDE finds that the complainant was provided with access to the requested documents in a timely manner despite the presence of the watermark, in accordance with 34 CFR §300.613 and COMAR 13A.05.01.11 and 13A.08.02.13. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2 Responses to October 5, 2020 Request for Access

Based on the Findings of Facts #13 - #16, the MSDE finds that the complainant was provided with access to the requested documents without unnecessary delay, prior to an IEP team meeting in which information contained in those documents was discussed, and within forty-five (45) days of the date of the request, in accordance with 34 CFR §300.613 and COMAR 13A.05.01.11 and 13A.08.02.13. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #3 Provision of Documents for the October 2, 2020 IEP Team Meeting

Based on the Finding of Fact #9, the MSDE finds that the PGCPS did not ensure that the complainant was provided with a document considered by the IEP team on October 1, 2020 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 with respect to the allegation.

Notwithstanding the violation, based on the Findings of Facts #9 - #12, the MSDE finds that the IEP team has not completed its consideration of the proposed communication protocol and thus the violation did not impact the complaint's ability to participate in discussion of the communication protocol.

Based on the Findings of Facts #9 - #12, the MSDE further finds that corrective action is being completed to ensure the future provision of documents in a timely manner. Therefore, this office does not require further corrective action to remediate the violation.

TIMELINES:

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 for the student, including issues subject to this State complaint investigation,

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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
 Keith Marston
 Dori Wilson
 Anita Mandis