

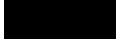


Mohammed Choudhury
State Superintendent of Schools

November 19, 2021




Ms. Trinell Bowman
Associate Superintendent-Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 2078

RE: 
Reference: #22-028

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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 21, 2021, the MSDE received correspondence from Ms.  hereafter, “the complainant,” on behalf of 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 that the student’s Individualized Education Program (IEP) identifies and addresses the student’s academic needs, since September 2020, in accordance with 34 CFR §§300.320 and 324.
2. The PGCPS has not ensured that the student has been provided with the amount of instruction required by the IEP since September 2020, in accordance with 34 CFR §§300.101 and .323.

3. The PGCPS has not ensured that the student has been provided with the supplementary aides and supports required by the IEP since September 2020, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is twelve (12) years old, is identified as a student with Multiple Disabilities 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.

FINDINGS OF FACTS:

1. The student's IEP, in effect in September 2020, was developed at an IEP team meeting on March 9, 2020. During this IEP team meeting, the IEP team determined that the student had needs related to reading comprehension, math calculation, math problem solving, and written language expression. Information for each area of need was derived from classroom observations, work samples and informal assessments consisting of informal reading and math and assessments.
2. During the March 9, 2020 IEP meeting, the IEP team determined that the student was functioning at the "second grade with support" level in reading comprehension, "low first grade" level in math calculation, "mid-kindergarten" level in math problem solving, and "late first grade to early second with support" level in written language expression. Because the student would be entering the sixth grade at the start of the 2020-2021 school year, and was pursuing a high school diploma, the IEP team developed goals for the student in each area that focused on developing grade level skills for the student.
3. The student's IEP, developed on March 9, 2020, requires that the student be provided with 29 hours and 45 minutes of instruction per week as well as supplementary aids and supports, including the use of movement breaks and proximity to staff.
4. Following the closure of school buildings due to the COVID-19 pandemic, the student's instruction was provided virtually from March of 2020 through the 2020-2021 school year. In November 2020, the student's IEP was amended to reflect that while the student continued to require 29 hours and 45 minutes of specialized instruction, the student would only receive 14.5 hours per week during virtual learning. There is documentation that movement breaks and proximity to staff were not provided to the student during virtual learning. The PGCPS staff indicate that these services were not able to be provided virtually. When questioned, the staff did not respond to the parent's concerns that these services could be provided in the virtual setting.
5. On October 30, 2020, the IEP team met to review a private neurological assessment obtained by the student's family. During this IEP team meeting, the student's family expressed concern regarding measuring the student's academic abilities and progress

towards IEP goals based on the amount and type of instruction being provided to the student.

6. On March 9, 2021, the IEP team met to review and revise the student's IEP, as appropriate. The IEP team developed new present levels of academic performance for the student based on assessment data, informal measures and observations of the student. The IEP team again recommended goals for the student in each area of need that were aligned to appropriate grade level standards¹. During the IEP team meeting, the student's grandmother questioned whether the instruction provided to the student was aligned with appropriate state curriculum. In response, the IEP team documented that the student's school did not have a history of non-compliance with delivering the required curriculum to students.
7. On May 6, 2021, the IEP team met to consider the concerns of the student's family regarding the instruction provided to the student. The IEP team again noted that the student's school does not have a history of non-compliance in that regard.
8. While there is documentation that the student was provided instruction virtually during the time that school buildings were closed due to the COVID-19 pandemic, there is not sufficient documentation to demonstrate that the student was provided with the amount of instruction required by her IEP and that the instruction was aligned with the grade level skills required by her IEP.
9. On June 11, 2021 and July 23, 2021, the IEP team met to consider proposed goals and data provided by the student's family. The IEP team reviewed informal data provided by the student's family and determined that it was consistent with information previously gathered by the IEP team which demonstrated that the student was performing "below grade expectancy in all areas that were assessed". The IEP team did not complete its review of the goals proposed by the student's family. The student's grandmother and the staff from the student's school could not come to an agreement regarding appropriate language to include in the student's IEP. The IEP team, therefore, did not revise the student's goals as a result. The PGCPs staff present agreed to review the proposed goals prior to the next IEP meeting to have a more productive review of the information provided by the student's family. To date, this review has not occurred.
10. PGCPs staff indicate that the IEP team will meet to consider the need for recovery or compensatory services to address any loss of learning as a result of the transition to virtual learning. To date, the IEP team has not met to make this determination.

DISCUSSION/CONCLUSIONS:

Allegation #1 Identifying and Addressing the Student's Needs

Based on Findings of Facts #1, #2, #5, #6, and #9 the MSDE finds that the IEP developed for the student identifies and addresses each area of need for the student in accordance with 34 CFR

¹ At the student's family's request, the student was retained in the 6th grade for the 2021-2022 school year.

§§300.320 and 324. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #2 Provision of Appropriate Instruction

Based on Findings of Facts and #3, #4, #7, #8, and #10 the MSDE finds that there is not documentation that the student was consistently provided with the instruction required by her IEP, since September 2020, in accordance with 34 CFR §§300.101 and 323. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #3 Provision of Supports During Virtual Learning

Based on Findings of Facts #3, #4 and #10, the MSDE finds that there is no documentation that the student was provided with the supplementary aids of proximity to staff and movement breaks during the time that the student received virtual instruction, in accordance with 34 CFR §§300.101 and 323. Therefore, this office finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below²

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Dr. Birenbaum can be reached at (410) 767-7770.

The MSDE requires the PGCPS to provide documentation that the student is being provided with the instruction and supplementary aids and supports required by her IEP. The MSDE further requires that the PGCPS provide documentation that the IEP team has convened to consider whether the violation related to providing the student with appropriate instruction since September 2020 and supplementary aids and supports during virtual learning had a

² The OSEP states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

³ The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

Ms. Trinell Bowman

November 19, 2021

Page 5

negative impact on the student. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings. The PGCPs must ensure that the complainant is provided with written notice of the team's decisions.

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 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
Robert Reese
Gail Viens
Nancy Birenbaum