




November 24, 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: #22-030

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 30, 2021, 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 allegation that the PGCPS did not follow proper procedures when conducting an evaluation since February 2021, in accordance with 34 CFR §§300.303-.306 and COMAR13A.05.01.06.

BACKGROUND:

The student is sixteen (16) years old, is identified as a student with Autism under the IDEA, and has an Individualized Educational Program (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. On May 10, 2018, the IEP team completed an evaluation for the student. The IEP team relied on a psychological assessment dated November 2012, an academic assessment dated November 2017, an assistive technology assessment dated March 2018, occupational therapy assessments dated August 2017, and a Functional Behavior Assessment (FBA) dated November 2016 and a speech/language assessment from 2012 to determine that the student continued to be eligible under the IDEA as a student with Autism.
2. On February 6, 2021, during the time that the student was participating in virtual instruction due to the closing of school buildings as a result of the COVID-19 pandemic, the IEP team recommended that a speech assessment be conducted for the student.
3. On February 26, 2021, the IEP team met to complete a reevaluation for the student. At that time, the IEP team determined that there was sufficient information to conclude that the student continued to be eligible under the IDEA as a student with autism. The IEP team further determined additional information was needed to inform IEP team decisions regarding educational programming for student. The IEP team recommended additional assessments for the student including a psychological and an FBA.
4. On March 15, 2021 the parent provided correspondence to the IEP team in which he provided consent for the FBA, speech/language¹, and psychological assessments. In that correspondence he asked that the assessments be completed as soon as possible, but understood that the psychological assessments would not be completed until the student returned to in-person instruction.
5. On May 28, 2021, the IEP team met to review the speech/language assessment completed for the student. The IEP team utilized the data and recommendations of the assessment to review and revise the student's speech/language goals and objectives.
6. To date, the FBA and psychological assessments have not been completed for the student.

¹ The IEP team later provided subsequent documentation reflecting the need for additional components of the speech/language assessment. On April 20, 2021, the parent agreed to provide consent for all components of the speech/language assessment.

DISCUSSION/CONCLUSIONS:

Based on Findings of Facts #1- #5 the MSDE finds that the IEP team met its obligation to determine the student's eligibility under the IDEA, in accordance with 34 CFR 34 CFR §300.303. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation. However, based on Findings of Facts #2-#6, the MSDE finds that the IEP team did not ensure that additional assessments recommended by the IEP team were completed in a timely matter, in accordance with COMAR 13A.05.01.06. Therefore, this office finds that a violation has occurred with respect to this aspect of the 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 below.²

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 or via email at nancy.birenbaum@maryland.gov.

The MSDE requires the PGCPS to provide documentation that the IEP team has convened to complete the review of the assessments recommended for the student and complete the additional evaluation started for the student. The MSDE further requires that the IEP team determine if there was a negative impact to the student as a result of the delay in completing this review. 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.

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.

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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 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, 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:gl

c: Monica Goldson
Barbara Vandyke
Keith Marston
Gail Viens
Nancy Birenbaum
Gerald Loiacono