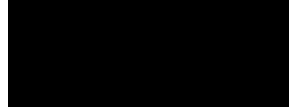





Mohammed Choudhury
State Superintendent of Schools

AMENDED COPY

March 29, 2023




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

RE: 
Reference: #23-120

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 January 6, 2023, MSDE received a complaint from Mr.  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 above-referenced student.

MSDE investigated the following allegations:

1. Whether the PGCPS followed proper procedures when responding to a request to inspect and review the student's education record on November 7, November 8, November 9, November 17, December 15, and December 19, 2022, in accordance with 34 CFR §300.613 and COMAR 13A.05.01.11(E).
2. **Whether, the complainant was unable to review and inspect the student's education record per the requests made on November 17, December 15, and December 19, 2022; and, if so, whether his participation in the December 20, 2022, [and the February 2, 2023,] IEP team meeting was negatively impacted, in accordance with 34 CFR§300.613(a) and 34 CFR§300.322.**
3. Whether the PGCPS followed proper procedures when responding to a request for an Independent Educational Evaluation (IEE) made on October 26, 2022, in accordance with 34 CFR §300.502 and COMAR 13A.05.01.14.

BACKGROUND:

The student is seventeen (17) 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 private, separate, special education school.

ALLEGATIONS #1 AND #2:

ACCESS TO RECORDS REQUESTED ON NOVEMBER 7, 8, 9, AND 17, AND DECEMBER 15 AND 19, WHETHER COMPLAINANT'S ABILITY TO PARTICIPATE IN THE IEP MEETINGS WAS IMPEDED

FINDINGS OF FACT:

1. On November 7, 2022, the complainant sent correspondence to Ms. Trinell Bowman, Associate Superintendent for Special Education, PGCPs, requesting access to certain records related to the student.
2. **On November 8, 2022, the complainant sent correspondence to Mr. Tony Spruill, Transportation Operations Supervisor, PGCPs, requesting access to certain records related to the student.**
3. On November 9, 2022, the complainant sent correspondence to Dr. Rudolph Saunders, Director of Transportation and Central Garage, PGCPs, requesting access to records related to the student.
4. On November 17, 2022, the complainant sent correspondence to Mr. Spruill requesting access to certain education records related to the student.¹
5. On December 15, 2022, the complainant sent correspondence to Ms. Trena Johnson Bowlding, Instructional Specialist, PGCPs, requesting access to records related to the student.
6. On December 19, 2022, the complainant sent correspondence to Mr. Spruill requesting access to certain records related to the student.
7. There is no documentation, to date, that the PGCPs has provided the complaint with a response to his November 7, November 8, and November 9, 2022, requests to access the student's educational records.
8. There is documentation that on January 5, 2023, the complainant was able to review the educational records requested on November 17, 2022, and December 19, 2022.
9. On January 27, 2023, the PGCPs sent correspondence to the complainant indicating that he could review the educational records requested on December 15, 2022, offering two different dates (January 31 and February 3) and times to review the student's record, and requesting alternative dates if these were inconvenient. To date, there is no documentation that the complainant was able to review the student's educational records requested on December 15, 2022.
10. The student had two IEP team meetings following his correspondences requesting access to the student record until the date of this letter. Those IEP meetings were convened on December 20, 2022, and on February 2, 2023.

¹ The correspondence to Mr. Spruill on November 17, 2022 and December 19, 2022, involved a request to access the same video document in the student's record.

DISCUSSION/CONCLUSIONS:

Based on Findings of Facts #1, #2, #3 and #7, the complainant has not been provided with a response to his request for access to the student record made on November 7, **November 8,**² and November 9, 2022, in accordance with 34 CFR §300.613 and COMAR 13A.05.01.11(E). Therefore, this office finds a violation with respect to this aspect of the allegation.

Based on Findings of Facts #4, #6, and #8, MSDE finds that although the complainant was not provided with access to the requested document in the student file within the requisite timeline of his November 17, 2022, and December 15, 2022, request, he was provided with access to the requested document within the required timelines of his December 15, 2022, request, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation; however, there was no effect from this violation as it was cured following his December 15, 2022, request for the same document.

Based on Findings of Fact #9, although the PGCPs responded to the complainant's December 15, 2022, request to access the student's record within the requisite timeline, they did not comply by offering the complainant dates within the timeline to access to the student record in accordance with 34 CFR §300.613 and COMAR 13A.05.01.11(E). Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on Findings of Fact #9, the complainant participated in two IEP team meetings during the time frame involved in this complaint. The complainant's December 15, 2022, correspondence requesting access to the student's record could have assisted in his preparation for the December 20, 2022, and his February 2, 2023, IEP team meeting, and the lack of access to the student's record may have negatively impacted his participation in the IEP team meeting, in accordance with 34 CFR §300.613(a) and 34 CFR §300.501. Therefore, this office finds a violation.

ALLEGATIONS #3:

REQUEST FOR AN IEE

FINDINGS OF FACTS

11. There is documentation that the complainant sent correspondence to Ms. Bowman on October 26, 2022, requesting an Independent Educational Evaluation (IEE). The complainant stated that he "disagrees with the most recent evaluation conducted by the District for the student."
12. There is documentation that PGCPs responded to the complainant on October 28, 2022, regarding his request for an IEE, asking for additional information, specifically, which evaluation the complainant is in disagreement with and the area for which he was requesting an IEE. PGCPs conditioned their decision to the complainant's IEE request on receiving a response from the complainant.
13. There is no documentation that the complainant responded to the PGCPs October 28, 2022, correspondence regarding his IEE request.

CONCLUSIONS

Parents of a student with a disability have the right to obtain one (1) independent educational evaluation (IEE) at public expense each time the public agency conducts an evaluation with which the parent disagrees.

² The November 8, 2022, request for records includes a request for video records from March 7, 2022. MSDE notes that pursuant to Letter of Findings 22-113, it was found that the student did not receive transportation services on March 7, 2022. Therefore, it is unlikely that the PGCPs has transportation records "relating to the student" for that date.

Upon request for an IEE, the public agency must, without unnecessary delay, either provide parents with information about where an IEE may be obtained and the agency criteria applicable for an IEE, or file a due process complaint to request a hearing to demonstrate that its evaluation is appropriate. If a parent requests an IEE, the public agency may ask for the parent's reason for objecting to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to defend the public evaluation. Moreover, the public agency is prohibited from imposing conditions or timelines related to obtaining an IEE at public expense (34 CFR §300.502).

Additionally, when a parent requests an IEE at public expense, the public agency must provide a written response either approving or denying the request within 30 days of the date the request is made. If the request is approved, the public agency must advise the parent of the process for arranging the evaluation at public expense; however, if it is denied, the public agency must file a due process complaint within 30 days of the denial. COMAR 13A.05.01.14.

Based on Findings of Facts #11 through #13, there is documentation that the complainant disagreed with a PGCPs evaluation and requested an IEE, and that PGCPs promptly responded with correspondence of their own. The PGCPs conditioned their decision on receiving further information from the complainant which is not permissible, and which resulted in a significant delay, in violation of 34 CFR 300.502 and COMAR 13A.05.01.14. There has been no communication either granting or denying the complainant's request since October 28, 2022. Therefore, this office finds a violation with regard 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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.³ This office will follow up with the public agency to ensure that it completes the required actions consistent with MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.⁴ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

MSDE requires the PGCPs to provide documentation by April 1, 2023, that the complainant has been informed of the handling of his requests for access to certain documents relating to correspondence on November 7 and 9, 2022. Further, PGCPs must provide the complainant with access to the documentation he requested in his December 15, 2022, correspondence prior to April 1, 2023. Following the complainant's review of this documentation, the IEP team must convene and determine whether the violations identified above had a negative impact on the student's ability to benefit from the education program. If the team

³ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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, 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.

⁴ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

Ms. Trinell Bowman

March 7, 2023

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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.

MSDE further requires that the PGCPs provide a response to the complainant regarding his request for an IEE by March 15, 2023.

The PGCPs must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

Similarly Situated Students

By April 1, 2023, the PGCPs must determine whether there are other parents who made requests for IEE during the 2022-2023 school year, have had the decision regarding their IEE request conditioned on a response to a PGCPs letter, and have not yet received an answer to their request for an IEE. If there are similarly situated parents, the PGCPs must provide a response to these parents by April 15, 2023. PGCPs must also review their current practice of responding to IEE requests to ensure compliance with state and federal requirements and provide MSDE with documentation reflecting compliance.

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 (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins

Deputy Superintendent

Office of the Deputy Superintendent of Teaching and Learning

DMC/abb

c: Monica Goldson
Gerald Loiacono

Henry Johnson
Alison Barmat

Keith Marston
Diane Eisenstadt

Darnell Henderson