



July 6, 2021

Ms. Jessica Williams
Education Due Process Solutions, LLC
711 Bain Drive, Suite 205
Hyattsville, Maryland 20785

Ms. Trinell Bowman
Director of Special Education
Prince George's County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: [REDACTED]
Reference: #21-098

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 May 11, 2021, the MSDE received a complaint from Ms. Jessica Williams, 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.

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that the Individualized Education Program (IEP) was implemented upon the student’s re-enrollment into the school system in April 2021, in accordance with 34 CFR §§300.101 and 323.
2. The PGCPS did not ensure that the parent was provided with Prior Written Notice (PWN) of the decisions made at a April 26, 2021 IEP team meeting, in accordance with 34 CFR §300.503.

BACKGROUND:

The student is ten (10) years old and is identified as a student with Autism under the IDEA. She attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. During the COVID-19 pandemic, the parent provided the student with homeschooling. Prior to that, the student had been enrolled in the PGCPS and had an IEP that required special education instruction. The IEP identified the school the student would attend, if not disabled, as [REDACTED] School. However, the IEP also reflected that the educational placement was a program located at [REDACTED] School, where the student received special education instruction and assessment using alternate achievement standards.
2. There is electronic mail (email), dated April 7, 2021, from the [REDACTED] School staff to the parent indicating that the school staff had been informed that the parent was attempting to re-enroll the student in the school system. The school staff told the parent that she had to re-enroll the student at [REDACTED] School and that an IDEA evaluation would have to be conducted.
3. On April 26, 2021, an IEP team meeting was held and the written summary reflects that an initial IDEA evaluation was conducted and the student was identified as a student with a disability. The team recommended that the student attend [REDACTED] School based on the services provided in the student's previous IEP. However, there is no documentation that the IEP team reviewed and revised the IEP or developed a new IEP at the meeting. Because the parent refused to consent to the provision of instruction and assessment using alternate achievement standards, the school staff decided to have the student continue to attend [REDACTED] School pending development of the IEP.
4. The school system enrollment report reflects that the parent completed the re-enrollment process for the student to return to the school system on April 29, 2021.
5. There is an email, dated May 3, 2021, from the [REDACTED] School staff to the parent forwarding the written summary of the decisions made by the IEP team on April 26, 2021.
6. On May 18, 2021, the IEP team reconvened and the written summary reflects that an IEP was developed. The IEP team decided that the student would be placed at [REDACTED] School, but in a program that provides instruction and assessment using regular achievement standards.
7. There is no documentation of the implementation of the IEP that existed from the time the student reenrolled in the school system on April 29, 2021 until the IEP was revised on May 18, 2021.

LEGAL REQUIREMENTS:

If a student with an IEP transfers to a new public agency within the State, the new public agency (in consultation with the parents) must provide the student with a Free Appropriate Public Education (FAPE), including services comparable to those described in the student's IEP from the previous public agency, until the new public agency either adopts the sending IEP or revises the IEP (34 CFR §§300.101 and .323).

“Comparable services” is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, as determined by the IEP team in the new public agency [Emphasis added] (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

If the student transfers to a new public agency from another State, and enrolls in a new school within the same school year, the new public agency must (in consultation with the parents) provide the student with a FAPE, including comparable services, until the new public agency conducts an evaluation, if determined necessary by the new public agency, and develops a new IEP. If the new public agency decides that an evaluation is required, that evaluation is considered an initial evaluation and not a reevaluation (34 CFR §§300.101, .323, and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

Each public agency must have in effect an IEP for each student with a disability within its jurisdiction. The IEP must be reviewed and revised, as appropriate, at least annually. In addition, it must be revised to address any new information about a student. Maryland law requires the IEP team to obtain the written consent of a parent each time the IEP is reviewed and revised if it proposes to enroll the student in a program that provides instruction or assessment using alternate achievement standards (Md. Code Ann., Educ. §8-405.)

DISCUSSION/CONCLUSIONS:

Allegation #1 IEP Implementation

Based on Findings of Facts #1 and #2, the MSDE finds that the student did not transfer from another public agency within the State or from another State, but simply reenrolled in the same public agency in which she was previously enrolled. Therefore, the IDEA requirements with respect to transferring students do not apply in this case.

However, based on the Findings of Facts #2, #3, and #6, the MSDE finds that the school staff treated the student as if she was a student transferring from a different school system in another state when it required an initial evaluation and development of a new IEP.

Based on the Findings of Facts #1 and #7, the MSDE finds that the PGCPS had an IEP in effect for the student when she reenrolled in the school system on April 29, 2021, but did not implement the IEP, in accordance with 34 CFR §§300.101 and .323.

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Based on the Findings of Facts #1 and #3, the MSDE finds that the IEP team did not review and revise the IEP at the April 26, 2021 meeting, and thus, updated parental consent was not required to implement the IEP prior to its revision on May 18, 2021.

Thus, the MSDE finds that the PGCPS did not implement the IEP that was in effect when the student reenrolled in the school system in April 2021 prior to development of the May 18, 2021 IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #2 Prior Written Notice

Based on the Finding of Fact #5, the MSDE finds that there is documentation that the parent was provided with PWN of the decisions made by the IEP team on April 26, 2021, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to 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.

The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with the 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 Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770 or by email at Nancy.birenbaum@maryland.gov.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency 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.

² The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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Student-Specific

The MSDE requires the PGCPs to provide documentation that the IEP team has determined the amount and nature of compensatory services or other remedy to redress the violation of the lack of IEP implementation from April 29, 2021 to May 18, 2021.

School-Based

The MSDE requires the PGCPs to provide documentation of the steps taken to ensure that the violation does not recur at [REDACTED] School.

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 parent maintains 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

MEF:ac

c: Monica Goldson
Barbara VanDyke
[REDACTED]
Dori Wilson
Anita Mandis
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