

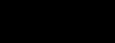


Mohammed Choudhury
State Superintendent of Schools

August 2, 2021




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

RE: 
Reference: #21-109

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 June 4, 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 following allegations:

1. The PGCPS has not ensured access to the student’s education records in response to requests made on April 20, 2020 and May 25, 2021, in accordance with 34 CFR §300.613 and a communication protocol required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323.

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2. The PGCPS did not provide information about the right to a hearing to dispute the accuracy of the student's education record when it refused to amend the record in response to a request on September 4, 2020, in accordance with 34 CFR §300.618.
3. The PGCPS did not ensure that a copy of the procedural safeguards notice was provided when it received the first (1st) IDEA State complaint during the 2019-2020 and 2020-2021 school years, in accordance with 34 CFR §300.504.

BACKGROUND:

The student is sixteen (16) 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 nonpublic, separate, special education school, which he attended from July 1, 2019 until the Statewide closure of schools as a result of the national COVID-19 pandemic.

ALLEGATION #1 ACCESS TO THE EDUCATION RECORD

FINDINGS OF FACTS:

April 20, 2020 Request

1. There is an electronic mail (email) message, dated April 20, 2020, from the complainant to a PGCPS Instructional Specialist and the school principal, forwarding a letter requesting copies of the following:
 - a. The January 7, 2020 IEP;
 - b. The most recent IEP; and
 - c. The most recent report of the student's progress towards achievement of the annual IEP goals.
2. There is an email, dated April 21, 2020, from the school staff to the complainant, stating that the most recent progress report and the July 17, 2019 IEP were being forwarded with the email. The email indicates that there was no IEP developed on January 7, 2020 to provide.
3. A review of the student's education record reflects that an IEP was not developed on January 7, 2020.

4. A review of the student's education record reflects that the most recent IEP that existed at the time of the April 20, 2020 request was dated July 17, 2019.
5. A review of the education record reflects that there are progress reports, dated February 5, 2020 and April 1, 2020, that are being maintained in the record.
6. On January 12, 2021, the MSDE issued a Letter of Findings reporting the results of an investigation of the complainant's State complaint #21-042. In that State complaint, the complainant alleged that the PGCPS did not ensure that a report was made of the student's progress towards achievement of the annual IEP goals for the third (3rd) quarter of the 2019-2020 school year. The MSDE found that a violation occurred, and required the PGCPS to make a report of the student's progress to the complaint for that time period.
7. The parent contact log documents that, on January 13, 2021, a progress report for the third (3rd) quarter of the 2019-2020 school year, dated April 1, 2020, was generated and provided to the complainant as required by the MSDE.

May 25, 2021 Request

8. Following the completion of an IDEA State complaint investigation of the complainant's State complaint #20-137, the MSDE required the PGCPS to develop a Parent Communication Protocol in order to ensure that the complainant is provided with all requested documents from the education record in a timely manner. The MSDE required that the protocol identify the PGCPS Central Office staff who will be responsible for actions such as accepting all of the complainant's requests for access to the education record and monitoring to ensure that the complainant is provided with access to requested documents in a timely manner.
9. This corrective action was required following the MSDE's identification of numerous violations of the requirements for providing the complainant with timely access to the education record through several previous State complaint investigations that had been conducted. Those previous State complaint investigations reflect that the complainant makes ongoing overlapping requests for multiple documents from various school and school system staff, and that the violations were occurring due to the inability of the school system to track and respond to these numerous requests.
10. The Parent Communication Protocol drafted by the PGCPS was reviewed and discussed by the IEP team on October 1, 2020 and February 5, 2021. The protocol identifies the PGCPS Central Office staff to whom the complainant should direct all requests for

documents. It also identifies the designated staff member as a Compliance Specialist within the PGCPS Compliance Office.

11. A review of the audio recording of the February 5, 2021 IEP team meeting reflects that at the meeting, the complainant expressed the opinion that the school system should continue to respond to his requests in the manner in which they respond to requests from other parents, as they had been doing in the past. He also expressed the belief that the MSDE did not require that the protocol identify PGCPS Central Office staff to be responsible for handling his requests, and he objected to the PGCPS Compliance Specialist identified in the protocol as the staff member to whom he should make his requests. The school-based members of the team disagreed with the complainant's interpretation and with his opinion based on the need to properly track and respond to his requests, and the IEP team adopted the protocol.
12. There is an email message, dated April 22, 2021, from the PGCPS speech/language therapist to the complainant forwarding a form entitled "Pragmatics Profile" for him to complete as part of a speech/language assessment. The form lists various pragmatic language skills and requires the person completing the form to indicate how often the student demonstrates the skills. The form does not contain information that would enable the reviewer to identify the student.
13. There is an email message, dated May 11, 2021, from the PGCPS speech/language therapist to the complainant forwarding the report of the speech/language assessment. The report of the speech/language assessment states that the "Pragmatics Profile" was provided to the parents, speech/language therapist, and teacher to complete. The report includes a summary of the raw score, standard score, and percentile where the student fell, disaggregating the data from all three raters.
14. There is an email message, dated May 25, 2021, from the complainant to a PGCPS Instructional Specialist, forwarding a letter requesting copies of the "Pragmatic Profiles" completed by the classroom teacher and speech/language therapist. There is no documentation that the request was made to the PGCPS Compliance Specialist identified in the Parent Communication Protocol.
15. A review of the audio recording of an IEP team meeting held on May 28, 2021 reflects that at the meeting, the IEP team considered the report of the speech/language assessment, and the complainant reiterated his request for copies of the "Pragmatics Profiles" completed by the speech/language therapist and teacher. The PGCPS Compliance Specialist reported that the request for these documents was under consideration. The complainant was asked whether had any specific questions about the

assessment results and the complainant indicated that he would not know without reviewing the requested “Pragmatics Profiles.”

16. On June 25, 2021, the PGCPs Associate General Counsel sent the complainant a letter denying the request for access to the “Pragmatics Profiles” based on their protected status under United States copyright law. The letter states that the complainant is entitled to a judicial review of the denial under the Maryland Public Information Act.

LEGAL REQUIREMENTS:

The public agency must permit parents to inspect and review the education records of their children without unnecessary delay and before any meeting regarding an IEP, and in no case more than forty-five (45) days after the request is made (34 CFR §.300.613).

These education records are defined as records that contain information directly related to the student and are maintained by an educational agency or institution. Information directly related to a student means personally identifiable information. This may include information such as the student’s name, the parent’s name and address, and any other indirect identifiers (34 CFR §99.3).

The United States Department of Education, Office of Special Education Programs (OSEP) has explained that test protocols with personally identifiable information may be both education records and copyright protected. The OSEP indicated that when this occurs, the options are to find an alternative way for the parent to inspect the records or discuss with the copyright holder whether a summary of the assessment results can be provided instead of a copy. This way, the parents can be provided with information regarding the student’s developmental functioning and areas of strengths and need (*Letter to Price*, 57 IDELR 50, October 13, 2010).

CONCLUSIONS:

April 20, 2020 Request

January 7, 2020 IEP

Based on the Findings of Facts #1 and #3, the MSDE finds that there was no January 7, 2020 IEP to provide to the complainant in response to his April 20, 2020 request and that the complainant was promptly provided with that information, in accordance with 34 CFR §300.613. Therefore, the MSDE does not that a violation occurred with respect to this aspect of the allegation.

Most Recent IEP

Based on the Findings of Facts #1, #2, and #4, the MSDE finds that the complainant was provided with a copy of the most recent IEP in response to his April 20, 2020 request, in accordance with 34 CFR §300.613. Therefore, the MSDE does not that a violation occurred with respect to this aspect of the allegation.

Most Recent Progress Report

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The complainant alleges that, while he was provided with a progress report, it was not the most recent report in effect at the time of his April 20, 2020 request, but the one filed prior to that report.

Based on the Findings of Facts #1, #2, and #5 - #7, the MSDE finds that the progress report, dated April 1, 2020, which would have been the most recent reporting period at the time of the April 20, 2020 request, was not developed until January 13, 2021. Based on those Findings of Facts, the MSDE finds that this report was generated and provided to the complainant on January 13, 2021 consistent with the Letter of Findings issued by the MSDE on January 12, 2021.

Therefore, the MSDE finds that on April 21, 2020, when the school staff sent the progress report for the previous reporting period, it provided the complainant with the most recent report that existed at that time consistent with his request, in accordance with 34 CFR §300.613. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

May 25, 2021 Request

The complainant also alleges that he was not provided with access to documents requested on May 25, 2021 consistent with the Parent Communication Protocol and within the required timelines.

Based on the Finding of Fact #12, the MSDE finds that the “Pragmatics Profiles” were not education records for which the complainant had a right to inspect under the IDEA, in accordance with 34 CFR §300.613 because they do not contain personally-identifiable information.

Furthermore, based on the Finding of Fact #13, the MSDE finds that the PGCPs provided the complainant with a summary of information reported in the protocols he requested prior to the IEP team meeting where the data was discussed.

Furthermore, based on the Findings of Facts #8 - #10, #15, and #16, the MSDE finds that, while the PGCPs response did not come from the PGCPs Compliance Specialist identified in the Parent Communication Protocol, the protocol does not require that the response come from this individual. It requires that this staff member take steps to ensure the provision of the response in a timely manner. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

ADDITIONAL DISCUSSION:

Based on the Findings of Facts #11 and #14, the MSDE finds that the complainant is unwilling to direct his requests to the PGCPs Central Office staff member designated to ensure that responses to his ongoing requests for access to the education records can be provided in a timely manner. Therefore, this office will not investigate future allegations that the school system did not follow

the Parent Communication Protocol when responding to the complainant's requests for access to education records.

**ALLEGATION #2 INFORMATION ON HOW TO DISPUTE CONTENT OF
THE EDUCATION RECORD**

FINDINGS OF FACTS:

17. An email from the school system staff to the complainant, dated August 27, 2020, documents that on that date, the school staff began attempting to find a mutually agreeable date for the IEP team to complete corrective action required as a result of the MSDE's investigation of the complainant's State complaint #20-137.

An email from the complainant to the school system staff, dated August 31, 2020, documents that on that date, the complainant stated:

We would like to have a three (3) hour IEP meeting to include our concerns about [the student's] education program and discuss additional information to revise his IEP. We would like to minimize the number of IEP meetings as much as possible. We would like to have at least one (1) hour allocated to discuss our concerns and inputs. In other words, state complaint discussions should not go over two (2) hours. If more than two (2) hours is required for state complaint discussions, additional separate meeting should be scheduled.

18. An email from a PGCPS Instructional Specialist to the complainant, dated September 2, 2020, documents that on that date, the PGCPS Instructional Specialist stated:

Since we do not know the other issues that you want to discuss at the IEP meeting, and since we cannot determine if 1 hour is an appropriate amount of time to address those issues, we will agree to two separate IEP meetings.

19. An email from a PGCPS Compliance Specialist to the complainant, dated September 2, 2020, documents that on that same date, the PGCPS Compliance Specialist stated:

I wanted to provide clarification as we are trying to schedule a mutually agreeable date and time to address the MSDE state complaint as well as additional concerns that you said you wanted to discuss. We offered you three dates in September to discuss the Letter of Findings, however, you said they did not work for you, and that you wanted an

additional hour to discuss additional concerns. You provided dates that you are available in late September and October, as well as stating the following in an email: “We would like to have at least one (1) hour allocated to discuss our concerns and inputs. In other words, state complaint discussions should not go over two (2) hours. If more than two (2) hours is required for state complaint discussions, additional separate meeting should be scheduled.”

While I did say in an earlier email that 2 hours should be ample time to discuss the state complaint, the meeting could potentially go for two hours. You have not provided information as to what your additional concerns are that you want to discuss outside of the Letter of Finding, so we are not sure the amount of time that will be needed to address those concerns.

In addition, it would be very difficult to have team members pulled from their teaching and service provision time with students to attend a 3 hour IEP meeting at one time. As such, we are accepting your recommendation to schedule 2 separate IEP meetings – one to address the state complaint and one to address your other concerns. We have allotted a 2 hour time slot for each to ensure that all topics and concerns are addressed.

We have accepted two of the dates that you said you are available – October 1 and October 8, as well as the timeframe that you requested. [The PGCPS Instructional Specialist] has provided you with those meeting invites.

20. An email from the complainant to the PGCPS Compliance Specialist, dated September 4, 2020, documents that on that date, the complainant stated:

The following sentence in your below email is not correct:

“We have accepted two of the dates that you said you are available – October 1 and October 8, as well as the timeframe that you requested.”

I did not say anything about the availability. I sent an email informing that I am available on one of the eight (8) dates/times. Please read the email carefully.

Please replace the Sentence in your below email with the following sentence:

“We have selected two of the dates which are in your email – October 1 and October 8, as well as the timeframe that was in the email.”

21. An email from the PGCPS Compliance Specialist to the complainant, dated September 4, 2020, documents that on that date, the PGCPS Compliance Specialist stated:

I will not be revising my own email at your request. However, thank you for clarifying what you wrote and your intent regarding the IEP meeting dates that you provided. I acknowledge that you are saying you would like to have one IEP meeting to address the state complaint and your other concerns.

Again, we will schedule a two hour timeframe for the IEP team meeting, as it is difficult for team members to be pulled away from their duties for a three hour time period.

We will address the MSDE Corrective Actions from #20-137 state complaint as well as your additional concerns.

If we are unable to address all of your concerns during the meeting timeframe, we will then have to schedule an additional IEP meeting.

In attempting to schedule a mutually agreeable date and time for the meeting, we accept your confirmed availability for October 1, 2020. We will meet from 1:00 p.m. to 3:00 p.m.

Please provide us with your additional concerns so that we can ensure that all appropriate team members are in attendance to address those concerns.

22. An email from the complainant to the school system staff, dated September 15, 2020, documents that on that date, the complainant stated:

Concerns I [raise] and information I provide at the IEP meeting can be regarding any aspect of the education program of the student. I do not wish to limit the concerns and information to any particular area.

DISCUSSION/CONCLUSIONS:

A parent who believes that information in education records collected, maintained, or used by the public agency is inaccurate or misleading may request that the information be amended. If the public agency decides to refuse the request, it must inform the parent of the refusal and advise the parent of the right to a hearing to challenge the information in the record (34 CFR §300.618).

Based on the Findings of Facts #17 - #22, the MSDE finds that there is no documentation that the complainant was in disagreement with the accuracy of the information in the school system's September 4, 2020 email, only with the decision made by the school system staff about how the

IEP team meetings would proceed. Therefore, this office finds that 34 CFR §300.618 does not apply and that a violation did not occur with respect to the allegation.

ALLEGATION #3 **PROVISION OF NOTICE OF THE
PROCEDURAL SAFEGUARDS**

FINDINGS OF FACTS:

23. The first (1st) IDEA State complaint filed by the complainant since the start of the 2019-2020 school year was on June 11, 2020 (State complaint #20-137).
24. The first (1st) IDEA state complaint filed by the complainant since the start of the 2020-2021 school year was on September 11, 2020 (State complaint #21-014).
25. There are emails from the school staff to the complainant that document that copies of the procedural safeguards were provided to him on the following dates:

March 11, 2020;
May 19, 2020;
June 24, 2020;
July 9, 2020;
September 2, 2020;
December 17, 2020;
January 22, 2021;
February 5, 2021;
March 30, 2021; and
April 6, 2021.
26. Between September 11, 2020 and February 5, 2021, the complainant filed IDEA State complaints alleging violations of his parental rights on the following dates:

September 25, 2020 – State complaint #21-020;
October 5, 2020 – State complaint #21-021;
October 16, 2020 – State complaint #21-028;
October 26 and 27, 2020 – State complaint #21-030; and
December 18, 2020 – State complaint #21-042.

DISCUSSION/CONCLUSIONS:

The public agency must provide parents with a copy of the notice of the procedural safeguards once per school year. In addition, another copy must be provided upon receipt of the first (1st) IDEA State complaint in a school year. This notice must inform the parent of all of their rights under the IDEA, including the right to Prior Written Notice (PWN), parent consent, access to education records, and the opportunity to present and resolve complaints through the due process complaint and State complaint procedures (34 CFR §300.504).

2019-2020 School Year

Based on the Findings of Facts #23 and #25, the MSDE finds that the PGCPs provided the complainant with a copy of the procedural safeguards nine (9) business days after the first (1st) IDEA State complaint filed in the 2019-2020 school year, in accordance with 34 CFR §300.504. Therefore, this office does not find that a violation occurred with respect to the allegation.

2020-2021 School Year

Based on the Findings of Facts #24 and #25, the MSDE finds that the PGCPs did not ensure that a copy of the procedural safeguards was provided to the parent upon receipt of the first (1st) IDEA State complaint filed in the 2020-2021 school year, in accordance with 34 CFR §300.504. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Findings of Facts #25 and #26, the MSDE finds that the documentation reflects that the lack of the provision of an eleventh (11th) copy of the procedural safeguards during the period of time covered by this investigation did not impact the complainant's ability to exercise his rights under the IDEA. Therefore, no student-specific corrective action is required to remediate the violations.

CORRECTIVE ACTION/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 below¹

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.² Dr. Birenbaum can be reached at (410) 767-7770.

¹ 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.

² 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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System-Based

The MSDE requires the PGCPS to provide documentation of the steps taken to ensure that the parents of students placed by the PGCPS at [REDACTED] are provided with copies of the procedural safeguards following the filing of the first (1st) State complaint in a school year.

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

c: Monica Goldson
Barbara Vandyke
Keith Marston
Gail Viens
Dori Wilson
Anita Mandis
Nancy Birenbaum