




February 17, 2023




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

RE: 
Reference: #23-115

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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 December 21, 2022, MSDE received a complaint from Mr.  hereafter, "the complainant," on behalf of the above-referenced student¹. 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. The PGCPS did not follow proper procedures when determining comparable services upon the student's transfer to the PGCPS at the start of the 2022- 2023 School Year, in accordance with 34 CFR §300.323(e).
2. The PGCPS did not provide the student with services in the placement required by his Individualized Education Program (IEP) since the start of the 2022- 2023 School Year, in accordance with 34 CFR §300.116.
3. The PGCPS did not ensure that the proper procedures were followed when responding to a request to inspect and review the student's educational record on December 6, 2022, in accordance with 34 CFR §300.613.

¹ The complainant is the student's Parent Surrogate serving as his parent pursuant to 34 CFR §300.30 under the IDEA.

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with multiple disabilities related to Intellectual Disability and Orthopedic Impairments under the IDEA. He attends [REDACTED] school in Prince George's County. He has an IEP that requires the provision of special education instruction and related services. Prior to the 2022-2023 school year, the student attended a public separate special education school located in Baltimore City.

FINDINGS OF FACTS:

1. The student's IEP at the start of school year 2022- 2023 states that the student "requires a program that specializes in small group instruction and integrated therapies with an emphasis on developing functional adaptive skills." The student functions significantly below chronological age and has been identified in the past as a student with significant disabilities in the areas of cognitive/functional development, academics, fine and gross motor, and communication.
2. The IEP further states that a "public separate day school is the least restrictive setting for the student to be academically successful and he is unable to participate with non-disabled peers in academic, non-academic, and extracurricular activities."
3. Initially, the student was to be enrolled at the [REDACTED] School, a public separate day school in the Baltimore City Public School (BCPS) for the school year 2022-2023. However, prior to the start of the school year, the student's foster care placement was changed to a home in Prince George's County. The student was enrolled in the PGCPs and assigned to [REDACTED] School, a public [REDACTED] school.
4. There is documentation that the PGCPs had access to the student's IEP from the BCPS on August 23, 2023.
5. On October 6, 2022, the IEP team met to consider the student's placement and discuss comparable services. The IEP team reviewed the student's IEP from BCPS, a psychological report dated March 30, 2020, a fine motor report dated March 5, 2020, an educational assessment report dated March 6, 2020, medical history, and residential home input. During the October 6, 2022 meeting, the team determined to continue with the student's IEP goals and services.
6. The IEP team further recommended that, based on the student's former school placement, the student continued to require placement at a public separate day school. The IEP developed by the PGCPs required identical services and frequency to those services determined by the BCPS. However, the student was not enrolled immediately in a public separate day school.
7. On November 7, 2022, the student was enrolled in and attended school at a public separate day school.
8. On December 6, 2022, the IEP team reconvened to discuss the comparable services provided to the student at the request of the complainant. During the meeting, the school base staff reviewed the goals and objectives, supplementary aids/services, the LRE, the eligibility page from the IEP they received from BCPS, comparable educational services, and educational placement based on the student's current IEP along with his previous placement. The IEP team also reviewed the student's psychological report dated March 30, 2020, fine motor report dated March 5, 2020, educational

assessment report dated March 6, 2020, medical history, and residential home input. The IEP team again determined that the IEP from BCPS was appropriate for the student. The IEP team discussed the option of keeping the student at his [REDACTED] neighborhood school for services, but rejected the option due to his needs and level of support that cannot be provided at the neighborhood school per his IEP.

9. There is no documentation that the complainant requested a copy of the student's prior IEP during the December 6, 2022 IEP team meeting. However, there is documentation that the IEP team reviewed and discussed this prior IEP during the course of the IEP team meeting.
10. There is no documentation that the student was provided with educational services from the start of the 2022-2023 school year to November 7, 2022.

CONCLUSIONS/ DISCUSSION:

Allegation #1: PROVISION OF COMPARABLE SERVICES

If a student with a disability who had an IEP that was in effect in a previous public agency in the same State transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the student including services comparable to those described in the child's IEP from the previous public agency, until the new public agency either adopts the child's IEP from the previous public agency; or develops, adopts, and implements a new IEP.

Based on the Findings of Facts #1 to #8 and #10, MSDE finds that while the IEP team convened by the PGCPs did adopt the IEP in place for the student in his previous school system, services for the student did not begin until November 7, 2022, in accordance with 34 CFR §300.323(e). Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #2: PLACEMENT DETERMINATION

Each student's educational placement must be made by the IEP team in conformity with the requirement that, to the maximum extent appropriate, students with disabilities, including those in public or private institutions or other care facilities, are educated with nondisabled students. This is the requirement to ensure that the IEP is implemented in the Least Restrictive Environment (LRE). Each public agency must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities, including instruction in regular class and special classes (34 CFR §§300.114 - .116 and COMAR 13A.05.01.10).

Based on the Findings of Facts #2, #3, and #5 to #7, MSDE finds the PGCPs has ensured that the IEP developed for the student included services in the placement required by his IEP since the start of the 2022-2023 School Year, in accordance with 34 CFR §300.116. Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #3: PARENT REQUEST TO REVIEW STUDENT RECORDS

Based on the Findings of Fact #9, MSDE finds that there is no documentation that the complainant requested a copy of the student's prior IEP during the December 6, 2022 IEP team meeting; hence, the PGCPs was not required to ensure that the complainant had access to that document following his request, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation did not occur with respect to the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

At least five business days before a scheduled IEP team meeting, the student's parent must receive an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at the meeting (COMAR 13A.05.01.07).

In this case, while there is no documentation that the complainant made an explicit request for access to the student's prior IEP in place while he attended Baltimore City Schools, the PGCPs was obligated to ensure that the complainant received a copy of the document at least five business days prior to the IEP team meeting convened on December 6, 2022 for the purposes of reviewing comparable services for the student. Therefore, based on the Finding of Fact #9, the MSDE finds that the PGCPs did not ensure that the complainant was provided with an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team planned to discuss at the December 6, 2022 IEP team meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation has occurred. Notwithstanding that violation, based on the same finding of fact, the MSDE finds that the PGCPs did provide the complainant with a copy of the prior IEP on February 8, 2023 and that no further corrective action is necessary to address the violation.

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.² 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.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student Specific:

MSDE requires the PGCPs to provide documentation by April 14, 2023, that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the delay in determining and providing the student with comparable services upon his enrollment in the PGCPs at the start of the 2022-2023 school year, as well as developed 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 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, 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 MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

Similarly Situated Students:

MSDE requires the PGCPs to provide documentation by June 1, 2023 that it has identified students who have transferred into the PGCPs since July 1, 2022, who at the time of their transfer required placement in either a public or private separate special education school. For each student identified, the PGCPs must determine if proper procedures were followed when determining comparable services, including a placement decision. If the PGCPs, in its review, determines that proper procedures were not followed when determining comparable services, it must convene an IEP team meeting for the identified student and determine the appropriate compensatory services or other remedy to redress the delay in determining and providing the student with services.

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

DC/sj

c: Monica Goldson
Keith Marston
Henry Johnson
Darnell Henderson
Gerald Loiacono
Diane Eisenstadt
Stephanie James