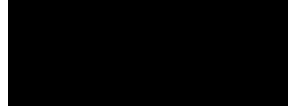




June 30, 2023



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

RE: [REDACTED]
Reference: #23-212

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 May 2, 2023, MSDE received a complaint from Mr. [REDACTED], 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. The PGCPS did not follow proper procedures when responding to requests for clarification of the student's educational records sent on February 10, 2023, to the student's social worker, in accordance with 34 CFR §300.613.
2. The PGCPS did not ensure that staff at the student's school were "available via email for parent questions or concerns" as required by his Individualized Education Program (IEP) in response to communications sent on March 24, 27, and 28, 2023, in accordance with 34 CFR §§300.101 and .323.
3. The PGCPS did not ensure that the IEP developed for the student reflected the IEP team's decisions on March 20, 2023, regarding behavioral interventions for the student, in accordance with 34 CFR §300.324.
4. The PGCPS did not ensure that the student was provided with behavioral supports required by his IEP on March 23, 2023, and March 24, 2023, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is seventeen 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.

FINDINGS OF FACTS:

1. On February 10, 2023, the complainant sent correspondence to the student's social worker requesting access to, and interpretation and explanation of, the student's behavioral data collected between December 2022 and February 2023, and access to, and interpretation and explanation of the records related to the students required mental health consultation between March 2022 and February 2023. In the correspondence, the complainant requested that the social worker "explain" when the student exhibited targeted behaviors, and how and when data was collected, and services were provided to the student.
2. The student's IEP, in effect on March 20, 2023, requires that " school staff will provide school to home communication via [the student's] communication book which is provided daily and are available via email for parent questions or concerns."
3. On March 20, 2023, the IEP team met to review and revise the student's IEP, as appropriate. During the IEP team meeting, the IEP team discussed strategies to assist the student in consistently using the toilet in an appropriate manner. As part of this discussion, the IEP team determined that the student would be provided with items to hold while using the toilet to ensure that he cannot touch his feces. The team agreed that a list of items would be developed in consultation with the student's occupational therapist. The student's Behavioral Intervention Plan (BIP) was updated to include this information. The IEP team also discussed other strategies such as communicating the details of the student's toileting to his parents and incorporated these decisions into the student's BIP.
4. The parent was provided with a completed copy of the student's IEP, including an updated BIP, and prior written notice of the IEP team's decisions on March 29, 2023.
5. On March 24, 27, and 28, 2023, the complainant sent correspondence to the student's classroom teacher and an instructional assistant asking questions related to the student's toileting and the use of a daily behavior log.
6. There is no documentation that the student's special education teacher or instructional assistant answered each of the complainant's questions sent on March 24, 27, or 28, 2023.
7. There is no documentation, to date, that the PGCPs has provided the complainant with a response to his request made on February 10, 2023.

DISCUSSION/CONCLUSIONS:

Allegation #1: Request for Explanation and Interpretation of the Student's Record

Based on Findings of Facts #1, #2 and #7, MSDE finds that the PGCPs has not followed proper procedures when responding to the complainant's request for interpretation and explanation sent on February 10, 2023, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation has occurred with respect to this allegation.

Allegation #2: Response to Parent Emails

Based on the Findings of Facts #2, #5, and #6, MSDE finds that the PGCPs has not ensured that staff at the student's school were "available via email for parent questions or concerns" as required by his IEP in response to communications sent on March 24, 27, and 28, 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this allegation.

Allegation #3: Development of the IEP and BIP

Based on the Findings of Fact #3, MSDE finds that the IEP developed for the student reflected the IEP team's decisions on March 20, 2023, regarding behavioral interventions for the student, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation has occurred with respect to this allegation.

Allegation #4: Implementation of the Student's IEP

The IDEA requires that each student's IEP be implemented as soon as possible following the development of the IEP. (34 CFR §300.323(c)(2)). The US Fourth Circuit Court of Appeals has held that "as soon as possible" does not mean immediately, and that only a material implementation failure will result in a loss of a Free Appropriate Public Education (FAPE). (See *Bd. of Educ. of Montgomery Cnty. v. Brett Y*, 155 F.3d 557 (4th Cir. 1998) (finding that a 30 day period for implementing a student's IEP was consistent with the federal regulations requiring the provision of services "as soon as possible.")).

In this case, the complainant alleges that the PGCPs had an obligation to provide the behavioral supports to the student three and four days following the IEP team meeting. This was before the PGCPs had an opportunity to provide the parent with prior written notice, which is required a reasonable time before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. (34 CFR §300.503).

Thus, based on the Finding of Facts #3 and #4, the PGCPs was not required to immediately provide the supports described in the student's IEP and BIP, including on March 23-24, 2023, and prior to providing the parents with prior written notice of the IEP team decisions and a completed copy of the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation has occurred with respect 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.¹ 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.

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, 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.

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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.² 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 August 1, 2023, that it has provided a response to the complainant's questions directed at the school staff on March 24, 27, and 28, 2023 and his request for interpretation and explanation of the student's educational records sent on February 10, 2023.

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/gl

c: Monica Goldson
Keith Marston
Darnell Henderson
Alison Barmat
Diane Eisenstadt
Gerald Loiacono

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