


March 1, 2024




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

RE:   
Reference: #24-108

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 December 20, 2023, MSDE received a complaint from , 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. On February 13, 2024, MSDE granted an extension due to exceptional circumstances to ensure a thorough investigation into all significant matters.

MSDE investigated the following allegations:

1. The PGCPS did not develop an Individualized Education Program (IEP) that addresses the student’s identified nursing needs during the September 14, 2023, IEP meeting, in accordance with 34 CFR §300.324.
2. The PGCPS has not ensured that the student has been provided with the special education instruction and related services required by the IEP since September 14, 2023, in accordance with 34 CFR §§300.101 and .323.
3. The PGCPS has not ensured that the student is consistently provided with the nursing services required by her IEP since September 14, 2023, in accordance with 34 CFR §300.101 and .323.

**BACKGROUND:**

The student is five years old and is identified as a student with a developmental delay under the IDEA. The student attends [REDACTED]. She has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. The student's IEP, in effect since September 14, 2023, was developed on June 5, 2023. The IEP requires that the student be provided with support in the areas of pre-academic, speech and language expressive language, speech and language receptive language, social emotional/behavioral, health/medical, vision, adaptive, fine motor, gross motor. The IEP includes goals addressing Pre-Academic and Social Emotional/Behavioral. The IEP requires that the student receive 90 hours of specialized instruction monthly outside of the general education classroom, one hour monthly of physical therapy outside of the general education classroom, and 126 hours monthly of other therapies from a private duty nurse (PDN). The student has a history of gastrostomy tube, seizures, and cerebral palsy. The IEP reflects the student will also be accompanied to school by a PDN, which was determined via a Nursing Assessment completed February 7, 2023. The PDN is required to assist the student for suctioning and oxygen required after seizures, as well as for close monitoring for aspiration during g-tube feeds.
2. On September 14, 2023, a "Private Duty Nurse (PDN) Roles and Responsibilities Agreement" was created between PGCPs Office of School Health and a Private Agency. The agreement reflects that the student is required to use a PDN throughout the day and the student is not allowed to attend school if the PDN is not present. Additionally, the agreement reflects that the agency would be responsible for finding a substitute nurse if the PDN is not present.
3. There is no documentation indicating that an IEP meeting took place on September 14, 2023, however, a "plan of care" meeting was convened to discuss the responsibilities and role of a PDN. The plan of care document resulting from this meeting is housed in the nurse's office with the student's health records. The student's IEP references the need for a school health consult, in addition to services from a PDN.
4. There is documentation from the private agency indicating that services for a PDN started on September 26, 2023, for the student's full-time school schedule (Monday-Friday), with the understanding that the student would not attend school on the first and third Wednesday of each month. However, there is documentation to reflect that although PGCPs has entered into a contract with a nursing services agency, the services have not been provided on a consistent basis during the 2023-2024 school year.
5. Due to the unavailability of the PDN, and the student's inability to attend school without one, the student did not receive her special education services. The student has missed a total of 29 days of school due to a lack of a PDN.
6. On February 14, 2024, the IEP team met to discuss the complainant's current State complaint, reevaluation, and to review and revise the IEP as appropriate. During the IEP meeting, the team proposed conducting cognitive and adaptive assessments to determine present levels of performance and continued eligibility for special education services, the use of a new nursing

agency to provide PDN services, and compensatory services as a remedy to parent concerns addressed in the current State Complaint.

7. The written summary of the February 14, 2024, IEP meeting reflects that the IEP team proposed the use of a new nursing agency to provide PDN services and noted it would take two weeks for the new service to begin. The current nursing agency would continue to provide services until the new PDN started. In addition, the IEP team proposed compensatory services for the missed days of special education services and related services. The team discussed that the student would receive virtual services on days the PDN is unavailable and attend school on the first and third Wednesday of every month when the school is closed due to half days where the student would receive 1:1 instruction from her classroom teachers. The IEP team determined to reconvene within 90 days, in conjunction with the annual review and review the results of the requested assessments.
8. Documentation confirms that the new nursing agency commenced services on February 23, 2024, and has been providing care since that date.

### **CONCLUSIONS:**

#### **ALLEGATION #1: AN IEP THAT ADDRESSES THE STUDENT'S IDENTIFIED NURSING NEED**

Based on the Finding of Fact #2 and #3, MSDE finds that the meeting held on September 14, 2023, was not an IEP team meeting, but a meeting with the health team only. Therefore, this office finds that a violation did not occur with respect to the allegation.

#### **ALLEGATION #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION AND RELATED SERVICES**

Based on the Finding of Fact #1- #8, MSDE finds that the PGCPs has not ensured that the student has been provided with the special education instruction and related services required by the IEP since September 14, 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding this violation, based on Finding of Fact #6-#8, MSDE finds that the IEP team has created a proposed compensatory service plan to address the lack of services throughout the 2023-2024 school year. Therefore, no further student-specific corrective action is required with respect to this aspect of the violations.

#### **ALLEGATION #3: PROVISION OF NURSING SERVICES**

Based on the Finding of Fact #4 and #5, MSDE finds that the PGCPs has not ensured that the student is consistently provided with the nursing services required by her IEP since September 14, 2023, in accordance with 34 CFR §300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding this violation, based on Finding of Fact #6- #8, MSDE finds that the PGCPs hired a new nursing service to provide services to the student and determined compensatory services to address the lapses in services prior to this time. Therefore, no further student-specific corrective action is required with respect to this aspect of the violations.

### **CORRECTIVE ACTIONS/TIMELINES:**

The IDEA requires that State complaint procedures include 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.<sup>1</sup> 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Alison Barmat can be reached at (410) 767-7770 or by email at [alison.barmat@maryland.gov](mailto:alison.barmat@maryland.gov).

### **System-Based**

MSDE requires the PGCPs to provide documentation by April 30, 2024, of the following:

- a. That it has identified each student in the PGCPs who is required to receive private duty nursing services in their IEP during the 2023- 2024 school year and documentation that each student is receiving those services.
- b. For any student not receiving services due to a lack of nursing services during the 2023- 2024 school year, a plan to identify and secure nursing services for the student by May 31, 2024.

For any student identified above not receiving services, the PGCPs is required to convene IEP team meetings to determine alternative strategies to mitigate educational harm for the student and compensatory services, or other remedy, as appropriate.

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.

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<sup>1</sup> 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.

<sup>2</sup> 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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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,

Antoine L. Hickman, Ed.D.  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services

ALH/sj

c: Millard House II, Chief Executive Officer, PGCPs  
Keith Marston, Compliance Instructional Supervisor, PGCPs  
Lois Jones Smith, Compliance Liaison, PGCPs  
Darnell Henderson, Deputy General Counsel, PGCPs  
██████████, Principal, PGCPs  
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Stephanie James, Complaint Investigator, MSDE