

June 21, 2024

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

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

RE: [REDACTED]
Reference: #24-205

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and 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 April 22, 2024, 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.

MSDE investigated the following allegations:

1. The PGCPS has not developed an Individualized Education Program (IEP) that identifies and addresses the student’s toileting needs since May 2023, in accordance with 34 CFR §§300.101 and .324.
2. The PGCPS has not ensured that the student’s progress towards achievement of the annual goals was measured as described in the IEP, since May 2023, in accordance with 34 CFR §§300.101 and .324.
3. The PGCPS did not ensure that the Functional Behavior Assessment (FBA), was reviewed, since May 2023, in accordance with 34 CFR §300.305.
4. The PGCPS has not followed proper procedures when responding to a request to amend the student’s education record, since October 2023, in accordance with 34 CFR §§300.618 - .621.

5. The PGCPs did not provide prior written notice (PWN) of the IEP team's decision to reject the parents' request for additional occupational therapy (OT) services in October 2023, in accordance with 34 CFR §300.503.
6. The PGCPs did not follow proper procedures to determine Home and Hospital Teaching (HHT) services since January 2024, in accordance with COMAR 13A.05.01.10.

BACKGROUND:

The student is six years old and is a student with Autism under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1 and #3

DEVELOPED AN IEP THAT ADDRESSES THE STUDENT'S TOILETING NEEDS, REVIEW OF FBA, PROPER WRITTEN NOTICE

FINDINGS OF FACT:

1. The IEP, in effect in May 2023, was developed on March 15, 2023. The IEP reflects the student's disability impacts the following areas: Cognitive, Communication, Math Problem Solving, Physical Education, Reading Vocabulary, Self-Management, Social Emotional/Behavioral, and Handwashing. The IEP requires twenty-nine hours per week of instruction outside the general education setting. The IEP requires one hour of weekly physical education instruction outside the general education classroom. The IEP requires OT as a related service for forty minutes per month outside the general education classroom, Speech-Language therapy for one hour thirty minutes per month outside of the general education classroom, and transportation services.

The Present Levels of Academic Achievement and Functional Performance (PLAFFS) reflects the student "usually requires adult assistance to help with daily living, like feeding, toileting, and dressing."

2. The Prior Written Notice (PWN) generated after the May 22, 2023; IEP team meeting reflects the team reconvened to review the Functional Behavior Assessment (FBA). The PWN further reflects the following:
 - the team reviewed the FBA report, identified, defined, and discussed disruptive behaviors, classroom interventions and classroom accommodations;
 - the team reviewed data collected from March 21, 2023, until May 10, 2023;
 - the parent requested a one to one and shared if the behavior is improving, then the team should continue to continue to collect data of the student's behavior;
 - the team shared that at times two adults are required to change the student's pull-up, however that only occurs when the student is in a playful mood and is not an everyday occurrence, therefore additional data is not required at this time; and
 - the team agreed that a Behavior Intervention Plan is not required and the IEP team will reconvene in October to review additional data and the FBA.

3. The team met again in October 2023. The PWN generated after the October 25, 2023, IEP team meeting reflects the purpose of the meeting was to review the FBA. The PWN reflects the IEP team reviewed the results of data collection and intervention to address the student's maladaptive behaviors. The PWN reflects the speech-language, OT, adapted PE and academic progress was reviewed. The PWN also reflects:
- parents requested additional speech-language and OT services, but the IEP team declined to increase services because the student was making progress;
 - parents agreed to allow the PGCPs Speech-Language Pathologist (SLP) to communicate with the student's private SLP;
 - parents asked if the student would have additional assistance in the classroom;
 - the IEP team agreed that OT will focus on functional hand use such as cutting and forming straight lines; and
 - special educator shared "during the bathroom schedule, he can sit on the toilet while watching YouTube with an adult seated beside him."

The team agreed to reconvene on November 29, 2023, for the purpose of discussing the Behavior Intervention Plan (BIP) and providing information about a dedicated aide.

4. There is no documentation that toileting is an identified need of the student. There is no documentation that the student's parent or the school-based team raised toileting as a concern during the May 22, 2023, and October 25, 2024, IEP team meetings.
5. The IEP developed on February 28, 2024, reflects the student's disability impacts in the following areas: Cognitive, Communication, Math Problem Solving, Physical Education, Reading Vocabulary, Self-Management, Fine-Motor, and Toileting. The IEP requires twenty-five hours per week of instruction outside the general education setting, and one hour of weekly adapted physical education instruction outside the general education classroom. The IEP further requires OT for one hour thirty minutes per month outside the general education classroom and Speech-Language therapy for two hours per month outside of the general education classroom.

The IEP's toileting goal reflects: "By February 2025, [Student] will touch/point the printed PCS¹ of a bathroom and/or on his personal communication device to indicate he needs to use the bathroom with decreased prompting." The progress reports dated January 19, 2024, and June 2, 2024, reflect that the student was making sufficient progress to meet the goal.

6. The report of progress towards the achievement of the annual IEP goals reported on March 22, 2024, reflects that the goal was not introduced due to the student's absences.
7. There is no documentation to support the complainant's allegation that the PWNs developed on May 22, 2023, and October 26, 2023, were not accurate.

¹ Picture Communication Symbols (PCS)

DISCUSSIONS AND CONCLUSIONS:

Developing an IEP that Addresses Identified Toileting Needs

In this case, the complainant alleges that the PGCPs did not “comprehensively evaluate the student in every area of [suspected] disability to identify all the academic and functional needs of the student, specifically the school-age child who was not fully toilet trained.”

Based on Findings of Fact #1 through #4, MSDE finds that toileting was not an identified need of the student; requiring the PGCPs to develop an IEP that identifies and addresses the student’s toileting needs from May 2023 to February 28, 2024, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation did not occur concerning this allegation.

Based upon Finding of Fact #5, MSDE finds that the PGCPs has developed an IEP that identifies and addresses the student’s toileting needs since February 28, 2024, in accordance with 34 CFR §§300.101 and .324.

Review of FBA

Based upon Findings of Fact #2 and #3, MSDE finds that the PGCPs has ensured that the FBA was reviewed, May 22, 2023, and October 25, 2023, in accordance with 34 CFR §300.305. Therefore, this office finds a violation did not occur concerning this allegation.

Development Of Prior Written Notice

In this case the complainant alleges that the school system did not “analyze existing data to make the decision based on the review of the data when refusing the parent’s request for additional occupational therapy as a related service.” The complainant alleges that the PWN failed to include “a description of each assessment procedure, test, record, or report the public agency uses as a basis for the proposal or refusal.”

The PWN includes the data reviewed by the IEP team and reflects that the reported speech-language progress was the basis for the refusal of the parent’s request for additional OT services. The PWN reflects the IEP team’s determination regarding additional OT services.

Based upon Finding of Fact #3, MSDE finds that the PGCPs provided prior written notice (PWN), including the basis and data used for their determination, of the IEP team's decision to reject the parents' request for additional occupational therapy (OT) services in October 2023, in accordance with 34 CFR §300.503. Therefore, this office finds a violation did not occur concerning this allegation.

ALLEGATION #2

PROGRESS REPORTS MEASURED AS REQUIRED

FINDINGS OF FACT:

March 2023 IEP

8. The report of progress towards the achievement of the annual Cognitive, Communication, Math Problem Solving, Physical Education, Reading Vocabulary, Self-Management, Social Emotional/Behavioral, and Handwashing goals reported on January 19, 2024, reflects that the goals were measured as required by the student’s IEP.

February 28, 2023, IEP

9. The report of progress towards the achievement of the annual Cognitive, Communication, Math Problem Solving, Physical Education, Reading Vocabulary, Self-Management, Fine-Motor, and Toileting goals reported on March 22, 2024, reflects that the goals were not introduced due to student absences.
10. The report of progress towards the achievement of the annual Cognitive, Communication, Math Problem Solving, Physical Education, Reading Vocabulary, Self-Management, Fine-Motor, and Toileting goals reported on June 2, 2024, reflects that the goals were measured as required by the student's IEP.

CONCLUSION:

Based on the Findings of Fact #8 through #10, MSDE finds that the PGCPSS has ensured that the student's progress towards achievement of the annual goals was measured as described in the IEP, since December 16, 2024, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds a violation has not occurred concerning this allegation.

ALLEGATION #4

RESPONSE TO A REQUEST TO AMEND STUDENT RECORD

FINDINGS OF FACT:

11. On January 2, 2024, the complainant emailed a request for reconsideration of state complaint #24-049 to the PGCPSS. The reconsideration letter also reflects a request to amend the student's record. "Concurrently, we request that Prince George's County Public Schools amend and rectify [the students'] educational records in accordance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR Part 99). We aim to rectify certain records that we believe contain inaccuracies or misrepresentations, aligning with FERPA guidelines."
12. There is no documentation that the school system responded to the parent's request to amend the record.

DISCUSSION AND CONCLUSION:

A parent who believes that information in the education records collected, maintained, or used under the IDEA is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing. 34 CFR § 300.618.

Based on the Findings of Fact #11 and #12, MSDE finds that the PGCPSS has not followed proper procedures when responding to a request to amend the student's education record, since October 2023, in accordance with 34 CFR §§300.618 - .621. Therefore, this office finds a violation occurred concerning this allegation.

ALLEGATION #6

PROPER PROCEDURES TO DETERMINE HHT SERVICES

FINDINGS OF FACT:

13. There is no documentation that the Notice for the IEP team meeting was provided to the parent for the February 22, 2024, IEP team meeting.
14. The PWN generated after the April 22, 2024, IEP team meeting reflects that the parent, special education teacher, occupational therapist, HHT case manager, school counselor, and adaptive physical educator participated in the meeting. The HHT application was received on February 8, 2024, and approved on February 16, 2024. The parent shared that the student is participating in a clinic and is unavailable from 9:30am- 12:30pm. The PWN further reflects that the IEP team proposed and agreed to:
 - The student “can receive virtual instruction six hours a week.” The specific days and times will be determined by the availability of an adult who is at home and the stamina of the student;
 - The HHT teacher will work on the following goal “By March 2024 [student] will identify core vocabulary words by pointing or touching the photo or picture symbols given verbal prompts with 80% accuracy in 4 out of 5 trials as measured by data collection;”
 - Speech/language services, and OT services will be provided as a consult; and
 - Adapted Physical Education, and Transportation services will not be provided while the student is receiving HHT service.

There is no documentation that the parent was provided the PWN following this meeting.

15. There is no documentation that the IEP reflects the student’s HHT services and that the IEP team developed a plan to return the student to school.

DISCUSSION AND CONCLUSIONS:

The public agency shall determine the need for service and begin instruction as soon as possible, but not later than 10 school calendar days following the (a) Notification to the local school system of the inability of the student to attend the school of enrollment; and (b) Receipt of the verification of the need for services. COMAR 13A.03.05.03(D)(4)

If a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team shall meet to review and revise the student's IEP. The IEP team shall: (i) Determine the instructional services to be provided to the student as long as the medical restrictions apply; and (ii) Develop a plan for returning the student to a school-based program. COMAR 13A.05.01.10(05)

In this case the complainant alleges that the IEP team did not conduct an IEP meeting with the entire team, provide a meeting notice, provide a prior written notice, and revise the IEP to reflect the services the student required while on HHT.

Based on the Findings of Fact #13, through #15, MSDE finds that the PGCPs did not follow proper procedures to determine Home and Hospital Teaching (HHT) services by failing to revise the IEP to reflect HHT services and failing to develop a plan for the student to return to school, since February 2024, in accordance with COMAR 13A.05.01.10. Therefore, this office finds that a violation has occurred concerning this aspect of the violation.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

Provision of IEP Meeting Notice

Based on the Findings of Fact #13, MSDE finds that the PGCPSS did not provide the parent with a meeting notice before the IEP team meeting, on February 22, 2024. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Fact #14, MSDE finds that the parent participated in the IEP team meeting on February 22, 2024, in accordance with COMAR 13A.05.01.10. Therefore, no corrective action is required concerning this aspect of the allegation.

Provision of PWN

Based on the Findings of Fact #14, MSDE finds the PGCPSS did not provide the parent with PWN following the IEP team meeting on February 22, 2024. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS AND 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.^[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.

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 Branch, MSDE, to ensure the effective implementation of the action.^[2] Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student-Specific

MSDE requires the PGCPSS to provide documentation by September 1, 2024, that the IEP team has:

- a. responded to the parents request to amend the record; and
- b. provided the parent with the PWN developed following the February 22, 2024, IEP team meeting.

The PGCPSS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

MSDE requires the PGCPs to provide documentation by September 1, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the provision of Notice of IEP team meetings, prior written notice, responding to a request to amend a student's record, and ensuring that proper procedures are followed to determine HHT services under the IDEA and COMAR. These steps must include staff development, as well as tools developed to monitor compliance.

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,

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

ALH/ra

c: Millard House II, Superintendent, PGCPs
Lois Jones Smith, Compliance Liaison, PGCPs
Keith Marston, Compliance Coordinator, PGCPs
Darnell Henderson, General Counsel, PGCPs
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