

July 24, 2024

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

RE: [REDACTED]
Reference: #24-254

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 3, 2024, MSDE received a complaint from [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 ensure that the Individualized Education Program (IEP) team convened to review the student's IEP before April 17, 2024, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR § 300.324.
2. The PGCPS has not followed proper procedures when conducting a re-evaluation of the student since May 16, 2024, in accordance with 34 CFR §§ 300.303-.306.
3. The PGCPS has not ensured that the student was provided with the special education services as required by the IEP since the start of the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323.

BACKGROUND:

The student is seven years old and is identified as a student with a Developmental Delay (DD) under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. The student's IEP developed on April 18, 2023, reflects a required projected annual review date of April 17, 2024. It further reflects that the most recent re-evaluation date was February 15, 2022.

2. The student's IEP developed on April 18, 2023, and May 16, 2024, requires the student to be provided with special education instruction and related services:

- Four 30-minute weekly sessions of special education instruction outside the general education classroom provided by the special, general education teacher or the IEP team;
- Five one-hour weekly sessions of special education instruction inside the general education classroom provided by the special education teacher or the IEP team;
- Three 30-minute weekly speech-language therapy sessions outside the general education classroom provided by the speech-language pathologist.

The student's IEP developed on April 18, 2023, requires the student to be provided with three 15-minute weekly sessions of occupational therapy (OT) inside the general education classroom provided by an occupational therapist or the certified occupational therapist assistant.

The student's IEP developed on May 16, 2024, requires the student to be provided with two 30-minute weekly sessions of OT inside the general education classroom provided by an occupational therapist or the certified occupational therapist assistant.

3. On April 5, 2024, the IEP team convened to review and revise the student's IEP. The Prior Written Notice (PWN) generated following this meeting reflects that the IEP team agreed to the discontinuation of the student's behavior chart, that the IEP should be amended to reflect daily hours instead of weekly hours, and that the special education resource teacher would gather reading data. There is no documentation to support that this IEP team meeting was considered an annual review of the student's IEP.

4. On May 16, 2024, the IEP team convened to conduct the annual review of the student's IEP. The PWN generated after this IEP team meeting reflects that the IEP team agreed to conduct the re-evaluation assessments to determine the full scope of the student's academic performance. In addition, the PWN reflects that the OT and speech pathologist updated and reviewed present levels of performance, and updated and reviewed the related IEP goals. Also, the IEP team agreed to not having a self-management goal based on behavior observations and data. The team did agree to add social skills training and transitions to the supplementary aids and services.

5. There is no documentation that the parent was provided with the consent form to complete the agreed upon re-evaluation assessments.

6. There is no documentation that the student was provided with the special education services required by the IEP since the start of the 2023-2024 school year.

DISCUSSIONS AND CONCLUSIONS:

ALLEGATION #1

ANNUAL REVIEW

The public agency must ensure that the child's IEP is reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved (34 CFR § 300.324). In this case, the IEP projected annual review date was April 17, 2024; the IEP team met on May 16, 2024, to conduct the student's annual IEP review. While there is documentation that the IEP team met on April 5, 2024, there is not documentation to support that the IEP team met the requirements of an annual IEP team meeting at this date, including the review of all of the annual IEP goals to determine whether the annual goals are being achieved or to address any lack of progress.

Based upon the Findings of Fact #1, #3, and #4, MSDE finds that the PGCPs did not ensure that the IEP team convened to review the student's IEP before April 17, 2024, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation occurred concerning the allegation.

ALLEGATION #2

PROPER PROCEDURES WHEN CONDUCTING A RE-EVALUATION OF THE STUDENT

A public agency proposing to conduct a re-evaluation must obtain informed consent from the student's parent before conducting the assessments (34 CFR § 300.300(c); COMAR 13A.05.01.13A). In this case, PGCPs has not yet obtained consent to re-evaluate the student; however, the 90-day timeline since the date the IEP team agreed to conduct the re-evaluation has not elapsed (COMAR 13A.05.01.06E).

Based upon the Findings of Fact #4 and #5, MSDE finds that the PGCPs has followed proper procedures when conducting a re-evaluation of the student since May 16, 2024, in accordance with 34 CFR §§ 300.303- .306. Therefore, this office does not find a violation occurred concerning the allegation.

ALLEGATION #3

PROVISION OF SPECIAL EDUCATION SERVICES

Based upon the Findings of Fact #2 and #6, MSDE finds that the PGCPs has not ensured that the student was provided with the special education services as required by the IEP since the start of the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds a violation occurred concerning the allegation.

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.

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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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.² Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student Specific

MSDE requires the PGCPS to provide documentation by October 1, 2024, that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the violation regarding the provision of the special education services, and determined if the lack of a timely annual review had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of all services within one year of the date of this Letter of Findings.

The PGCPS must ensure that the parent is provided with prior written notice of the team's decisions. The parent maintains 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 October 1, 2024, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at [REDACTED]. Specifically, the PGCPS must provide a monitoring report for 15 randomly selected students reflecting data showing that the students have had their IEPs reviewed at least annually and have documentation of receiving the services required by their IEP. Full compliance is required. If 100% compliance is not reported, a second sample will be reported. If 100% compliance is not obtained, PGCPS will confer with MSDE to determine next steps.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety days of the initial date of a determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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.

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

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

ALH/sd

c: Millard House II, Superintendent, PGCP
Keith Marston, Compliance Instructional Supervisor, PGCP
Lois Jones Smith, Compliance Liaison, PGCP
Darnell Henderson, General Counsel, PGCP
William Fields, Associate General Counsel, PGCP
██████████, Principal, ██████████, PGCP
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
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