

September 19, 2020

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
100 State Circle
Annapolis, Maryland 21401

Re: Special Education State Complaint for

Dear Governor Hogan:

I am writing to file a complaint on behalf of my son (the Student), regarding his education in the state of Maryland (the State). I believe that the Maryland State Department of Education (the “State Educational Agency” or the “SEA”) and the State are in violation of certain requirements in the Individuals with Disabilities Education Act (IDEA or the “Act”), its implementing regulations at 34 C.F.R. §300 (the Regulations) and related Code of Maryland Regulations (COMAR). This complaint is filed under 34 C.F.R. §300.153 and COMAR 13A.05.01.15, against the SEA and the State. I will be referred to as the “Complainant” hereafter.

The details about the complaint are as follows:

Student Information:

Student's Name:

Date of Birth:

Address:

Local Educational Agency (LEA): Prince George's County Public Schools (PGCPS)

School the student is currently attending:

School(s) the student attended when violation(s) occurred:

(Placed by the PGCPS)

Student Background:

The Student is a fifteen (15) years old boy with Autism and Epilepsy, and is a child with disability under the IDEA. The Prince George's County Public Schools (the LEA) placed the Student at the [REDACTED] (the School), a non-public separate day school in the State, to receive Free Appropriate Public Education (FAPE).

Legal Standards:

1. The IDEA implementing regulations at 34 C.F.R. §300.101 requires that a free appropriate public education must be available to all children residing in the State between the ages of 3 and 21;
2. The IDEA implementing regulations at 34 C.F.R. §300.146 requires that each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency is provided special education and related services in conformance with an IEP that meets the requirements of 34 C.F.R. §§300.320 through 300.325;
3. The IDEA implementing regulations at 34 C.F.R. §300.152(a)(4) requires that each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under 34 C.F.R. §300.153 to review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of 34 C.F.R. §300;
4. The IDEA implementing regulations at 34 C.F.R. §300.600(a)(1) requires that the State must monitor the implementation of 34 C.F.R. §300;
5. The IDEA implementing regulations at 34 C.F.R. §300.600(a)(3) requires that the State must enforce 34 C.F.R. §300, consistent with 34 C.F.R. § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in 34 C.F.R. § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA);
6. The IDEA implementing regulations at 34 C.F.R. §300.600(b) requires that the primary focus of the State's monitoring activities must be on improving educational results and functional outcomes for all children with disabilities; and ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities;
7. The IDEA implementing regulations at 34 C.F.R. §300.600(e) requires that in exercising its monitoring responsibilities under paragraph (d) of this section, the

State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance;

8. The IDEA implementing regulations at 34 C.F.R. §300.321 requires that the public agency must ensure that the IEP Team for each child with a disability includes not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; and
9. Pursuant to 34 C.F.R. §300.33 and section 612(a)(11) of the Act, the term public agency includes the SEA. The SEA must, therefore, resolve any complaint against the SEA pursuant to the SEA's adopted State complaint procedures. The SEA, however, may either appoint its own personnel to resolve the complaint, or may make arrangements with an outside party to resolve the complaint. If it chooses to use an outside party, however, the SEA remains responsible for complying with all procedural and remediation steps required in part 300. (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46602, August 14, 2006).

Background:

1. On June 07, 2020; June 21, 2020; and June 22, 2020; the Complainant filed a complaint, pursuant to 34 C.F.R. §300.153 and COMAR 13A.05.01.15 (collectively, the "Complaint"), with the SEA alleging that the LEA violated certain provisions of the IDEA and its implementing regulations at 34 C.F.R. §300 and related COMAR. The Complaint was addressed to Ms. Marcella E. Franczkowski, Assistant State Superintendent, Division of Special Education/Early Intervention Services within the SEA (hereafter the "Superintendent");
2. One of the allegation in the Complaint was that the LEA did not ensure that the IEP team included the Student's Special Education Teacher in the IEP meeting conducted on July 16, 2019 for the Student (the IEP Meeting), in accordance with 34 C.F.R. §300.321; and COMAR 13A.05.01.07 (the Allegation);
3. On August 06, 2020 the Superintendent wrote a letter (the Letter), addressed to Ms. Trinell Bowman, Executive Director of Special Education at the LEA and the Complainant asserting that the SEA completed investigation of the Complaint;
4. In one part of the Letter, the Superintendent acknowledged that she understood that 34 C.F.R. §300.321 requires that a special education teacher or a special education provider is required to attend IEP meeting;

5. On the same page of the Letter, in another part of the Letter, the Superintendent documented that special education teacher was not required to participate in the IEP Meeting in accordance with 34 C.F.R. §300.321;
6. The Student did not have a Special Education Provider other than Special Education Teacher and the Superintendent did not dispute that;
7. The Superintendent asserted in the Letter that the Student's school bus driver and bus attendant attended the IEP Meeting and for that reason Special Education was not required to attend the IEP Meeting;
8. The Student's school bus driver or the bus attendant did not provide special education to the Student; the Superintendent did not dispute that; and there was no finding in the Letter that the bus driver or the attendant provided special education to the Student;
9. The Superintendent confirmed in the Letter that a special education teacher or special education provider of the Student did not attend the IEP Meeting; and
10. The Superintendent acknowledged in the Letter that it might have been helpful if the special education teacher had attended the IEP Meeting;

Allegation #1:

The State has not ensured that the noncompliance was corrected when it identified that the IEP Team did not include a Special Education Teacher or Provider for the IEP Meeting, in accordance with 34 C.F.R. §300.600.

Date(s) violation(s) occurred or duration of the violation: Since August 06, 2020

The State identified that the Special Education Teacher or Provider did not attend the IEP Meeting. However, it did not require the non compliance to be corrected. Please refer to the Legal Standards and the Background provided earlier for more information.

Allegation #2:

The SEA did not make an independent determination as to whether the LEA violating a requirement of Part B of the IDEA or its implementing regulations with regards to the Allegation, in accordance with 34 C.F.R. §300.152.

Date(s) violation(s) occurred or duration of the violation: Since August 06, 2020

In spite of the knowledge that the Special Education Teacher of the Student was not part of the IEP Team for the IEP Meeting, and the knowledge that the Special Education Teacher was required to attend the IEP Meeting as per 34 C.F.R. §300.321, the Superintendent documented that she did not find a violation. Please refer to the Legal Standards and the Background provided earlier for more information.

Allegation #3:

The State failed to monitor the implementation of 34 C.F.R. §300.321 with regards to the IEP Meeting, in accordance with 34 C.F.R. §300.600.

Date(s) violation(s) occurred or duration of the violation: Since August 06, 2020

Please refer to the the Legal Standards and Background provided earlier for more information.

Allegation #4:

The State did not enforce the requirements under 34 C.F.R. §300.321 with regards to the IEP Meeting, in accordance with 34 C.F.R. §300.600.

Date(s) violation(s) occurred or duration of the violation: Since August 06, 2020

Please refer to the the Legal Standards and Background provided earlier for more information.

Allegation #5:

The State did not primarily focus on improving educational results and functional outcomes of the Student while investigating the Allegation, in accordance with 34 C.F.R. §300.600.

Date(s) violation(s) occurred or duration of the violation: Since August 06, 2020

Please refer to the the Legal Standards and Background provided earlier for more information.

Allegation #6:

The State did not ensure that the LEA met the program requirements under 34 C.F.R. §300.321 while investigating the Allegation, in accordance with 34 C.F.R. §300.600.

Date(s) violation(s) occurred or duration of the violation: Since August 06, 2020

Please refer to the Legal Standards and the Background provided earlier for more information.

Proposed Resolution:

1. Within fifteen (15) days of the date of this letter, you should provide a written confirmation to the Complainant that the disciplinary removal of the Superintendent from her current position, for fraudulent manipulation of State Complaint investigation findings, has been completed and a qualified personnel has been temporarily appointed as the Assistant State Superintendent, Division of Special Education/Early Intervention Services within the SEA;
2. Within twenty (20) days of the date of this letter, the SEA should provide a written confirmation to the Complainant that it has required the LEA to provide remedy including compensatory services to the Student to remediate the violation identified by the Allegation;
3. Within twenty (20) days of the date of this letter, the SEA should provide a written confirmation to the Complainant that it has required the LEA to ensure that the Student's IEP Team will include his special education teacher;
4. Within twenty five (25) days of the date of this letter, you should provide a written explanation to the Complainant with the steps the State has taken to ensure that the SEA requires correction of the noncompliances identified during State Complaint investigations, within sixty (60) days of the filing of the complaint;
5. Within twenty five (25) days of the date of this letter, you should provide a written explanation to the Complainant with the steps the State has taken to ensure that the SEA conducts independent determination without retaliating the Student or the Complainant, during State Complaint investigations;
6. Within twenty five (25) days of the date of this letter, you should provide a written explanation to the Complainant with the steps the State has taken to ensure that the SEA monitors the implementation of IEP meetings consistent with 34 C.F.R. §300.321 by all school systems in the State;
7. Within twenty five (25) days of the date of this letter, you should provide a written explanation to the Complainant with the steps the State has taken to ensure that the SEA primarily focuses on improving educational results and

- functional outcomes of the student, and not on retaliating the student or the complainant, during State Complaint investigations;
8. Within twenty five (25) days of the date of this letter, you should provide a written confirmation to the Complainant that minimum qualifications for the position of Assistant State Superintendent, Division of Special Education/Early Intervention Services within the SEA has been revised to include history of proper conduct and integrity; successful completion of training on code of conduct; and understanding of disciplinary action procedures consistent with code of conduct set forth by you for state employees;
 9. Within thirty (30) days of the date of this letter, you should provide the Complainant with a written confirmation that a qualified personnel has been permanently appointed as the Assistant State Superintendent, Division of Special Education/Early Intervention Services within the SEA;
 10. Within thirty (30) days of the date of this letter, the SEA should provide a written explanation to the Complainant, describing the steps it has taken to ensure that the SEA and the State comply with each of the requirements in the Regulations which are described in this letter; and
 11. Within thirty (30) days of the date of this letter, the SEA should provide a written explanation to the Complainant, describing the steps it has taken to ensure that each of the violations and the issues identified in this letter do not reoccur for the Student and any other children with disabilities in the State.

All of the above must be implemented.

Complainant Information:

Complainant's Name: HAMEED JAMARUSSADIQ

Relationship to Student: FATHER

Address: [REDACTED]

Telephone Number(s): [REDACTED]

This complaint is filed against the SEA. Pursuant to 34 C.F.R. §300.33 and section 612(a)(11) of the Act, the term public agency includes the SEA. The SEA must, therefore, resolve any complaint against the SEA pursuant to the SEA's adopted State complaint procedures. The SEA, however, may either appoint its own personnel to resolve the complaint, or may make arrangements with an outside party to resolve the complaint. If it chooses to use an outside party, however, the SEA remains responsible for complying with all procedural and remediation steps required in part 300. (Analysis

of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46602, August 14, 2006).

Since the SEA has demonstrated severe deficiencies in its State Complaint procedures, because of the severity and depth of the deficiencies in the SEA's complaint investigation system and because of the unavailability of the qualified staff at the SEA, I strongly suggest that an outside party be used to investigate this complaint in order to have an independent, fair and proper investigation.

Failures of the SEA and the State described in this letter negatively impacts the education of children with disabilities in the State. I believe that it is essential that the SEA and the State fully comply with the requirements of the Regulations in order to provide Free Appropriate Public Education (FAPE) to the children with disabilities in the State.

By this letter to you and the copies, I would like to remind the SEA and the State that federal regulations prohibit public entities and recipients of Federal Financial Assistance (FFA) from taking actions, towards the Student or any of his immediate family members, to harass, intimidate, threaten, coerce or discriminate them, because I filed this complaint, any additional complaints regarding the same or different matter, asserted the Student's right to receive FAPE in the State, or asserted the Student's right to not being discriminated based on his disability, in the State. I request you to take proactive measures to ensure that violations described in this paragraph do not occur.

I request you to ensure that this complaint is processed in accordance with the IDEA and the Regulations, complying with all procedural requirements. I also request you to provide procedures for effective implementation of corrective actions to achieve compliance as required by the IDEA.

Thank you for your cooperation. Please contact me to confirm the receipt of this complaint, set up times for the investigators to talk to me and establish timelines for completing the investigation. If you or the investigators need further information or clarification, I can be reached at the contact numbers in this letter.

Sincerely,

A black rectangular box redacting the signature of Hameed Jamarussadiq.

Hameed Jamarussadiq

c: Laurie VanderPloeg
Gregg Corr
Gbenimah Slopadoe
Boyd K. Rutherford
Karen B. Salmon
Carol A. Williamson
Marcella E. Franczkowski
Trinell Bowman