

September 18, 2021

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

Re: State Complaint

Dear Governor Hogan:

I am writing to file a complaint on behalf of my son [REDACTED] (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: [REDACTED]

Date of Birth: [REDACTED]

Address: [REDACTED]

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

School the student is currently attending: [REDACTED]

School(s) the student attended when violation(s) occurred: [REDACTED]

[REDACTED] (Placed by the PGCPS)

Student Background:

The Student is a sixteen (16) 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).

Participants Information:

The individual(s) participated in the violation(s) described in this complaint include, but not limited to, the following:

1. Ms. Marcella E. Franczkowski, Assistant State Superintendent, Division of Special Education/Early Intervention Services (the Division) within the SEA (the Superintendent);
2. Dr. Nancy Birenbaum, Compliance Specialist, Dispute Resolution Branch, within the Division at the SEA (the Specialist);
3. Ms. Dori Wilson, Previous Chief, Family Support and Dispute Resolution Branch within the Division at the SEA (the Branch Chief); and
4. Ms. Anita Mandis, Previous Section Chief, Complaint Investigation Section within the Division at the SEA (the Section Chief).

The above individual(s) conducted the operations on behalf of the SEA under the leadership of Dr. Carol A. Williamson, Deputy Superintendent, Office of Teaching and Learning at the SEA (the Supervisor) and Dr. Karen B. Salmon, Previous State Superintendent of Schools at the SEA (the Previous Superintendent). The Specialist and the Superintendent served as the chief participants.

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(b)(2)(i) requires that each SEA's procedures under 34 C.F.R. §300.152(a) must include procedures for effective implementation of corrective actions to achieve compliance;
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(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;
6. 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; and
7. 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 July 15, 2020; July 21, 2020; and July 23, 2020 the Complainant filed complaints, 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, the Regulations and related COMAR. The Complaint was addressed to the Superintendent;
2. One of the allegation in the Complaint was that the LEA did not ensure that the Student's need to have change of clothes was addressed to develop/revise his Individualized Education Program (IEP), in accordance with 34 CFR §300.324 and COMAR 13A.05.01.08. (the Allegation);

3. On July 27, 2020, the Branch Chief wrote a letter (the Initiation Letter) to the Complainant informing him that the SEA is starting an investigation and it was assigned to the Section Chief, but did not mention the purpose of the assignment;
4. On September 10, 2020 the Superintendent wrote a letter (the Letter), addressed to Ms. Trinell Bowman, Executive Director of Special Education at the LEA (the Director) and the Complainant asserting that the SEA completed investigation of the Complaint;
5. In the Letter, the Superintendent agreed that a violation occurred as alleged in the Allegation (the Noncompliance);
6. In the Letter, the Superintendent informed the Director that the SEA required the LEA to provide documentation that the IEP team has addressed the student's need for extra clothing at school (the Corrective Action);
7. In the Letter, the Superintendent identified that if the Noncompliance is not corrected in a timely manner, the SEA is required to provide technical assistance to the LEA, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate (the Enforcement Action);
8. On Sunday, February 21, 2021, the Specialist documented that the LEA worked with the School to develop a plan to address the student's need for extra clothing at school and the plan was outlined in an e-mail, sent by the School's Principal to the parent. (the Corruptive Action);
9. On the same date, the Specialist notified the LEA, the Section Chief and the Branch Chief that based on the Documentation, the SEA "finds" that LEA completed the Corrective Action and the SEA closed the matter;
10. On August 25, 2021 the Complainant informed the Superintendent in writing that the Student continue to face issues related to extra clothes at the School;
11. On the same date, the Section Chief brought to the attention of the Superintendent that on September 10, 2020, the SEA had required a corrective action regarding extra clothes. But, the Section Chief did not indicate whether the corrective action was implemented;
12. On September 08, 2021; the Complainant informed the Superintendent again in writing that the Student continue to face issues regarding extra clothes at the School. The Complainant informed the Superintendent that the State was sending the Student home with someone else's clothes while the Student's extra clothes were with the State. The Complainant informed the Superintendent that he didn't know whose clothes were they and whether they were washed; this is especially important during this time of COVID-19; and the Student's parents end up

- washing them before returning them; and he was not sure if someone else was wearing the Student's clothes;
13. On September 10, 2021, the Superintendent responded in writing and confirmed that the SEA closed the case consistent with the Documentation, but falsely documented that the Corrective Action was completed;
 14. Please note that the Corrective Action was for the IEP Team to convene and address the Student's needs. The Corrective Action was not for the LEA and the School to develop a plan or send email and such action will not correct the Noncompliance either;
 15. As of the date of this letter, the Student's IEP Team has not addressed the student's need for extra clothing at school as required by the Corrective Action and the Corrective Action was not implemented; and
 16. It has been more than one (1) year since the identification of the Noncompliance by the SEA.

Violation #1:

The SEA did not ensure that the Corrective Action was implemented as soon as possible to correct the Noncompliance, in accordance with 34 C.F.R. §600 and COMAR 13A.05.01.15

Date(s) violation(s) occurred or duration of the violation: February 21, 2021.

Violation #2:

The SEA did not ensure that the Corrective Action was implemented to correct the Noncompliance within one (1) year of the identification of the Noncompliance, in accordance with 34 C.F.R. §600 and COMAR 13A.05.01.15

Date(s) violation(s) occurred or duration of the violation: September 11, 2021.

Violation #3:

The SEA did not ensure that the Enforcement Action was implemented as soon as possible to correct the Noncompliance, in accordance with 34 C.F.R. §600 and COMAR 13A.05.01.15

Date(s) violation(s) occurred or duration of the violation: February 21, 2021.

Violation #4:

The SEA did not ensure that the Enforcement Action was implemented within one (1) year of the identification of the Noncompliance, in accordance with 34 C.F.R. §600 and COMAR 13A.05.01.15

Date(s) violation(s) occurred or duration of the violation: September 11, 2021.

Violation #5:

The State failed to monitor the implementation of 34 C.F.R. §300.600 by the SEA with regards to the implementation of the Corrective Action and correction of the Noncompliance as soon as possible, in accordance with 34 C.F.R. §300.600.

Date(s) violation(s) occurred or duration of the violation: February 21, 2021.

Violation #6:

The State failed to monitor the implementation of 34 C.F.R. §300.600 by the SEA with regards to the implementation of the Corrective Action and correction of the Noncompliance within one (1) year of the identification of the Noncompliance, in accordance with 34 C.F.R. §300.600.

Date(s) violation(s) occurred or duration of the violation: September 11, 2021.

Proposed Resolution:

1. Within five (5) days of the date of this letter, the SEA should provide a written notification, to the Complainant, that the SEA has changed the status of the Corrective Action in its records to “incomplete” and has required the LEA to complete the Corrective Action within fifteen (15) days of the date of this letter;
2. Within ten (10) days of the date of this letter, the SEA should ensure that the LEA requested the Complainant to identify the services and provisions to include in the Student's IEP to address the Student's need for extra clothes;
3. Within fifteen (15) days of the date of this letter, the SEA should provide a revised IEP of the Student to the Complainant with the services and the provisions identified by the Complainant per the previous step above;
4. Within ten (10) days of the date of this letter, the SEA should provide a written confirmation to the Complainant that disciplinary action has been taken against

the Superintendent and the Specialist for the fraudulent activities identified in this letter;

5. Within fifteen (15) days of the date of this letter, the SEA should provide the Complainant with a written confirmation that it has identified any and all students in the State for whom corrective actions required by the SEA as a result of State Complaint investigation and which were closed without actually implementing them;
6. Within twenty (20) days of the date of this letter, the SEA should provide the Complainant with a written confirmation that all of the parents of any and all students identified in the previous step have been notified that the status of any and all corrective actions identified in the previous are changed to “incomplete” in the SEA's records and respective LEAs were notified;
7. Within fifteen (15) 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 ensures implementation of corrective actions identified in State Complaint investigations as soon as possible and within one (1) year of the identification noncompliances;
8. Within fifteen (15) days of the date of this letter, you should provide a written confirmation to the Complainant that minimum qualifications for the positions of the Superintendent and the Specialist have been revised to include history of proper conduct and correction of noncompliances consistent with IDEA, the Regulations and COMAR;
9. Within twenty (20) days of the date of this letter, you should provide the Complainant with a written confirmation that qualified personnel have been appointed to the positions of the Superintendent and the Specialist;
10. Within thirty (30) days of the date of this letter, you should provide a written explanation to the Complainant, describing the steps you have taken to ensure that the SEA and the State comply with any and all 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/or any other children with disabilities in the State.

All of the above must be implemented. All confirmations referred above must be consistent with facts. The SEA and the LEA must comply with any and all requirements in the IDEA, the Regulations, and COMAR for each of the steps described above.

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 with me to clarify the allegations before starting the investigation, to set up times for your investigators to talk to me and to 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
Christine Pilgrim
Gbenimah Slopadoe
Boyd K. Rutherford
Mohammed Choudhury
Carol A. Williamson
Marcella E. Franczkowski