



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

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July 17, 2018

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Ms. Bobbi Pedrick  
Director of Special Education  
Anne Arundel County Public Schools  
2644 Riva Road  
Annapolis, Maryland 21401

RE: XXXXX  
Reference: #18-162

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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 May 18, 2018, the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The AACPS did not ensure the provision of assessment reports at least five (5) days prior to Individualized Education Program (IEP) team meetings held on May 9 and 17, 2018, during which they were considered, in accordance with COMAR 13A.05.01.07.
2. The AACPS did not ensure the provision of copies of documents from the student’s educational record, which was required in order to provide the opportunity to inspect and review the records, in advance of the May 9, 2018 IEP team meeting, in accordance with 34 CFR §300.613.

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3. The AACPS has not ensured that the IEP team has considered the results of parent-initiated medical evaluations during the 2017-2018 school year, in accordance with 34 CFR §300.502(c).
4. The AACPS has not ensured that data has been collected on the student's behavior, as required by the IEP and Behavior Intervention Plan (BIP), during the 2017-2018 school year, in accordance with 34 CFR §§300.101 and .323.
5. The AACPS has not ensured that requested documents were provided with the Prior Written Notice (PWN) of the May 9, 2018 IEP team meeting, as determined by the IEP team, in accordance with 34 CFR §§300.101 and .323.
6. The AACPS did not ensure that the written notice of the May 9, 2018 IEP team meeting included information that a purpose of the meeting was to discuss compensatory services, in accordance with 34 CFR §300.322.

**BACKGROUND:**

The student is thirteen (13) years old and attends XXXXXXXXXXXXXXXXXXXX. He is not identified as a student with a disability under the IDEA. Prior to June 13, 2018, the student was identified as a student with an Other Health Impairment under the IDEA due to an Attention Deficit Hyperactivity Disorder-Combined Type, Developmental Coordination Disorder (Dysgraphia), Anxiety Disorder, and a Pervasive Developmental Disorder.

**FINDINGS OF FACTS:**

1. On April 30, 2018, five (5) business days before the IEP team meeting, the complainant requested numerous documents, including assessments, standardized test scores, benchmark test scores, draft IEP, and documentation that supports the reported progress on the IEP goals be provided to him, electronically, at least five (5) days prior to the May 9, 2018 IEP team meeting.
2. On May 3, 2018, AACPS responded by indicated that they would investigate whether the documents could be provided to the complainant securely through electronic mail (email). In response, the complainant indicated that he is a "full-time working adult and small business owner" and that his "free time is very limited during the work week," and that "more meetings is not helpful and simply hinders the process of remaining a well-informed IEP team member for his son."
3. On May 8, 2018, AACPS responded by stating that the complainant has "been provided with multiple invitations to come to the school to review all the documentation requested, and that they cannot provide copies through email and ensure that they remain secure," but were willing to meet with him and provide him with the hard copies.
4. On May 8, 2018, the complainant stated that the school staff had previously sent these types of documents electronically, and he was unsure why they could not provide them again.

5. The IEP meeting invitation, dated May 9, 2018, reflects that the purpose of the IEP team meeting is to “review reevaluation information and determine continued eligibility.”
6. The IEP meeting summary dated May 9, 2018, reflects that the team reviewed psychological, educational, assistive technology, communication, and occupational therapy assessments which were conducted by the school staff. The meeting summary also states that the team reviewed independent speech/language and neuropsychological assessments which were provided by the complainant during the 2017-2018 school year.
7. On May 9, 2018, the IEP team also discussed and determined compensatory services as a result of a previous MSDE State complaint (#18-046) filed by the complainant on behalf of the student.
8. There is no documentation that the complainant was provided with the AACPS assessments five (5) days prior to the May 9, 2018 IEP team meeting. Further, there is no documentation that the IEP team meeting invitation reflects that compensatory services would be discussed by the team at that meeting.
9. The audio recording for the May 9, 2018 IEP team meeting reflects that the school staff agreed to provide the complainant with copies of documentation that he requested at the meeting. However, the school staff did not indicate on the audio recording that the requested documents would be included with the PWN.
10. Due to time constraints, the team could not complete the reevaluation meeting on May 9, 2018, and agreed to reconvene at a later date.
11. On June 13, 2018,<sup>1</sup> the IEP team reconvened. The comprehensive evaluation review summary reflects that the team discussed previous evaluations which were conducted on the student, and parent-initiated evaluations and letters containing medical recommendations which were provided by the complainant during the 2017-2018 school year. However, there is no documentation that the complainant was provided with the school-based assessments, which were discussed at both the May 9, 2018 and June 13, 2018 meetings, prior to this meeting.
12. On June 13, 2018, the IEP team discussed the student’s behavior as part of the reevaluation process. The school-based members of the team reported that there were “no notable or significant behaviors of concern regarding the student’s functioning at school.”
13. The BIP required that a “daily behavior chart” be completed to document instances of frustration and that an “Antecedent-Behavior-Consequences (A-B-C) data sheet be completed by staff to document those episodes of frustration.

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<sup>1</sup> While the complainant alleged that the meeting was continued on May 17, 2018, the documentation reflects it was reconvened on June 13, 2018.

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14. There is documentation that during the 4th quarter of the 2017-2018 school year, the student demonstrated what the complainant indicated as instances of frustration on three different occasions, and that the school staff did not complete A-B-C data sheets on the incidents. The school staff indicated that the incidents did not “necessitate” the need to complete an A-B-C data sheet, but rather was “evidence of the student’s coping skills as he calmed himself quickly, did not miss class, and was able to participate in class effectively.” The complainant disagreed with the school staff’s assessment of the incidents and requested that A-B-C data sheets be completed and the BIP be amended to reflect those incidents.
15. There is documentation that the school staff subsequently completed A-B-C data sheets on the incidents, as requested by the complainant, and amended the BIP to reflect those incidents.
16. There is documentation that on July 10, 2018, the school staff provided the complainant with documentation he requested on April 30, 2018 and May 8, 2018.

### **CONCLUSIONS:**

#### **Allegation #1: Provision of Documents Prior to an IEP Team Meeting**

Based on the Findings of Facts #5, #6, #8, #11, the MSDE finds that there is no documentation that the complainant was provided with the school-based assessments five (5) days prior to the May 9, 2018 and the June 13, 2018 IEP team meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

#### **Allegation #2: Access Rights**

Based on the Findings of Facts #1 - #4, #11, #16 the MSDE finds that while the AACPS may not have had sufficient notification to provide the requested documentation to the complainant prior to the May 9, 2018 IEP team meeting, it did have sufficient time to provide the documentation prior to the June 13, 2018 meeting, but did not do so, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation occurred with respect to the allegation.

#### **Allegation #3: Parent-Initiation Evaluation Consideration**

Based on the Findings of Facts #5, #6, #10, and #11, the MSDE finds that the AACPS considered the results of parent-initiated medical evaluations during the 2017-2018 school year, in accordance with 34 CFR §300.502(c). Therefore, this office does not find that a violation occurred with respect to the allegation.

#### **Allegation #4: BIP Data Required by the IEP**

Based on the Findings of Facts #12 - #15, the MSDE finds that the AACPS collected data as required by the IEP and addressed the complainant’s concerns about the manner in which the information was documented, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

**Allegation #5: Provision of Documents with the PWN**

Based on the Finding of Fact #9, the MSDE finds that there is no evidence that the AACPS agreed to provide the complainant with copies of documentation along with the PWN, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

**Allegation #6: IEP Team Meeting Notice**

Based on the Findings of Facts #5, #7, and #8, the MSDE finds that the meeting notice did not indicate that the team intended to discuss compensatory service at the May 9, 2018 IEP team meeting, in accordance with 34 CFR §300.322. Therefore, this office finds that a violation occurred with respect to the allegation.

**SUMMARY OF FINDINGS**

The MSDE finds that, as a result of the above violations, the complainant was not provided with the opportunity to fully participate in the IEP team meeting that occurred on May 9, 2018 and June 13, 2018. Based on the Findings of Facts above, the MSDE further finds that the complainant has now been provided with documents that should have been provided prior to the May 9, 2018 and June 13, 2018 IEP team meeting.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires that the AACPS provide documentation by the start of the 2018-2019 school year that an IEP team<sup>2</sup> has convened and considered any concerns that the complainant has about the compensatory services that are required and the reevaluation of the student's eligibility under the IDEA.

If, as a result of the IEP team's consideration of the complainant's concerns, a decision is made that the student meets the criteria for identification as a student with a disability under the IDEA, the MSDE requires the AACPS to provide documentation that an IEP has been developed to be implemented at the start of the 2018-2019 school year.

**School-Based**

The MSDE requires the AACPS to provide documentation by September 30, 2018 of the steps taken to ensure that the violations do not recur at XXXXXXXXXXXXXXXXXXXX.

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<sup>2</sup> Because the IEP team must be convened during the summer months, it may not be possible to ensure participation by school staff who have worked with the student. Nonetheless, the team must include at least one special education teacher or provider of the student and at least one general education teacher who has either worked with the student or who will be working with the student during the 2018-2019 school year.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the AACPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. 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.

The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/Early Intervention Services

MEF:ac

c: George Arlotto  
Alison Barmat  
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