




February 13, 2023




Ms. Chris Wittle
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: 
Reference: #23-112

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and Special Education 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 December 7, 2022, MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) 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 CCPS did not ensure that the Individualized Education Program (IEP) team meetings convened on November 2 and 29, 2022, included the required participants, in accordance with 34 CFR §300.321.
2. The CCPS did not ensure that the parents were provided with proper written notice of the attendees for the IEP team meetings on November 2 and 29, 2022, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.
3. The CCPS did not ensure that the parents were afforded the opportunity to participate in the IEP team meeting convened on November 2, 2022, in accordance with 34 CFR §300.501.
4. The CCPS did not follow proper procedures to determine eligibility of the student as a student with a disability requiring special education and related services, in accordance with 34 CFR §300.303-.306.

BACKGROUND:

The student is eight years old and is identified as a student with Other Health Impairment under the IDEA.

The student attends [REDACTED] School. The student is currently receiving comparable special education services from an out of state IEP.

ALLEGATIONS #1 and #2:

**REQUIRED IEP PARTICIPANTS AND PROPER NOTICE
OF IEP TEAM MEETING**

FINDINGS OF FACTS:

1. There is documentation that on October 3 2022, the complainant agreed to participate in an IEP team meeting on November 2, 2022.
2. There is documentation that the complainant was provided with a meeting notice dated October 21, 2022 for the November 2, 2022, IEP team meeting. The notice included the purpose, time, location of the meeting, and reflects that the following participants were expected to attend:
 - Occupational Therapist
 - Local School System Representative
 - Speech/Language Pathologist
 - General Education Teacher
 - Psychologist
 - Special Education Teacher
 - Special Education Teacher
 - Parents
3. The IEP team meeting attendance sheet dated November 2, 2022, reflects the following participants:
 - Occupational Therapist
 - Local School System Representative
 - Speech/Language Pathologist
 - General Education Teacher of the student
 - Psychologist
 - Special Education Teacher for CCPS
 - Special Education Teacher of the student
 - Parents
4. There is documentation that the complainant was provided with a meeting notice dated November 10, 2022 for the November 29, 2022, IEP team meeting. The notice included the purpose, time, location of the meeting, and reflects that the following participants were expected to attend:
 - Occupational Therapist
 - Local School System Representative
 - Speech/Language Pathologist
 - General Education Teacher
 - Psychologist
 - Special Education Teacher

- Special Education Teacher
 - IEP Case Manager
 - Parents
5. There is documentation that the November 29, 2022, IEP team meeting was rescheduled and convened on January 5, 2023.
6. The IEP team meeting attendance sheet dated January 5, 2023, reflects the following participants:
- Parents of the Child
 - Regular Education Teacher of the child
 - Special Education Teacher of the child
 - A public agency representative
 - Speech and Language Pathologist
 - Special Education Supervisor
 - Occupational Therapist
 - Grandparents of the child
 - Cousin of the child
 - Three Family Friends
 - An individual who can interpret the instructional implications of evaluation results

DISCUSSIONS/CONCLUSIONS:

The IEP team must include not less than one regular education teacher of the student, not less than one special education teacher or provider of the student, a representative of the public agency, and an individual who can interpret the instructional implications of evaluation results, who may also be a required member of the IEP team. The IEP team may also include other individuals who have knowledge or special expertise regarding the student, including related service personnel, as appropriate (34 CFR §300.321).

The public agency must ensure that parents are provided with notice of who will be in attendance at each IEP team meeting (34 CFR §300.322). In Maryland, the notice must be in writing and be provided to the parents at least ten (10) days in advance of the meeting (COMAR 13A.05.01.07).

The US Department of Education Office of Special Education Programs has issued guidance explaining that as long as the notice identifies individuals by position, it is sufficient to provide parents with information about who will be in attendance at an IEP team meeting (*Letter to Livingston, (1995)*).

Required IEP Team Participants

Based upon the Findings of Fact #3, MSDE finds that the CCPS did ensure that the IEP team meeting convened on November 2, 2022, included the required participants, in accordance with 34 CFR §300.321. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based upon the Findings of Facts #4 to #6, MSDE finds that the November 29, 2022, IEP team meeting did not convene and was rescheduled. The January 5, 2023, IEP team meeting included the required participants, in

accordance with 34 CFR §300.321. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Proper Notice of Attendees at the IEP Team Meeting

Based upon the Findings of Facts #1 to #5, MSDE finds that the CCPS did ensure that the parents were provided with proper written notice of the attendees for the IEP team meetings on November 2 and 29, 2022, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #3: PARENT PARTICIPATION IN THE IEP TEAM MEETING

FINDINGS OF FACTS:

7. The prior written notice generated after the November 2, 2022, IEP team meeting reflects that the IEP team, including the complainant, reviewed: educational, psychological, fine motor, and sensory assessments; a pragmatics report; classroom observation; and teacher input. The IEP team completed the eligibility tool and determined the student was eligible for special education services as a student with an Other Health Impairment. The IEP team also noted that the student qualified as a student with a Specific Learning Disability and has an “outside medical diagnosis” of Autism. The IEP team proposed special education services in the areas of reading phonics, math calculation and problem solving, written expression, and fine motor skills. The complainant was not in agreement with the IEP team’s decision that the student was not eligible under the disability category of Autism.

DISCUSSION/CONCLUSION:

The IDEA requires that parents be afforded the opportunity to participate in any IEP team meeting where the identification, evaluation, educational placement or the provision of FAPE is an issue (34 CFR §300.501).

Based upon the Findings of Fact #7, MSDE finds that the CCPS did ensure that, although they disagreed, the parents were afforded the opportunity to participate in the IEP team meeting convened on November 2, 2022, in accordance with 34 CFR §300.501. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #4: PROPER PROCEDURES TO DETERMINE ELIGIBILITY

FINDINGS OF FACTS:

8. There is documentation that on September 7, 2022, the IEP team, including the complainant, determined that the student required assessments to determine eligibility for the suspected disabilities of Specific Learning Disability, Other Health Impairment, and Autism in the following areas:
 - Educational Assessments - reading, writing, and math
 - Cognitive Assessments
 - Pragmatics Assessment
 - Fine Motor Assessment

- Social/Emotional/Behavioral Assessment
- Sensory Processing Assessment
- Classroom Observation

9. The "Evaluation Report" dated November 2, 2022, reflects that the complainant provided consent on September 7, 2022, for an initial evaluation. In determining eligibility, the IEP team considered standardized assessments results, classroom performance, observations and county-based assessments. The assessment results indicated that the student, despite intensive reading interventions, did not meet grade level standards for decoding skills and his reading assessment scores demonstrate a need in this area. The student's performance on standardized assessments in math demonstrate a need in the areas of basic concepts, operations, and applications. The student's classroom performance and previous out of state IEP data reflect that the student has difficulty organizing his ideas in writing. The results of the Autism Spectrum Rating Scale, Kaufman Assessment Battery for Children, and the Conners 4th Edition demonstrates that the student has "very few behavioral characteristics similar to those exhibited by youth diagnosed" with Autism. The student's Attention Deficit Hyperactivity Disorder (ADHD) index was in the "high range" and "indicates that [the student's] ratings at school have a high similarity with 8-year-olds that have ADHD." The student's performance on standardized assessments and the clinical observation reflect that he has decreased legibility, increased hand writing errors when writing his own thoughts, and deficits in visual perceptual skills that impact his reading and writing.
10. The IEP team determined that student's academic achievement and/or functional performance was impacted in the areas of:
- Reading Phonics and Comprehension
 - Math Problem Solving
 - Written Language Mechanics and Expression
 - Self-management
 - Fine Motor

The IEP team determined that the student's lack of academic progress is not a result of a lack of appropriate reading instruction, math instruction, or a lack of English proficiency. The team further determined that the student requires specially designed instruction in order to make adequate progress in school.

11. There is documentation that the IEP team determined that the student was previously medically diagnosed with Autism. The IEP team further determined that the student did not display "significant difficulties with verbal communication skills" indicating the student does not meet the eligibility criteria under the disability code of Autism in Maryland. The documentation reflects that the complainant did not agree and refused to sign the eligibility determination tool.
12. There is documentation that the IEP team determined there was documentation of "repeated measures of classroom achievement reflecting the student's performance during instruction[,] wherein the student exhibits a "lack of achievement in both age and grade level standards", and the IEP team has ruled out exclusionary factors. A classroom observation was conducted to document the student's academic performance and behavior in the identified areas of difficulty. The student

demonstrates a severe discrepancy between ability/achievement scores and classroom performance despite interventions. His educational performance is adversely affected as a result of documented characteristics of a specific learning disability in the areas of academic achievement and fine motor. The IEP team also determined the student requires specialized instruction and meets the eligibility criteria under the disability code of specific learning disability. The eligibility determination tool was signed by the complainant.

13. There is documentation that the IEP team determined the student has a documented chronic health condition identified by a licensed medical professional of ADHD. The health condition impacts his "limited alertness" and impacts his academic achievement, social emotional/behavioral functioning, and fine motor. The IEP team determined the student requires specialized instruction and he meets the eligibility criteria under the disability code of Other Health Impaired. The eligibility determination tool was signed by the complainant.

DISCUSSIONS/CONCLUSION:

Re-evaluation procedures must be individualized to meet the child's current needs, and formal assessment data is not required if the IEP team finds there is enough data to determine the student's eligibility and educational needs. (34 CFR §300.305).

The evaluation must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student is classified. The eligibility determination must be made on an individual basis and be based on the student's specific needs. The IEP team must review the evaluation data, and based on that data, determine whether the student meets the criteria for identification as a student with a disability under the IDEA (COMAR 13.A.05.01.06).

In order to meet the criteria for identification as a student with a disability under the IDEA, a student must have at least one (1) of a list of impairments, and who, by reason thereof, requires special education and related services. If a student is determined to have one (1) of the impairments listed, but is found to require only related services, and not special education instruction, the student does not meet the criteria for identification as a student with a disability under the IDEA (34 CFR §300.8). Regardless of the category of disability, the IEP team must ensure that all of the student's suspected areas of need are addressed (34 CFR §§300.304).

Based upon the Findings of Facts #8 to #13, MSDE finds that the CCPS did follow proper procedures to determine eligibility of the student as a student with a disability requiring special education and related services, in accordance with 34 CFR §300.303-.306. Therefore, this office finds that a violation did not occur with respect to the allegation.

TIMELINES:

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

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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,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMC/tg

c: Cynthia McCabe
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