



November 3, 2023



Ms. Diane McGowan
Director, Specially Designed Instruction and Compliance
Anne Arundel County Public Schools
1450 Furnace Avenue
Glen Burnie, Maryland 21060

RE: [REDACTED]
Reference: #24-032

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/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 September 5, 2023, the MSDE received a complaint from [REDACTED] the student's mother, [REDACTED] the student's grandfather, and Patricia A. Death, the student's grandmother hereafter, "the complainants," or "the family" on behalf 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 that information was provided about the individuals who would be attending the March 24, 2023, Individualized Education Program (IEP) team meeting in writing no less than ten days before the meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
2. The AACPS did not follow proper procedures when responding to a request for an IEP team meeting since March 2023, in accordance with 34 CFR §300.503.

3. The AACPS did not ensure that the IEP includes present levels of academic achievement and functional performance in order to properly identify and address all of the student's behavioral and social/emotional needs since March 2023, in accordance with 34 CFR §300.320.
4. The AACPS did not ensure that the student was provided with the appropriate 1:1 instructional assistance required by the IEP from September 2022 through June 2023¹, in accordance with 34 CFR §300.323.
5. The AACPS did not ensure that the student was consistently provided with the occupational therapy services required by the IEP since September 2022, in accordance with 34 CFR §§300.101 and .323.
6. The AACPS did not ensure that parent consent was obtained prior to sharing personally identifiable information of the student, on March 24, 2023, in accordance with 34 CFR §§300.610 and .611 and the Family Educational Rights and Privacy Act (FERPA), at 34 CFR part 99.

BACKGROUND:

The student is 14 years old and is identified as a student with Autism under the IDEA. He attends ██████████ School, a private separate special education school, where he is placed by the AACPS. Prior to July 6, 2023, he attended ██████████ School. The student has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

ALLEGATIONS #1 and #6:

IEP MEETING NOTICE AND PARENT CONSENT PRIOR TO SHARING STUDENT INFORMATION

1. On February 28, 2023, the ██████████ School sent a "Notice of Individualized Education Program (IEP) Team Meeting" to the complainants. The individuals invited to attend the meeting included a school administrator/designee, the student's parent/guardian, the student, and "██████████ School Representatives".
2. On March 13, 2023, the student's case manager emailed staff at the ██████████ School stating that the complainants had contacted her requesting that a supervisory behavior therapist at the school not attend the student's March 24, 2023, IEP meeting. Instead, the complainants requested that a different behavior therapist attend the meeting. On that same day, the IEP chair responded in an email, on which the principal was copied, stating that the supervisor would be asked not to attend the meeting and the requested behavior therapist would attend instead.
3. On March 24, 2023, the IEP team met virtually to review and revise the student's IEP. The IEP team meeting attendees for this meeting were listed as the school administrator/designee, the school's

¹ Thought MSDE initially identified this allegation as LASTING through December 2022, in the course of the investigation, it was determined that June 2023 would be more appropriate.

IEP coordinator, the student's mother, the student's advocate, the student's aunt, the student's grandparents, a speech-language pathologist, an occupational therapist, the family requested behavior therapist, a special educator, an assistant principal, a social worker, and the student's case manager. The supervisory behavioral therapist was not listed as an attendee of the meeting.

4. During the March 24, 2023, IEP meeting, the supervisory behavioral therapist emailed the IEP chair and the school principal stating that she was "listening" to the discussion regarding the student's behaviors and requested support for the behavior therapist attending the meeting. She sent at least three emails providing her insight into what was being discussed during the meeting.
5. There is documentation that "... [the supervisor] disclosed to AACPS that she was listening to the meeting of 3/24, knowing she was not to be a participant [and was exhibiting] the unprofessional behavior of... crawling on the floor and hiding behind [a [REDACTED] School staff member] during the 3/24 IEP meeting."

CONCLUSION:

Each public agency must take steps to ensure that the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate. The notice required under this section must (i) indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) Inform the parents of the provisions relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child. (34 CFR § 300.322; COMAR 13A.05.01.07)

Appropriate action must take place to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the LEAs. (34 CFR § 300.610) Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. The Family Educational Rights and Privacy Act of 1974 (FERPA) allows schools to disclose information, without consent, to school officials with legitimate educational interests even if they are not IEP team members. (34 CFR § 99.31 and *Letter to Anonymous*, Family Policy Compliance Office, September 28, 2006)

Allegation #1:

Notice of the IEP Team Meeting

Based on the Findings of Facts # 1 to #5, MSDE finds the AACPS did not ensure that information was provided about the individuals who would be attending the March 24, 2023, Individualized Education Program (IEP) team meeting in writing no less than ten days before the meeting, in accordance with 34 CFR § 300.322 and COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to allegation #1.

Allegation #6:

Disclosure of Personally Identifiable Information Belonging to the Student

In this case, although the staff at the school acknowledge that the conduct during the March 24, 2023, IEP team meeting was unprofessional, FERPA allows certain disclosures of student information without parental consent. The supervisory behavioral therapist had a legitimate educational interest in the

information in order to perform her duties at the student's school. Therefore, MSDE finds that the AACPS was not required to ensure that parent consent was obtained prior to sharing confidential information of the student at the March 24, 2023, IEP meeting, in accordance with 34 CFR §§300.610 and .611 and the Family Educational Rights and Privacy Act (FERPA), at 34 CFR part 99. Therefore, this office finds that a violation did not occur with respect to allegation #6.

ALLEGATION #2: PROPER PROCEDURES WHEN RESPONDING TO A REQUEST FOR AN IEP MEETING

6. On March 24, 2023, the IEP team convened to review and revise the student's IEP. The prior written notice reflects that the team discussed updates to the student's present level of academic achievement and functional performance that the family requested, revised supplementary aids and services, addressed certain family concerns regarding student discipline, and considered the student's 1:1 Instructional Assistant justification and FADE plan, among other family concerns. The meeting was adjourned with the school team directed to "...start creating a draft [IEP] and collecting data" to be used in the updated IEP. It was determined that the team would reconvene at the beginning of May to review and update the student's IEP with the new information and address the parent's concerns and proposals related to the 1:1 assistant and the student's behavior.
7. The student's parent contact log reflects that on May 2, 2023, the student's case manager contacted the student's mother "regarding two upcoming IEP meetings, one scheduled for 5/5/23 and one for 5/12/23." According to the notes in the contact log, the purpose of the May 5, 2023, meeting was to discuss transportation, and the purpose of the meeting scheduled for May 12, 2023, was to "...discuss family concerns with some portions of [the student's] IEP and 1:1 [Instructional Assistant] justification/fade plan. [The case manager] offered to send the family a draft of the proposed changes to the 1:1 [Instructional Assistant] justification and Fade Plan for their review and encouraged them to send over concerns in the IEP."
8. The IEP team reconvened on May 5, 2023, in order to review the student's IEP. The team utilized this meeting to develop a new transportation plan for the student. According to the prior written notice, the student's family provided input for the student's transportation plan prior to the meeting. The team developed a transportation plan to allow the student to "...travel to and from school safely on a school van."
9. The May 12, 2023, meeting did not occur, and the student's family and the school-based IEP team did not meet again to discuss the student's 1:1 Instructional Assistant fade plan and other portions of the student's IEP that the family proposed to change prior to the student beginning his attendance at his new school on May 17, 2023.
10. There is no documentation of prior written notice stating the reason or reasons why the May 12, 2023, IEP meeting was not going to occur.

CONCLUSION:

Written notice must be given to the parents of a child with a disability a reasonable time before the public agency (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (34 CFR §300.503)

When the IEP team met on March 24, 2023, it was determined that the school-based team would collect data to be used to update the student's IEP and reconvene in May in order to review and consider making changes to the student's IEP based on the data collected. It is documented that the team met on May 5, 2023, during which time they developed the student's transportation plan. The team did not meet on May 12, 2023, and the team never met to discuss the other proposals and concerns that the complainants had prior to May 17, 2023, as the family requested without providing them with prior written notice. By not rescheduling the May 12, 2023, IEP team meeting, the IEP team rejected the complainants' proposals without providing prior written notice and the AACPS did not ensure that the IEP team met at the student's new school. Therefore, based on the Findings of Facts #6 to #10, MSDE finds that the AACPS did not follow proper procedures when responding to a request for an IEP team meeting since May 2023, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did occur with respect to this allegation.

ALLEGATION #3:

AN IEP THAT CONTAINS APPROPRIATE PRESENT LEVELS

11. The student's IEP in place in March 2023 is dated October 17, 2022. It reflects present levels of academic achievement and functional performance for the student in the following areas: reading phonics, reading fluency, reading comprehension, math calculation, math problem solving, written language expression, speech and language receptive language, speech and language expressive language, speech and language pragmatics, communication, executive functioning skills, self-management, and self-regulation.
12. The present level of academic achievement and functional performance reflect that the student had made progress on his previous self-regulation goal but was functioning below age expectations with needs in the areas of independently utilizing calming strategies when needed and identifying his arousal level. In the area of self-management, the student was functioning below age level and demonstrated an increased ability and willingness to access sensory strategies and engage in appropriate replacement behaviors with support from staff. His needs in this area included increasing his ability to initiate and engage in less preferred tasks/activities with adult support, accepting help from multiple staff, engaging appropriately with peers, and identifying when he needs to access sensory items/activities. The present level of academic achievement and functional performance reflected in this area made reference to the student exhibiting "maladaptive behaviors" that included non-compliance, aggression, leaving location, inappropriate vocalizations/gestures, property abuse, self-injurious behavior, and mouthing inedible. The IEP states that "a behavioral goal was not implemented" in this area.

13. On March 24, 2023, the IEP team met to review and revise the student's IEP. According to the prior written notice from this meeting, the complainants shared concerns related to the fact that the "...self-management present level contains information from a 2019 [Functional Behavior Assessment] which [did] not accurately represent his current presentation" at that time. Specifically, the complainants took issue with the fact that the student was reported to be "...demonstrating maladaptive behaviors but is showing sensory dysregulation." The IEP team discussed an earlier incident at the school where the student was alleged to have destroyed property when he tore a piece of paper and threw it away. The complainants proposed that the school staff not characterize these behaviors as destruction of property as they were not aggressive behaviors. The complainants also had concerns that there were discrepancies in the communication log with regard to how the student's behavior was being reported from one staff member to another.
14. The complainants proposed that the self-management present levels were best described as a sensory need that should be addressed through occupational therapy. In response to the family's concerns, the IEP team amended the student's present levels of academic achievement and functional performance, and the Behavioral Self-Management area was removed. The team determined that they would create new definitions for the student's behaviors and collect data to be used to create a draft IEP for the student.
15. The complainants also proposed changes with regard to the required proximity of the 1:1 Instructional Assistant to the student during the school day, changing the strategies term in the IEP from "preventative strategies" to "proactive strategies", and the IEP Chair suggested initiating a different way of collecting student data.
16. There is no documentation that the IEP team met to further revise the student's present levels using new definitions of the student's behavior.

CONCLUSION:

An individualized education program or IEP is a written statement for each child with a disability that is developed, reviewed, and revised in an IEP team meeting and must include a statement of the child's present levels of academic achievement and functional performance (34 CFR § 300.320).

During the March 24, 2023, IEP meeting the student's family shared, and the IEP Chairperson agreed, that the information included in the student's present level of academic achievement and functional performance was outdated and incorrect; thus, the area of Behavioral/Self-Management was removed from the student's IEP. As a group, the team determined that observations would be conducted to obtain new data on the student's behaviors in order to adjust the student's present level of academic achievement and functional performance. This information was to be reviewed at the May 12, 2023, IEP meeting and included in the student's amended IEP. However, the team never reconvened to review and update the student's present level of academic achievement and functional performance.

Based on the Findings of Facts #11 to #16, MSDE finds that the AACPS did not ensure that the IEP includes present levels of academic achievement and functional performance in order to properly identify and address all of the student's behavioral and social/emotional needs since March 2023, in

accordance with 34 CFR §300.320. Therefore, this office finds that a violation did occur with respect to this allegation.

ALLEGATIONS #4 and #5:

PROVISION OF APPROPRIATE ADULT SUPPORT AND OCCUPATIONAL THERAPY SERVICES

17. The student's IEP developed in October 2022 reflects that the student should receive daily adult support from a dedicated aide, and two thirty-minute sessions of Occupational Therapy per week from October 17, 2022, to October 16, 2023.
18. According to the IEP dated October 17, 2022, "The purpose of the services of a full-time (6.5 hours per day), 1:1 Educational Assistant is to prevent and reduce the incidents of [the student's] off-task behaviors, as well as, to model and encourage him to engage in functional communication and access sensory items/activities for self-regulation. A 1:1 Educational Assistant would provide [the student] with the following: (1) Help maintain [the student's] safety when he is engaging in Leaving Location, Aggression, Property Abuse, Self-Injurious (Self-Directed Physical Input), and Mouthing Inedibles behaviors; (2) Help [the student] to de-escalate during behavioral incidents; (3) Help [the student] access sensory items/activities which he needs throughout his school day; (4) Help [the student] focus in order to complete his academic/social/daily living tasks; (5) Help [the student] communicate his wants and needs appropriately and to engage in appropriate social behavior; (6) Help [the student] to consistently access a positive reinforcement schedule; (7) Help [the student] prevent future incidents of maladaptive behaviors by modeling replacement behaviors for [the student] to engage in."
19. The "1:1 Instructional Assistant Related Service Summary Report" reflects that the student had 1:1 instructional assistance from September 1, 2022, to December 22, 2022, with the following exceptions:
 - October 14, 2022, where there is no 1:1 instructional assistant listed;
 - October 20, 21, and 24, 2022, where it states that the 1:1 Instructional Assistant was reassigned;
 - November 28, 29, 30, and December 1, 2022, where it states that the 1:1 Instructional Assistant was reassigned; and
 - December 9, 15, and 16, 2022 where there is no information provided at all.

The student's attendance record indicates that he was absent from school on October 20th, 21st, and 24th, November 28th, 29th and 30th, and December 1, 2022. Therefore, the record reflects that the student did not receive 1:1 instructional assistance on October 14th, and December 9th, 15th, and 16th.

20. The "1:1 Instructional Assistant Related Service Summary Report" reflects that the student had 1:1 instructional assistance from January 2, 2023, to June 13, 2023, with the following exceptions:
 - January 6th, February 17th, March 22nd, March 23rd, and March 31st, May 31st, and June 9th, 2023, where there is no 1:1 instructional assistant listed; and
 - February 28th, March 20th, March 21st, March 29th, May 24th, June 1st, June 2nd, and June 13th, 2023, where it states that the 1:1 Instructional Assistant was reassigned.

The student's attendance record indicates that he was absent from school on February 28th, March 20th, March 21st, March 29th, May 24th, June 1st, June 2nd, and June 13th. Therefore, the record reflects that the student did not receive 1:1 instructional assistance on January 6th, February 17th, March 22nd, March 23rd, May 31st, and June 9th.

21. The Occupational Therapy Service Provider Report for the 2022-2023 school year reflects that the student's occupational therapy services began on October 17, 2022, and ended on June 9, 2023. During that time the student received 1920 contact minutes, leaving 240 total "missed contact minutes".
22. On December 22, 2022, the student's mother emailed the principal at [REDACTED] School "...regarding [an incident that she] observed during the Winter Concert" involving the student's 1:1 assistant. The principal responded to her in an email on the same day stating that she didn't know anything about it. There was no further documentation provided regarding this incident; however, the student's 1:1 Instructional Assistant service provider was changed.
23. The student's 1:1 Instructional Assistant was responsible for collecting data, including sensory regulation data. On May 16, 2023, the student's "Sensory Regulation Data Sheet" reflects that the student was making a "New Noise" from 10:00 a.m. to 11:00 a.m. On May 17, 2023, a note on the student's "Sensory Regulation Data Sheet" states, "In every class [the student] has been making this gasping 'for air' noises (the past 2 days)."
24. On May 23, 2023, the student's mother emailed staff at [REDACTED] School stating that upon arriving home the student stated that his allergies had been bothering him all day and that the home communication sheets documented that the student had been gasping for air from 8:30 am until 2:30 pm on May 23, 2023, and from 10:30 am until the student fell asleep at 1:30 pm on May 22, 2023. The student's mother asked if the student had been taken to the nurse on either day and expressed that "it is well known that [the student] has severe seasonal allergies..." The student's mother asked why the family was not notified that the student had not been feeling well. The Sheppard Pratt School staff member replied to the student's mother in an email dated May 24, 2023, stating that the student had been "constantly asked throughout the day if he needed to go to the nurse and if he felt alright. He refused the nurse each time and also responded that he was okay." The staff member also stated that May 22, 2023, was the first day that she noticed the "...constant noises that sounded like a surprise noise [that] was occurring when he was playing on the computer or when he was making animated hand gestures [and when] asked to lower his volume, he stopped making the surprise noises." The student's mother responded to the staff member in an email the next day stating that what the staff member shared "does not match what was documented on the communication sheets sent home yesterday" because gasping was the only sound that had been documented. The student's mother explained that the gasping noise was due to the student's allergies, but "there is no documentation regarding a surprise noise that he could increase or decrease the volume."

CONCLUSION:

At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP that is consistent with State policy; and agreed to by the agency and the child's parents. As soon as possible following the development of the IEP, special education, and related services are made available to the child in accordance with the child's IEP (34 CFR §300.323).

Allegation #4: Provision of Appropriate 1:1 Instructional Assistance

Documentation for the student's related services reflects that he did not receive 7 days of service from his 1:1 Instructional Assistant from January 2, 2023, to June 13, 2023. Although the student's IEP required the 1:1 Instructional Assistant to provide the student with various supports and services, there was no requirement that stipulated that the 1:1 Instructional Assistant was to provide the student with specific support with regard to his respiratory health issues. Outside of ensuring the documentation of any irregularities on the student's "Sensory Regulation Data Sheet", as was documented on May 16th and May 17th, the 1:1 Instructional Assistant had no duty to provide the student with any other support in this regard.

Based on the Findings of Facts #17- #20, MSDE finds that the AACPS did not ensure that the student was consistently provided with the appropriate 1:1 Instructional Assistance required by the IEP from September 2022, through June 13, 2023, in accordance with 34 CFR §300.323. Therefore, this office finds that a violation did occur with respect to this allegation.

However, based on the Findings of Facts #22- #24, the MSDE finds that the support of the 1:1 assistant, when provided to the student, was provided in a manner consistent with his IEP, in accordance with 34 CFR §300.323. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Allegation #5: Provision of Occupational Therapy

Based on the Findings of Facts #17 and #21, MSDE finds that the AACPS did not ensure that the student was consistently provided with the occupational therapy services required by the IEP since September 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did occur with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for 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.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.² This office will follow up with the public agency to ensure that it completes the required actions consistent with the 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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific:

MSDE requires that no later than January 1, 2024, the AACPS convene an IEP team meeting in order to determine the amount of compensatory services or other remedy to address the inappropriate meeting notice prior to the March 24, 2023, IEP meeting, the inconsistent provision of 1:1 Instructional Assistance during the 2022-2023 school year, the inconsistent occupational therapy services during the 2022-2023 school year, and the delay in addressing the parent's concerns and proposals related to the student's 1:1 assistance and his behavioral needs.

System-Based:

MSDE requires that no later than March 31, 2024, that the AACPS has taken steps to ensure that the requirements of the IDEA related to the provision of appropriate IEP team meeting notices, responding to proposals from parents of eligible students related to the provision of FAPE, and the provision of supports and related services are properly implemented for students placed in nonpublic schools by the AACPS. This must include professional development of the above referenced violations and quarterly monitoring of student's IEPs for the implementation of related services and additional adult support, as appropriate. Quarterly monitoring reports of a random sampling of 25 students from a representative sample of nonpublic schools must be provided to MSDE on or before December 31, 2023, March 30, 2024, and June 15, 2024.

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 (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

² The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

³ The 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 (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 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. The 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/ebh

c: Mark T. Bedell
Sonya McElroy
Diane McGowan

Jennifer Brown

Gerald Loiacono
Nicole Elliott
Paige Bradford
Diane Eisenstadt
Elizabeth B. Hendricks