

September 13, 2024

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[REDACTED]  
[REDACTED]

Dr. Kendy Anderson  
Director of Special Education  
Calvert County Public Schools  
1305 Dares Beach Road  
Prince Frederick, Maryland 20678

RE: [REDACTED]  
Reference: #25-005

Dear Parties

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, has completed the investigation of the complaint regarding special education services for the above-referenced student. The correspondence is the report on the final results of the investigation.

**ALLEGATIONS:**

On July 16, 2024, MSDE received a complaint from [REDACTED], hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complaints alleged that the Calvert County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The CCPS has not developed an Individualized Education Program (IEP) that addresses the student's identified health needs since June 2023, in accordance with 34 CFR § 300.324.
2. The CCPS did not provide prior written notice (PWN) of the IEP team's decisions from the IEP team meetings since June 2023, in accordance with 34 CFR § 300.503.
3. The CCPS has not ensured that the student is being provided with adult support since August 2023, in accordance with 34 CFR §§ 300.101 and .324.

**BACKGROUND:**

The student is four years old and is a student with Developmental Delay under the IDEA. She attends [REDACTED] and has an IEP that requires special education instruction and related services.

## **FINDINGS OF FACT:**

1. On June 22, 2023, the IEP team held the annual review meeting and developed the IEP. The IEP reflects the following areas impacted by the student's disability: language and literacy, physical well-being and motor development, social foundations, and health/medical.

The IEP includes present levels of academic achievement and functional performance (PLAAFP). The health/medical PLAAFP narrative reflects discussion of current health status and safe mealtime. The PLAAFP also identifies an active problem list and past medical history. The IEP also reflects parental input incorporated into the IEP.

The IEP requires supplementary aids, services, program modifications, and support. Specifically, the IEP requires the following supports to address the student's health needs:

- a. Daily
  - i. Adult Support – “The [student] requires adult support/enhanced staffing to provide physical prompting at all levels. She needs assistance with arrival/dismissal procedures; donning/doffing her medical backpack; during snack with opening containers; see feeding protocol under supplementary aids; toileting; transitioning to/from the classroom and within the classroom; supervision when using stairs and all playground equipment for safety; during emergency evacuations; accessing work and play materials in all subject areas; participating in structured and unstructured play during developmental centers; preventing her from pulling on/out her G-Tube; and engaging in developmentally appropriate classroom tasks.”
  - ii. Allow extra time for movement between classes – “Due to [Student’s] gross motor developmental delays and instability, she will require extra time and adult support for movement between classes as well as into and out of the school during arrival and dismissal time.”
  - iii. Meal set up plan – “[Student] require a safe mealtime plan to ensure during mealtimes and snack. See safe mealtime plan for details.”
- b. As needed
  - i. Special transportation for field trips - “Due to student’s complex physical and medical needs, special bus transportation is required for field trips to include a car seat/harness for safety. In addition, two adults will need to accompany [Student] on field trips to assist [Student] with her medical and hygiene needs. If parent cannot go, then two CCPS employees should go on the trip.”
- c. Periodically
  - i. School health consult – “The school nurse will collaborate with the family to develop a health care plan to monitor changes in [Student] health status, update health protocols, identify required medical equipment, plan for the storage of medical equipment, and provide information and training to school staff as needed.”

- ii. Staff training - "The school nurse will complete an emergency protocol and provide training to school and bus staff regarding [Student's] health concerns, what constitutes an emergency for [Student], and management of an emergency."
- iii. Feeding tube care - "The school nurse will complete a CCPS feeding tube emergency care plan and provide training to staff regarding management of dislodgement and prevention strategies."
- d. At the beginning of the school year "parent to provide classroom and related service staff training regarding [student's] care."

Written consent to implement the IEP was provided on June 29, 2023.

- 2. On June 1, 2023, the Mealtime Plan was developed. On September 12, 2023, the Mealtime Plan was reviewed/revise. Parental input reflects the student "is currently g-tube dependent for nutrition and hydration." The plan also reflects the student "requires adult support for all meals to assist with directing her attention and focus, provide cueing (verbal, tactile and gestural) for self-feed, pacing with liquid intake, and environmental management."
- 3. On May 7, 2024, the IEP team convened for the student's annual review meeting. The PWN generated following this meeting reflects the IEP team "discussed how [Student] might receive her tube feedings and water bolus next year with the lengthened school day. Parents inquired if nursing services like this can be delivered in the classroom, so that [Student] does not miss large blocks of time away from the classroom." The CCPS central office staff informed the parents that information would be gathered "and shared at the next IEP meeting."
- 4. The May 7, 2024, IEP continues to reflect the student's disability impacts the area of health/medical needs. The health/medical PLAAFP narrative continues to reflect discussion of current health status, safe mealtime, identification of an active problem list, and past medical history. The IEP also reflects the PLAAFP was updated to include data from screeners completed by the occupational therapist and speech-language pathologist, and records review by the school nurse.

The IEP continues to require supplementary aids, services, program modifications, and support. Specifically, the IEP requires the following supports to address the student's health needs:

- a. Daily
  - i. Adult support - "[Student] requires adult support/enhanced staffing to provide physical prompting at all levels. Physical: She needs assistance with arrival/dismissal procedures by adult propelling medical stroller provided by family or hand held assistance while walking; assistance with up/down curbs by providing hand held support and minimal assistance; help donning/doffing her school backpack and medical backpack as needed; assistance during snack with opening containers (see feeding protocol under supplementary aids), transitioning to/from the classroom with one hand held assistance and close supervision within the classroom for safety navigating and mouthing objects; assistance or close supervision when using stairs and all playground equipment for safety and when on uneven surfaces; during emergency evacuations [Student] requires one hand held assistance to safely exit building or use of medical stroller (see safe evacuation plan).

Toileting: [Student] requires adult support for all toileting/hygiene needs including donning/doffing of any clothing, shoes, pull-ups and SMO (supramalleolar orthotics) and requires a one person transfer on/off mat during diaper changes.

Social/academic: accessing/gathering work and play materials in all subject areas; participating in structured and unstructured play during developmental centers; assistance as needed in related arts and engaging in developmentally appropriate classroom tasks.

Medical: close supervision to prevent her from pulling on/out her G-Tube."

- ii. Adaptive equipment – “[Student] will be given access to a chair with lateral supports during classroom, a chair with high back and lap belt during lunch and art room and mat table during toileting changes. [Student] family will provide a medical stroller to be used during arrival/dismissal and at times during transitions between classes, for longer periods in the hallway and to/from related resource classes. Classroom staff in collaboration with nursing and physical therapist will determine need for stroller versus walking based on her endurance at that time. [Student] will be wearing SMO supramalleolar orthotics.”
  - iii. Safe mealtime plan
  - iv. School health consult
- b. As needed - special transportation for field trips
  - c. Quarterly - safe mealtime consult - “A safe mealtime consult is required due to [Student’s] pediatric feeding disorder. She is supported by a safe mealtime plan and a consult will be required to adjust her plan as she progresses through her medical development and her emergence with her PO intake. Her consult is also necessary to support staff training throughout the school year.”
  - d. Periodically - staff training, feeding tube care, parent to provide classroom and related service staff training regarding the student’s care.
5. On June 5, 2024, the IEP team convened, the PWN generated following this meeting, reflects “Parents requested that feedings be completed in the classroom. The team discussed how best to maximize [Student] service time allotted while attending to [Student’s] feedings and flushes. The school team declined the parents’ request. Since this is a health need, the team determined it should be provided in the Health Room. CCPS will make every effort to minimize time out of class while preserving [Student’s] dignity and privacy.”

#### **DISCUSSION AND CONCLUSION:**

In developing each child's IEP, the IEP team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. 34 CFR § 300.324.

Each public agency must ensure that, the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals described, and in the general education curriculum, if appropriate; the results of any reevaluation conducted; information about the child provided to, or by, the parents; the child's anticipated needs; or other matters. 34 CFR § 300.324.

In this case, the complaint alleges that the CCPS failed to develop and IEP to address the student's unique needs by not including health service as a related service. The complainant also alleges that the CCPS did not address the student's anticipated/unique needs of adult support to support the student's safety and support the student by ensuring/monitoring medical equipment. Although the IEP does not require health services as a related service, the IEP reflects health needs are addressed through supplementary aids, services, program modifications, and support, including adult support.

Based on the Findings of Fact #1 through #5, MSDE finds that the CCPS has developed an IEP that addresses the student's identified health needs since June 2023, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation did not occur concerning this allegation.

## **ALLEAGTION #2**

## **PROVISION OF THE PWN**

### **FINDING OF FACT:**

6. There is documentation that the PWNs generated following the IEP team meetings on June 22, 2023, December 14, 2023, May 7, 2024, and June 5, 2024, included: a description of the action proposed or refused; an explanation of the action; a description of each evaluation procedure, assessment, record, or report used as a basis for the decision; a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained; sources for parents to contact to obtain assistance in the understanding the provisions; a description of other options that the IEP team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal.

### **DISCUSSION AND CONCLUSION:**

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision, a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR § 300.503).

In this case, the complainant alleges that the CCPS did not accurately capture the complainant's input regarding feeding services in the PWN developed on June 5, 2024. The PWN did capture the decision of the IEP team regarding feeding services and reflects the complainant's disagreement. There is no requirement that the PWN reflect the verbatim discussion of the IEP team.

Based on the Finding of Fact #6, MSDE finds that the CCPS, did provide prior written notice of the IEP team's decisions from the IEP team meetings since June 2023, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation did not occur concerning the allegation.

### **ALLEGATION #3**

### **PROVISION OF ADULT SUPPORT**

#### **FINDING OF FACT:**

7. There is no documentation that adult support was provided as required by the IEP.

#### **CONCLUSION:**

Based on the Findings of Fact #1, #3, and #7, MSDE finds that the CCPS has not ensured that the student was provided with adult support since August 2023, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office finds that a violation has occurred concerning this allegation.

#### **CORRECTIVE ACTIONS AND TIMELINE:**

The IDEA requires that State complaint procedures include 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.<sup>[1]</sup> This office will follow up with the public agency to ensure that it completes the required actions consistent with 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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.<sup>[2]</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

#### **Student –Specific**

MSDE requires the CCPS to provide documentation by November 1, 2024, that the CCPS has:

- a. Provided the student with adult support as required by the IEP; and
- b. Convened an IEP team meeting to determine whether the violation related to the provision of adult support had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct 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.

<sup>2</sup> MSDE will notify the Public Agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

amount and nature of compensatory services or other remedies to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings. The CCPS must ensure that the parent is provided with prior written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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

Sincerely,

Antoine L. Hickman, Ed.D.  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services

ALH/ra

c: Dr. Andrae Townsel, Superintendent, CCPS  
██████████, Principal, ██████████, CCPS  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Nicole Green, Compliance Specialist, MSDE  
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