



September 27, 2023

Corrected Copy November 3, 2023



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

RE: [REDACTED]  
Reference: #24-015

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.

**ALLEGATION:**

On August 1, 2023, MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that Calvert County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated that the CCPS did not follow proper procedures when reviewing and revising, as appropriate, the student’s Individualized Education Program (IEP) since May 2023, in accordance with 34 CFR §§300.324.

**BACKGROUND:**

The student is seven years old and is identified as a student with Other Health Impairment/Speech Language Impairment under the IDEA. He attends [REDACTED] School. The student has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. On January 1, 2023, and February 6, 2023, the complainant emailed the IEP team, in response to prior communication with the school staff, and requested that the student’s IEP annual review be completed only after additional progress data was collected regarding the student’s success in achieving his IEP goals. On February 6, 2023, the IEP team chairperson responded to the complainant in an email agreeing to wait until the previously scheduled date for the student’s annual review to meet.

2. The IEP team met on May 5, 2023, to conduct an annual review of the student's IEP. In attendance at this meeting were a general education teacher, a special education teacher, the speech and language pathologist, the IEP chairperson, the school psychologist, the occupational therapist, the parent, and the parent's educational advocate. The prior written notice from this meeting reflects that "...the team reviewed the student's progress on his IEP goals and objectives and determined that revisions were needed...[and] the team determined [the student] does not like being pulled out of class. He is afraid he is missing something." During the meeting, it was stated that the student had mastered all of his reading fluency objectives, all six of his articulation objectives, and five of his seven expressive language objectives.
3. The IEP team recommended that the student's speech therapy services be reduced from twice a week for thirty minutes to once a week for thirty minutes and specialized instruction for English language arts be reduced from thirty minutes per day outside of the general education setting to twenty-five minutes per day. The complainant disagreed with the team's proposal to reduce the student's speech/language services. The prior written notice generated following the meeting reflects that "Team members expressed their viewpoints regarding [the student's] speech needs and determined that [the student] only required one thirty-minute session per week in a special education setting, with the exception of [the complainant]." Additionally, the complainant explained that she was "...quite fearful that without an instructional assistant in [the first-grade classroom, the student's] attention concerns will prevent him from making adequate progress in ELA." The prior written notice states "The team compromised with two thirty-minute sessions per week in the special education setting and will reassess his need for pull-out ELA services after the school year begins." The prior written notice states that "the basis for this decision included the progress report and information from teachers, related service providers, and parent." Prior to the meeting ending the complainant requested another meeting to discuss the results of a private assessment that she had obtained for the student. The prior written notice states that the IEP would remain "open "until the team's follow-up meeting.
4. On May 5, 2023, the complainant emailed the IEP chairperson to express her concerns surrounding how the meeting was conducted. She also stated that as a result of the meeting ending prior to concluding the discussion of all issues, "the IEP is not ready to move forward until all the data and recommendations from [the private assessment] are discussed with the team."
5. On May 10, 2023, the IEP chairperson emailed the complainant and provided the prior written notice and draft IEP from the May 5, 2023, IEP team meeting. The email also states, "The IEP will remain a draft until our next meeting to review the [the private assessment] ."
6. On May 23, 2023, the complainant emailed the IEP team at MHES inquiring if the services recommended by the IEP team in the recent meeting had been implemented. School staff replied to the complainant that the decreased services were implemented, but that it was a mistake "and the service was made up."
7. The IEP team reconvened on May 31, 2023, to "...review [the private assessment] from January 20, 2023, and to review and if appropriate, revise the IEP." According to the prior written notice, the team reviewed the private assessment, in which "the assessors concluded the following diagnostic impression: ADHD (combined presentation), a medical diagnosis of Specific Learning Disability, and a history of language disorder...The team discussed the assessor's recommendations and determined that most were already embedded in the IEP." Based on this report, the team added the following recommendations to the IEP: provide the student with the use of a graphic organizer for writing and

direct the student to independently choose an option from appropriate tasks when he completes his work before his peers. The team also changed the reading phonics goal criteria from three out of four to four out of five. The prior written notice states that “the basis for decisions included the [the private assessment], and information from the parent, aunt, teachers, and related service providers.” “All team members were in agreement, [and] the IEP was approved.”

8. On June 13, 2023, the CCPS sent a “Quarterly Progress Report Notification” to the complainant that stated, “At the IEP meeting held on May 31, 2023, progress was shared for [the student]. Therefore, progress cannot be accurately updated again at this time. Please refer to information shared at the IEP meeting regarding your child’s academic performance and/or progress on previous goals and objectives as it will show the most accurate progress your child has made over the quarter.” The complainant did not receive a progress report for the fourth quarter of the 2022-2023 school year.

### **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)

In this case, the complainant alleges that the school staff made determinations for the student outside of the IEP team meeting when staff discussed possible revisions to the student’s IEP prior to the student’s annual review meeting in May. While the school staff proposed changes to the student’s IEP prior to the meeting, the actual determinations regarding the student’s program were made as part of a team and based on the needs of the student, with the input of the student’s parent and consideration of the information that she shared with the team.

Based on the Finding of Facts #1 to #8, MSDE finds that the CCPS followed proper procedures when reviewing and revising the student’s Individualized Education Program (IEP) since May 2023, in accordance with 34 CFR §§300.324.

### **ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

The IEP must include, among other things, a description of how the student’s progress toward achieving the annual goals will be measured and when reports will be made of the student’s progress to the parents (34 CFR §300.320). Local Education Agencies are responsible for ensuring that the parents receive reports of the student’s progress as proscribed in the IEP. (34 CFR §300.323)

Although the IEP team started developing the student’s IEP on May 5, 2023, and completed the development of the IEP on May 31, 2023, the complainant did not receive a progress report for the student for the fourth quarter of the 2022-2023 school year. Instead, the complainant received a notification stating that the student’s progress information had been shared at the May 31, 2023, IEP meeting, therefore the student’s progress could not be updated for the fourth quarter. However, the prior written notice from that meeting does not reflect a discussion or update on the student’s progress on his IEP goals. Instead, the prior written notice from the May 5, 2023, IEP meeting reflects a discussion of the student’s progress on his IEP goals.

**Based on the Findings of Facts #7 and #8, MSDE finds that a violation occurred with respect to the provision of progress reports, in accordance with 34 CFR §§300.320 and .323 for the fourth quarter of the 2022-2023 school year.**

### **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.<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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

#### **Student-Specific**

By November 1, 2023, the school-based IEP team for this student should provide the parent with a progress report for the fourth quarter of the school year. If the team is unable to do so, the team should reconvene to determine whether the violation 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 amount and nature of compensatory services or other remedy 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.

#### **School-Based**

By January 1, 2024, the special education team at [REDACTED] School should develop and implement a monitoring tool to ensure that progress reporting occurs for every special education student during every required marking period. The team should also develop a system of ensuring that documentation of parent receipt of progress reports is available for MSDE review.

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, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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

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<sup>1</sup> 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.

<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.

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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,

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

DMC/ebh

c:     Andraé Townsel  
       Nancy Gregory  
       ■  
       Gerald Loiacono  
       Nicole Elliott  
       Paige Bradford  
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       Elizabeth B. Hendricks