



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

October 12, 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: #19-021

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 August 16, 2018, the MSDE received a complaint from Ms. XXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 identified the following allegations for investigation:

1. The AACPS has not ensured that the Individualized Education Program (IEP) addresses the student’s needs in the areas of adaptive, fine motor, gross motor, social, pragmatic language, expressive language, and receptive language skills since the start of the 2017-2018 school year,<sup>1</sup> in accordance with 34 CFR §§300.101, .320, .323, .324, and .502.
2. The AACPS did not ensure that Prior Written Notice (PWN) of the decisions made by the IEP team on March 5, 2018, April 16, 2018, and May 30, 2018 was provided, in accordance with 34 CFR §300.503.

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<sup>1</sup> While the complainant alleged that this violation has occurred since May 31, 2017, she was informed, in writing, that only those allegations of violations that occurred within one (1) year of the filing of the State complaint can be addressed through the State complaint investigation procedure.

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3. The AACPS did not ensure that the student was provided with the amount of occupational and physical therapy required by the IEP during the 2017-2018 school year or with the special education instruction required by the IEP in June 2018, in accordance with 34 CFR §§300.101 and .323.
4. The AACPS did not follow proper procedures when responding to requests for amendment of the student's educational record during the 2017-2018 school year, in accordance with 34 CFR §§300.618 - .621.
5. The AACPS did not ensure the confidentiality of the student's educational record during the 2017-2018 school year, in accordance with 34 CFR §§300.610 - .622.

**BACKGROUND:**

The student is five (5) years old and is identified as a student with Multiple Disabilities under the IDEA, including Autism and an Other Health Impairment related to cerebral palsy and difficulty with attention.

During the 2017-2018 school year, the student participated in preschool programs at the XXXXXXXXXXXXXXXXXXXX and the XXXXXXXXXXXX. The student is now attending kindergarten at the XXXXXXXXXXXX, an AACPS charter school.

**ALLEGATIONS #1 AND #2                      IEP TEAM DECISIONS AND PRIOR WRITTEN NOTICE**

**FINDINGS OF FACTS:**

**May 31, 2017 IEP Team Meeting**

1. The IEP in effect at the start of the 2017-2018 school year was developed on May 31, 2017, when the student was four (4) years old. The IEP reflects that information about the student's academic and functional performance was obtained from the complainant, the student's teachers and service providers, private service providers, and the results of evaluations, including those obtained privately by the complainant.
2. The IEP states that the student is diagnosed with genetic and neurological abnormalities known for causing problems in balance, motor coordination, and executive functioning. It also states that she is diagnosed with Autism, and "congenital left hemiplegic cerebral palsy with mild thoracic curvature of the spine to the right." It further states that the student is diagnosed with expressive-receptive language disorder, gastroenterological disorders, and scoliosis, and that she wears bilateral orthotics to assist with alignment of her feet and ankles during weight bearing activities.

Early Learning-Social Foundations and Speech/Language

3. The IEP states that the student is functioning at the “preschool level” in the areas of early learning-social foundations, with “slightly below average skills” in the area of social language. The special educator reported that the student is consistently initiating play and communication with peers and engaging in reciprocal conversation. Her Head Start teacher reported that the student “made great progress,” following the daily routine with prompts, and was starting to raise her hand to answer questions. The speech/language therapist reported that the student was able to use eye contact with peers and adults and engaged in joint play with peers without adult support, and that her speech was “age appropriate.”
4. The team also considered the report of a private speech/language assessment that states that the student “presents within normal/functional limits regarding sentence structure, word structure, expressive vocabulary, and articulation,” but that, “informally, she has difficulties with self-advocacy, pragmatics, nonverbal imitation, social communicative interactions, problem solving/inferencing, and inter/intrapersonal skills.” The team also considered information from the student’s private service providers that the student prefers isolated play, and is “inconsistent in protesting with peers and interpreting emotional expressions of peers.”
5. Although the IEP states that expressive/receptive language is an area impacted by the student’s disability, there was no data indicating that the student was unable to understand language or to express herself.
6. While the team noted that the student’s functioning in the classroom was different from that of her functioning at home, it decided that the student’s disability impacts social functioning and communication in the area of pragmatic language. Annual goals were developed for the student to improve social skills and language.
7. The first goal requires the student to demonstrate appropriate social skills by initiating and taking turns with peers with 80% accuracy. The short-term objectives to be achieved in order to master the goal include asking for help when needed, identifying emotional vocabulary to express feelings, remaining on task and following directions while working with peers, and independently initiating play or conversation with a peer for a minimum of two (2) to three (3) times per session. The student’s progress towards achievement of the goal is to be measured using information from “data sheets.”
8. The second goal requires the student to demonstrate problem-solving skills with peers by using words to verbalize feelings and self-advocate in four (4) out of five (5) opportunities during three (3) sessions. The short-term objectives to be achieved in order to master the goal include self-advocating by using words to protest while playing with peers with one (1) prompt or cue, using words to verbalize feelings when upset given one (1) prompt or cue, and self-advocating by making requests while playing or working with peers given one (1) prompt or cue. The student’s progress towards achievement of the goal is to be measured using information from teacher reports.

9. The IEP requires the provision of two (2) hours of special education instruction per month, one and one-half (1.5) hours of speech/language therapy per month, and consultation between a speech/language pathologist and the student's teachers to assist the student in achieving the goals.

#### Behavior, Cognition and Adaptive Skills

10. The IEP states that a private assessment of learning and language acquisition barriers for children with Autism or other developmental disabilities reflected that the student was functioning between the two and one-half (2.5) to four (4) year old level. It notes that the student was found to have "splinter skills across all areas of development," and needs to learn to identify numbers, shapes, and the letters of the alphabet, begin to match words and pictures, independently write all upper and lower case letters and write her name, locate items in books and the natural environment based on a variety of questions about the topic and the complexity of the sentence.
11. The IEP also reflects that the student's private behavior therapist reported that the student experiences "difficulty with generalization of skills across environments and people," and that a private assessment report that contained a recommendation for the provision of Applied Behavior Analysis therapy<sup>2</sup> for Autism was made available for the team's consideration.
12. The team further considered information from progress reports that the student is able to follow directions with spatial concepts, understands size concepts, can match and sort objects by attribute, can name categories for given items and describe some items with attributes. The team further considered information from progress reports that the student can follow two step directions with support, and can answer yes/no and what/who/where questions without prompting.
13. The team documented the discrepancy between behaviors observed at home and at school, and based on the data about the student's functioning within the school setting, decided that these are not areas impacted by the student's disability. However, in order to ensure the student's continued age-appropriate progress, the team included in the IEP checks for understanding, provision of wait time after giving directions, repetition of directions, and the provision of verbal cues and prompts for toileting activities.

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<sup>2</sup> Applied Behavior Analysis (ABA) is an instructional methodology where the instructor uses a variety of behavior analytic procedures, some of which are directed by the instructor and others initiated by the learner; where parents receive training so they can support learning and skill practice throughout the day, where the learner's day is structured to provide many opportunities to acquire and practice skills in both structured and unstructured situations; and where the learner receives an abundance of positive reinforcement for demonstrating useful skills and socially appropriate behaviors ([www.autismspeaks.org](http://www.autismspeaks.org)).

Gross Motor Skills

14. The IEP states that a school-based physical therapy assessment reflected that, while the student demonstrates variability in her dynamic balance on the playground, she “independently walks within her classroom and school environment,” is able to sit on the floor independently, uses child sized furniture without difficulty, and can negotiate stairs. It states that the student is “performing as expected with motor skills, including the area of gross motor,” scoring 100 out of a possible 100 points on the Early Clinical Assessment of Balance, which measured postural stability for children diagnosed with cerebral palsy.
15. However, the IEP also states that the report of a private physical therapy assessment reflected that the student experiences “very frequent falls,” continues to not demonstrate back protective reflexes, demonstrates over/undershooting with throwing, occasionally drags the toe on her left foot, and demonstrates decreased push off with her foot. The private evaluator stated that the student “would benefit from continued skilled physical therapy to increase her balance, motor planning, lower extremity strength and range of motion, increase her core strength, improve her spinal range of motion, and address her gait abnormalities in order to progress towards age-related gross motor milestones.”
16. The IEP also includes information from private medical and service providers that contained recommendations for physical therapy to include overall core, trunk and extremity strengthening and endurance with a focus on balance, motor planning, fall prevention and gait, stair climbing, and balance. Based on this information, the IEP team identified gross motor skills as an area of need arising out of the disability and decided that services would be provided by a physical therapist to support the student in the classroom.
17. The IEP requires the provision of supports in the classroom such as reviewing with the student playground safety rules and expectations prior to outdoor play to increase safety awareness, providing the student with adult facilitated play sessions and supervision for safety, opportunities to engage in structured gross motor activities, and cues for proper posture during seated activities. The team also decided that school staff would be designed to inspect the student’s functional electrical stimulation foot device to ensure that it is in the on position and is proximally positioned, and that consultation would be provided between a physical therapist and the student’s teachers.

Sensorimotor and Fine/Visual Motor Skills

18. The IEP states that classroom data reflects that the student “does not demonstrate any repetitive, obligatory, or unusual sensory behaviors in class,” that she is “integrating all aspects of sensory domains quite well,” that “there is no impact on her performance in the classroom,” and that there are “no fine motor or sensorimotor weaknesses which affect [the student’s] ability to access and participate in the preschool curriculum.” While the student was reported to have a tendency to slouch to the right when seated and sit on her right hip, and to have reduced endurance for bilateral anti-gravity upper extremity activities, she was also reported to be “functional and adept at the present time,” requiring no assistance with completing two handed tasks using classroom tools and materials. Based on this

information, the team found that the student does not have sensorimotor needs arising out of her disability.

19. However, the IEP also states that the private providers and evaluators reported that the student falls “below average appropriate performance compared with typically developing peers,” and identified needs in the areas of self-help skills, motor planning, and bilateral integration skills for use with toileting, car seat management, and cutting tasks. In addition, the complainant reported that the student engages in repetitive rocking behaviors at home and “an increased interest in sensory experiences,” which result in her “taking risks that compromise her safety.” The private occupational therapy provider also reported that the student requires encouragement to use her left hand for paper stabilization, as well as opportunities to practice clothing and materials management.
20. The IEP also states that the private assessment of learning and language acquisition barriers for children with Autism or other developmental disabilities notes that the student “engages in fecal smearing, and demonstrates other odd automatically reinforcing (sensory) behaviors such as aversiveness to jeans, tags, brushing hair, chewing on hair, dental floss and clothing, skin picking, smearing toothpaste on her body.”
21. While the school-based members of the team did not observe such behavior, the IEP documents that the team “felt that [the student’s] medical diagnoses may place her at developmental risk in the future.” Therefore, the IEP team identified fine motor skills as an area of need and decided that services would be provided by an occupational therapist to support the student in the classroom.
22. The IEP requires supports in the classroom including providing the student with sensory opportunities and supports, as needed, access to a slanted writing surface, encouragement to use her left hand for classroom fine and gross motor activities, and an appropriate height table, desk and chair in the classroom. In addition, the team added consultation between an occupational therapist and the student’s teachers to address fine motor and sensorimotor skills.

### **December 6, 2017 IEP Team Meeting**

23. On December 6, 2017, the IEP team considered progress notes from the private speech/language therapist that, during private therapy, the student has demonstrated decreased rocking. However, the private speech/language therapist also reported that the student demonstrated an increase in oral stimulation, withdrawal, decreased emotional awareness, oral scripting, decreased social play, decreased eye contact, decreased flexibility, decreased use of words, and required maximum prompts to increase communication.
24. The team also documented consideration of progress notes from the private occupational therapist indicating that the student was demonstrating rocking and “meltdowns” due to tactile input, as well as decreased attention, and decreased left hand strength and motor control.

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25. The team further documented consideration of progress notes from private physical therapist indicating that the student was demonstrating difficulty with stairs, toe walking, falls, decreased left foot clearance, decreased balance, core weakness, decreased heel strike, decreased coordination with skipping, decreased endurance, fatigue, “stimming,” and left toe drag. In addition, the team considered reported incidents of the student’s falling from the Head Start staff.
26. Based on this information, and information from the school staff that they were not observing the problems reported by the private services providers, the team decided to monitor for the behavior noted by the private providers at school and to conduct a reevaluation.

### **March 5, 2018 Reevaluation Planning Meeting**

27. On March 5, 2018, the IEP team began reevaluation planning for the student. There is documentation that attempts were made to convene the meeting earlier, but that an earlier date that was mutually convenient for parents and school staff could not be identified.

### Early Learning-Social Foundations and Speech/Language

28. On March 5, 2018, the IEP team considered information from the complainant that she believes that the student’s language-based skills are below her same age peers, and information that she was having private testing conducted. The team also considered the complainant’s request for educational testing and testing for dyslexia because the student’s sibling has that diagnosis, and agreed to the request.

### Behavior, Cognition and Adaptive Skills

29. The student’s private behavioral consultant, again, reported that the student does not retain skills once they are mastered. In response, the team documented that they had data regarding the student’s cognitive functioning from a private psychological assessment and that additional testing in this area was not needed. The private psychological assessment, conducted on August 14, 2017, reflects that the student demonstrates “a pattern of strong cognitive abilities.”
30. The team considered the complainant’s concern that the student is demonstrating behavioral needs arising out of a diagnosis of Autism, and that she would like to see consistency in the student’s social behavior. The team also considered information from the school-based members of the team that they have observed consistent appropriate behavior at school. However, based on the complainant’s concerns, the team decided that additional social, emotional testing would be conducted.

### Gross Motor Skills

31. The team also considered the complainant's concerns about the student's falls and information from the school staff that previous testing indicated that the student's gross motor skills are "above average," and decided that an updated assessment in that area would be conducted.

### Sensorimotor and Fine/Visual Motor Skills

32. The team considered information that the complainant observed "stimming" behaviors at home,<sup>3</sup> but that the school-based members did not observe sensory issues affecting the student at school.
33. The team considered the complainant's request for an occupational therapy assessment. While the occupational therapist reported that the student was doing very well functionally, including with toileting, and did not recommend additional testing, the team decided that an updated assessment in that area would be conducted based on the complainant's concerns. The complainant reported that she was also having private visual and sensory assessments conducted.

### Vision

34. The team also considered information from the complainant that the student was diagnosed with strabismus<sup>4</sup> and had been referred to visual therapy to help both eyes work together. The IEP team discussed that it would consider information from the student's developmental optometrist.

### **Reevaluation**

35. On March 6, 2018, the complainant withdrew consent for the AACPS to conduct assessments and requested an extension of the timeline for completion of the reevaluation in order to resolve concerns about one of the evaluators.
36. On April 16, 2018, May 30, 2018, July 25, 2018, and September 25, 2018<sup>5</sup> the IEP team began reviewing private assessment results, but did not have sufficient time and data to complete the reevaluation.

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<sup>3</sup> A private medical report from December 12, 2017 states that the complainant reported "increased self-injurious behavior," and "strong sensory-seeking behavior, including eating XXXX," as well as sensitivity to touch.

<sup>4</sup> This is a condition in which the eyes do not align with each other (medilineplus.gov).

<sup>5</sup> There is documentation that the IEP team could only meet for one (1) hour at a time due to the complainant's reported fatigue and her need to limit stress, as directed by her physician, and that these were the earliest dates upon which the school system could ensure the complainant's participation in the reevaluation. Additional meetings have been scheduled for November 13 and 15, 2018 to complete the reevaluation.



37. The team has considered data from the student's private providers and evaluators that the student has been diagnosed with several medical conditions and that recommendations have been made for services. The team has also considered information from the school system staff that the student has achieved all of the IEP goals and that, based on her classroom performance, they do not believe that the student continues to require specialized instruction as a result of her medical conditions.
38. The complainant and her advocate expressed the belief that the Autism diagnosis should be sufficient to identify the student with a disability. The school-based members of the team reported that the current data does not demonstrate the need for special education instruction as a result of the diagnosis.<sup>6</sup>
39. The IEP team also considered information from the student's father about the student's increased risk of injury from falling and the team decided that a nursing plan would be developed to including training of staff to detect neurological problems. The team considered concerns of the complainant that the student's falls may be the result of balance issues occurring as a result of vision problems. Based on the complainant's concern, the team recommended a functional vision assessment in order to determine whether the student requires specialized instruction as a result of the strabismus diagnosis.
40. The IEP team further considered information from the complainant that the student demonstrates sensory needs because she rubs napkins in her hands, and information from the school staff that they do not observe this. The IEP team considered information from the complainant about the student's toe walking and that she is having a private evaluator determine whether it reflects a sensory problem. The team also considered information from the school staff that it may demonstrate an emotional issue.
41. The complainant reiterated concern about the student's memory and ability to recall. The Head Start teacher reported that the preschool screening tool demonstrates that the student is displaying skills "at or above age level." The school-based members indicated that the private psychological reports "solidly average" scores in these areas for the student's age, and recommended an updated psychological to cover attention, executive functioning, social, emotional, and behavioral functioning, and adaptive skills.
42. On July 25, 2018, the complainant and her advocate reported that they would not consent to the psychological at this point until another private psychological is conducted. They did agree to fine, visual, and gross motor assessments as well as a communication assessment.
43. The team considered concerns of the complainant and her advocate about the assessment tools being used to complete the reevaluation. With respect to the communication assessment, the complainant stated that she does not believe that structured assessments provide the most accurate information, and requested that the assessment be conducted in natural environments. However, the complainant reported that the student was currently

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<sup>6</sup> The report of the latest private psychological evaluation, conducted on August 14, 2017, states that with respect to the Autism diagnosis, the student "has shown important gains in language and social skills over the past two years," and that "her performance on standardized testing currently falls in the average range."

not enrolled in school or camp and requested that the observation be conducted when the student starts kindergarten at XXXXXXXXXXXX during the 2018-2019 school year. The complainant also indicated that she would not consent to a functional visual assessment.

44. A review of audio recordings of IEP team meetings reflects that the complainant requested that the IEP team accept or reject each recommendation for services contained in the private assessment data, and that the team explained that it was considering the data for purposes of determining the student's continued eligibility, and that if the student continues to meet the criteria for identification as a student with a disability, the team will consider the recommendations for services.
45. The written summaries of the IEP team meetings reflect that the complainant requested that all recommendations for services made by the private evaluators be reported in the prior written notice documents. The documents also reflect that the IEP team rejected the request explaining that the purpose of the documents was not to create a verbatim transcript of the meetings but to document the decisions that were made by the team.

#### **Progress Reports on the Social Skills Goal**

46. On November 9, 2017, a report of the student's progress towards achievement of the annual IEP goal to demonstrate appropriate social skills was made. The report states that the student made sufficient progress to achieve the goal. The description of the progress indicates that the student was observed independently initiating conversations and play two (2) to three (3) times per session, independently expressing the feelings of her doll and her own feelings about the doll's feelings, independently asking for assistance in four (4) out of four (4) times observed, and remaining on task to follow two (2) to three (3) step directions in three (3) out of three (3) targeted observations.
47. On November 10, 2017, a report of the student's progress towards achievement of the annual IEP goal to demonstrate problem solving skills with peers was made. The report states that the student made sufficient progress to achieve the goal. The description of the progress indicates that the student was observed using language to advocate for herself to protest while playing with friends in ten (10) out of ten (10) opportunities, seven (7) of which she did independently. It also indicates that the student was observed using language to request toys and items in five (5) out of five (5) trials, working on labeling her feelings, and independently named four (4) out of ten (10) emotions pictures.
48. On January 31, 2018, a report of the student's progress towards achievement of the annual IEP goal to demonstrate appropriate social skills was made. The report states that the student achieved the goal. The description of the progress indicates that the student was observed to independently initiate conversations or play two (2) to three (3) times per session, correctly label the emotion of pictures and correctly answer questions about the emotions, ask for help, and remain on task and follow two (2) to three (3) step directions in four (4) out of five (5) targeted observations.

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49. On March 15, 2018, a report of the student's progress towards achievement of the annual IEP goal to demonstrate appropriate social skills was made. The report states that the student achieved the goal. The description of the progress indicates that the student was observed to independently initiate play or conversation on a regular basis, tell her teacher and friends what makes her happy or sad, participates in class discussions about emotions, consistently ask for help, and remain on task.
50. On June 13, 2018, a report of the student's progress towards achievement of the annual IEP goal to demonstrate appropriate social skills was made, continuing to reflect that the student had achieved the goal. The description of progress indicates that the student was observed initiating interactions without prompts or cues, demonstrating empathy, making up a game and teaching it to others, reacting appropriately when angry, advocating for herself, and remaining on task.

### **Progress Reports on the Problem Solving Skills Goal**

51. On January 30, 2018, a report of the student's progress towards achievement of the annual IEP goal to demonstrate problem solving skills was made. The report states that the student achieved the goals. The description of progress states that the student has made "significant progress in her ability to use language to advocate for herself," achieved the objectives to use language to protest and make requests, and was able to name six (6) out of six (6) emotions pictures.
52. On March 14, 2018, a report of the student's progress towards achievement of the annual IEP goal to demonstrate problem solving skills was made. The report states that the student achieved the goal. The description of the progress indicates that the student was observed to consistently use language to advocate for herself to make requests and to protest with peers, and explain why she had been crying when she became upset on one (1) occasion.
53. On June 13, 2018, a report of the student's progress towards achievement of the annual IEP goal to demonstrate problem solving skills was made, continuing to reflect that the student had achieved the goal. The description of progress indicates that the student was observed to continue to independently use language to protest and make requests and to initiate interactions with peers and teachers.
54. The information in the progress reports is consistent with notes on the Community Based Services Observation Forms. It is also consistent with the data sheets completed by the special educator.
55. The student's private behavior specialist maintained data sheets as well. The private behavior specialist noted that she did not observe the student verbalizing her feelings when falling and injuring herself on the playground and that she observed the student being provided with prompts to verbalize her needs. However, the private behavior specialist also noted that she observed the student initiating and engaging in appropriate play with peers, following directions, and advocating for herself with peers.

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1                      IEP Team's Decisions**

#### Present Levels of Performance

In this case, the complainant alleges that the IEP does not include a statement of the student's present levels of performance in speech/language because it does not specify the grade level in which the student is performing.

Based on the Finding of Fact #3, the MSDE finds that the documentation does not support the allegation, in accordance with 34 CFR §§300.101, .320, .323, .324, and .502. Therefore, this office does not find a violation with respect to this aspect of the allegation.

#### Measurable Annual Goals

In this case, the complainant also alleges that the IEP does not include measurable annual goals designed to meet the needs arising out of the student's disability to enable her to be involved in and make progress in the general education curriculum. She specifically asserts that, although there are needs identified in the areas of fine and gross motor skills, and the IEP requires services to be provided in these areas, there are no goals to be addressed by the services.

Based on the Findings of Facts #2, and #14 - #22, the MSDE finds that there is no requirement for an IEP to include a goal for every support that is provided, and that the IEP includes supports necessary to assist the student with the fine and gross motor needs identified, in accordance with 34 CFR §§300.101, .320, .323, .324, and .502. Therefore, this office does not find a violation with respect to this aspect of the allegation.

The complainant also asserts that the goals to improve social skills and language are not measureable because there is no statement of the grade level in which the student is currently performing, and because the short-term objectives within the goals do not align with or scaffold to the goals.

Based on the Findings of Facts #3, #7, and #8, the MSDE finds that the documentation does not support the allegation, in accordance with 34 CFR §§300.101, .320, .323, .324, and .502. Therefore, this office does not find a violation with respect to this aspect of the allegation.

#### Statement of the Special Education Services to be Provided

In this case, the complainant further alleges that the IEP does not include a statement of the special education and related services that are to be provided in a manner that clearly informs teachers and service providers of their responsibilities for the provision of those services because it does not specify the number of sessions of special education instruction the student will receive per month.

Based on the Finding of Fact #9, the MSDE finds that the IEP includes information about the amount and frequency of special education instruction to be provided, in accordance with

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34 CFR §§300.101, and .320. Therefore, this office does not find a violation with respect to this aspect of the allegation.

#### Identification of Student Needs Consistent with the Data

The complainant asserts that the IEP team was required to review and make decisions about all of the recommendations for services contained in existing data before determining whether the student continues to meet the criteria for identification as a student with a disability under the IDEA. The complainant alleges that, because the IEP team did not do so, she was denied the right to parent participation in the IEP team meetings.

The complainant further alleges that decisions made by the IEP team about the student's needs have not been consistent with the data she has provided in the areas of social, gross motor, language, and cognitive skills and the data provided from private providers and evaluators.

The MSDE finds that the IEP team must first determine whether the student continues to meet the criteria for identification as a student with a disability under the IDEA before determining the special education and related services needed to address the needs that arise out of such a disability. Based on the Findings of Facts #1 - #55, the MSDE finds that there was data to support the IEP team's decisions with respect to the IEP that is currently in effect, as well as the school staff's initial recommendation to find that the student no longer requires special education instruction, in accordance with 34 CFR §§300.101, .320, .323, .324, and .502.

Based on the Findings of Facts #23 - #33, the MSDE finds that additional data is being collected by the IEP team for the purpose of addressing the complainant's concern that the student continues to require special education instruction. Therefore, this office does not find a violation with respect to this aspect of the allegation.

#### Progress Reports Consistent with the Data

The complainant also alleges that the reports of the student's progress towards achieving the annual IEP goals to improve social skills, speech pragmatics, and articulation skills have not been consistent with the data.

Based on the Findings of Facts #46 - #55, the MSDE finds that the documentation does not support the allegation, in accordance with 34 CFR §§300.101, .320, .323, .324, and .502. Therefore, this office does not find a violation with respect to this aspect of the allegation.

#### Review/Revision of the IEP

The complainant alleges that the IEP team did not complete a review of the IEP at least annually and did not revise the IEP to address lack of expected progress towards achievement of the speech/language goal.

Based on the Findings of Facts #1, #26, and #36, the MSDE finds that the reevaluation has not been completed within the required timelines and the IEP team has not completed the review of

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the IEP within one (1) year of the last review, in accordance with 34 CFR §§300.101, .320, .323, .324, and .502.

However, based on the Findings of Facts #23 - #43, the MSDE finds that the delay in completing the reevaluation and review of the IEP was the result of the need to hold numerous meetings in order to accommodate the complainant and to ensure that all necessary data is obtained to address the complainant's concerns that the student continues to require special education instruction. Furthermore, based on the Findings of Facts #38 and #46 - #55, the MSDE finds that the steps taken by the school system to ensure participation by the complainant in the education decision-making process has not negatively impacted the student's receipt of a Free Appropriate Public Education (FAPE).

### **ADDITIONAL DISCUSSION:**

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate IEP, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. The SEA may not, however, overturn an IEP team's decisions when proper procedures have been followed and there is data to support the team's decisions. The OSEP indicates that parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

This office understands that the IEP team has considered conflicting data and that the complainant has disagreed with the IEP team's decisions about the data it has chosen to rely upon. However, because there is data to support the team's decisions, this office is unable to overturn those decisions. The complainant is reminded of her right to request mediation or to file a due process complaint if she continues to disagree with the IEP team decisions.

### **Allegation #2**

### **Provision of Prior Written Notice (PWN)**

In this case, the complainant alleges that the documentation of the IEP team meetings does not include information about the IEP team's decisions regarding recommendations for services that are contained in the data considered by the team. Alternatively, as stated above, the complainant alleges that the IEP team did not properly consider the recommendations for services that were contained in the data.

Based on the Findings of Facts #1, #26, and #36, the MSDE finds that the data was reviewed for the purpose of completing a reevaluation and that the IEP team has not begun to review and revise the IEP services. Therefore, this office finds that the IEP team was not required to make decisions about the recommendations at the IEP team meetings, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #1, #26, #36, #44, and #45, the MSDE finds that because the IEP team has not made decisions regarding the services recommended in the reevaluation data, there were no decisions for which to provide written notice, in accordance with 34 CFR §300.503. In addition, based on the Finding of Fact #45, the MSDE finds that the complainant has been provided with written notice of the basis for why the IEP team has not considered the recommendations for services, in accordance with 34 CFR §300.503. Therefore, this office does not find a violation with respect to the allegation.

**ALLEGATION #3                      IEP IMPLEMENTATION**

**FINDINGS OF FACTS:**

56. The IEP states that the student will be provided with two (2) hours per month of special education instruction to assist the student in achieving the annual IEP goals, and that progress towards achievement of the goals be provided on a quarterly basis.
57. The IEP states that the student will be provided with three (3) thirty (30) minute sessions of occupational therapy “semiannually (3 sessions per semester).”
58. The occupational therapist’s service logs reflect that services were provided as follows:  
  
September 14, 2017 – 75 minutes;  
October 17, 2017 – 30 minutes;  
February 1, 2018 – 45 minutes;  
February 27, 2018 – 30 minutes;  
April 11, 2018 – 30 minutes; and  
May 21, 2018 – 30 minutes.
59. The IEP states that the student will be provided with three (3) thirty (30) minute sessions of physical therapy “semiannually (3 sessions per semester).”
60. The physical therapist’s service logs reflect that services were provided as follows:  
  
September 20, 2017 – 40 minutes;  
November 13, 2017 – 30 minutes ;  
December 4, 2017 – 30 minutes;  
February 20, 2018 – 40 minutes; and  
May 24, 2018 – 40 minutes.
61. There is documentation that the physical therapist was also scheduled to work with the student on May 2, 2018, but that the student was absent from school on that date.

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62. Special education instruction and related services were offered in June 2018 to students such as the named student, who were participating in community-based preschool programs that ended in May 2018. However, the student was not available for the services.

**DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that the student was not provided with special education services required by the IEP in June 2018. Based on the Findings of Facts #56 and #62, the MSDE finds that the services were offered, in accordance with 34 CFR §§300.101 and .323. Based on the Findings of Facts #46 - #55, the MSDE further finds that the services that were provided assisted the student in achieving the annual IEP goals. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant also alleges that the student was not provided with two (2) sessions of occupational therapy required by the IEP. Based on the Findings of Facts #57 and #58, the MSDE finds that the documentation does not support the allegation, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant further alleges that the student was not provided with one (1) session of physical therapy required by the IEP. Based on the Findings of Facts #59 - #61, the MSDE finds that the services were offered as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION #4**

**RESPONSES TO REQUESTS TO AMEND THE RECORD**

**FINDINGS OF FACTS:**

63. The complainant requested that written summaries of IEP team meetings be amended, indicating that she believes them to be inaccurate and misleading and providing her own summaries, which she believes to accurately reflect the team's decisions.
64. While the school staff offered to place the complainant's summaries in the student's educational record, they refused the request to amend the summaries they generated, and did not provide the complainant with notice of the right to request a hearing to contest the accuracy of those summaries.

**DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #63 and #64, the MSDE finds that the complainant was not informed of the right to a hearing to contest the content of the student's educational record, in accordance with 34 CFR §§300.618 - .621. Therefore, this office finds that a violation occurred with respect to the allegation.



**ALLEGATION #5                      CONFIDENTIALITY OF THE RECORD**

**FINDINGS OF FACTS:**

65. The IEP team has included a member of the Head Start preschool staff, who is not an AACPS employee.
66. There is documentation that, while the complainant wanted the AACPS to consider information from Head Start preschool staff about the student's performance, she notified the school staff that she wished to screen all information provided by Head Start preschool staff before it was provided to them.
67. There is documentation that the school system staff obtained information from the Head Start preschool staff without it being screened by the complainant. There is also documentation that when the complainant expressed concern about the matter, the school system staff agreed to destroy any data that had been provided by the Head Start preschool staff.

**DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that the disclosure of information to the AACPS from the Head Start preschool staff without her written consent constitutes a violation of the requirement that the AACPS maintain the confidentiality of the student's educational record, in accordance with 34 CFR §§300.610 - .622.

Based on the Findings of Facts #65 - #67, the MSDE finds that the provision of information about the student to the AACPS did not constitute an impermissible disclosure of information by the AACPS, in accordance with 34 CFR §§300.610 - .622. Therefore, this office does not find that a violation occurred with respect to the allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the AACPS to provide documentation by January 1, 2019, that the complainant has been offered a hearing to contest the content of the written summaries of the IEP team meetings.

The MSDE also requires the AACPS to provide documentation by April 1, 2019 of the steps taken to ensure that the IEP team provides parents with notice of the right to a hearing to contest the accuracy of the educational record. The documentation must include a description of the action that will be taken to monitor the effectiveness of the steps taken.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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**TECHNICAL ASSISTANCE:**

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

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 complainant and the school system 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 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 Early Intervention and Special Education Services

MEF/aam

c: George Arlotto  
Alison Barmat  
Dori Wilson  
Anita Mandis  
Linda Koban  
Nancy Birenbaum