



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

November 21, 2018

XXX

XXX

XXX

Ms. Trinell Bowman
Executive Director
Department of Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #19-050

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 October 19, 2018, the MSDE received a complaint from Ms. Ronetta Stanley, hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXX.¹ In that correspondence, the complainant alleged that the Prince George’s County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The PGCPS did not ensure that a reevaluation was conducted prior to determining that the student was no longer a student with a disability under the IDEA on May 2, 2018, in accordance with 34 CFR §300.305.
2. The PGCPS did not obtain written parental consent for the initiation of special education services at the start of the 2018-2019 school year, in accordance with 34 CFR §300.300.

¹ Because the MSDE did not receive written parental consent to release the results of this investigation to the complainant, as requested, this letter is addressed to the parent and the school system only.

XXX

Ms. Trinell Bowman

November 21, 2018

Page 2

3. The PGCPS has not ensured that the Individualized Education Program (IEP) has addressed the student's feeding needs and his need for reduction of visual clutter on his assistive technology device, a swing to provide motion, Applied Behavioral Analysis² therapy, an alternative to the use of headphones throughout the day, and a personalized bathroom schedule, since October 2017,³ in accordance with 34 CFR §300.324.
4. The PGCPS did not ensure that the IEP team identified a strategy to address the student's sensory needs, consistent with the decision made by the IEP team on March 6, 2018, in accordance with 34 CFR §§300.101 and .323.
5. The PGCPS did not ensure the provision of Prior Written Notice of the decisions made by the IEP team on April 24, 2018 and October 10, 2018, in accordance with 34 CFR §300.503.
6. The PGCPS did not ensure that proper procedures were followed on October 10, 2018 when the IEP team recommended that the student receive instruction and assessment based on alternate academic achievement standards, in accordance with 34 CFR §§300.160 and .320, and the *Maryland Guidance for IEP Teams on Participation Decisions for the Alternate Assessments*, July 1, 2017.
7. The PGCPS has not ensured that the student has been provided with special education instruction on the Maryland College and Career Ready Standards, as required by the IEP, since the start of the 2018-2019 school year, in accordance with the Annotated Code of Maryland, Ed. Art., §8-405 and 34 CFR §§300.101 and .323.

BACKGROUND:

The student is five years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services.

The student attends the XXXXXXXXXXXXXXXXXXXX, a public, separate, special education school. During the 2017-2018 school year, the student participated in a preschool program at the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

² 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).

³ While the complainant alleged that violations occurred prior to this period of time, she was informed in writing that only those allegations of violations that occurred within one year of the filing of the State complaint can be resolved through the State complaint investigation procedure (34 CFR §300.153).

**ALLEGATIONS #1 AND #2 REEVALUATION AND PARENTAL CONSENT FOR
THE INITIATION OF SERVICES**

FINDINGS OF FACTS:

1. On April 24, 2018, the IEP team convened with representation from the PGCPS Central Office to consider the family’s concerns about the program and determine the educational placement for the 2018-2019 school year. At that time, the IEP team decided that the student, who had just turned five years old and was participating in a preschool program, would be placed at the XXXXXXXXXXXXXXXXXXXXXXX, a public separate special education school for the 2018-2019 school year.
2. The school communication log reflects that, on April 30, 2018, the student’s grandmother informed the school staff that the student would be attending an intensive audiology program to assist with his vocabulary in the mornings and that she was not sure whether the student would be brought to school in the afternoons. The log reflects that the grandmother also reported that the program is provided for three weeks at a time with a two week break between sessions, and that she was not sure whether the student would be brought to school on the off weeks.
3. On May 7, 2018, the student’s mother informed the school system staff that the student would not return to school for the rest of the school year.
4. The school communication log reflects that on May 20, 2018, the student’s mother responded to school staff’s inquiry about whether the student would be accessing Extended School Year (ESY) services for the summer of 2018, indicating that he would not be accessing ESY services.
5. On May 23, 2018, the school system staff sent the student’s mother an electronic mail message stating that, because the student would not be attending school for an extended period of time, they were “required to withdraw him from school⁴ and exit him from special education services.” The message further states that the school staff wanted to ensure that the student is enrolled in the separate special education school when he returned to the school system for the 2018-2019 school year, and requests that the parent register the student in the XXXXXXXXXXXXXXXXXXXXXXX in early August “so that there is no delay in providing services at the beginning of the school year.”

⁴ The PGCPS Administrative Procedure 5113 requires withdrawal from the school system for lack of regular attendance.

6. On June 27, 2018, the IEP was amended to reflect that on May 2, 2018, a Child Outcome Summary was developed as a result of the student's exit from special education. There is no information or documentation that a reevaluation was conducted and that the student was determined by the IEP team to no longer meet the criteria for identification as a student with a disability under the IDEA prior to the school system's dismissing the student from special education.
7. On August 24, 2018, the IEP team at the XXXXXXXXXXXXXXXXXXXXXXXX conducted an initial evaluation following the student's reenrollment in the school system. A review of the audio recording of the meeting reflects that the school system staff explained that the team should be conducting a reevaluation instead of an initial evaluation since the team had not determined that the student no longer meets the criteria for identification as a student with a disability under the IDEA and was only seeking updated information on his present levels of performance. However, the complainant objected to the team treating the meeting as a reevaluation since the school system staff had previously informed the family that the student had been dismissed from special education.
8. At the August 24, 2018 IEP team meeting, which included the student's parent, the team decided to implement the existing IEP since the student had not been out of the school system for a lengthy period of time, and that it would reconvene in thirty days to review the student's progress. A review of the audio recording of the meeting reflects that the student's family participated in the meeting, evidenced an understanding that the student would be provided with the special education and related services in the IEP, and expressed no objection. However, the school system has not sought written consent for the initiation of the services following the August 24, 2018 evaluation despite the fact that the IEP has been implemented at the XXXXXXXXXXXXXXXXXXXXXXXX since the start of the 2018-2019 school year.

DISCUSSION/CONCLUSIONS:

Allegation #1 Reevaluation

Based on the Findings of Facts #1 - #7, the MSDE finds that the student was dismissed from special education without convening a reevaluation, as required by 34 CFR §300.305. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #1 - #8, the MSDE finds that the violation occurred following the student's withdrawal from the school system, and thus, he was not denied special education services as a result of the violation. Therefore, no student-specific corrective action is required to remediate the violation.

Allegation #2 Initiation of Special Education Services

Based on the Findings of Facts #5 - #8, the MSDE finds that, although the student's parent participated in the decision to provide special education services to the student and evidenced no disagreement, the PGCPS did not obtain written parental consent prior to the initiation of those services following an initial IDEA evaluation, as required by 34 CFR §300.300. Therefore, this office finds that a violation occurred.

ALLEGATIONS #3 – #6 IEP DEVELOPMENT AND PRIOR WRITTEN NOTICE

February 16, 2017 IEP Team Meeting

9. The IEP in effect in October 2017 was developed on February 16, 2017 when the student was about to turn four years old and was participating in a preschool program at the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The IEP states that the student was unable to shake his head to signal “no” or nod to signal “yes,” could not identify objects by function, had difficulty with the concept of “one,” could not identify himself in the mirror, and did not use turn taking with peers or show interest in playing. It also states that the student had difficulty pointing his index finger, could not imitate a vertical stroke or cut paper, could not dress or undress, and required assistance with washing his hands.
10. The February 16, 2017 IEP identified needs in the areas of expressive and receptive language, pre-academics, adaptive functioning, and social, emotional, and behavioral functioning. It specifically identified needs for the student to functionally play with other children and toys, indicate his wants and needs, participate in adult-directed activities, follow directions, use a spoon and eat age appropriate foods, and communicate through signs, gestures, and augmentative communication.
11. The February 16, 2017 IEP included goals for the student to improve his functioning in the areas of identified need. It also required the provision of special education instruction and occupational therapy services in a separate special education classroom in a regular early childhood program, with the opportunity to receive some services with nondisabled peers, as appropriate. It also required the provision of instructional supports including structured routines and repetition of directions, as well as low-tech assistive technology, such as picture symbols, signs, core vocabulary board, and visual schedules to transition between activities, answer questions, make choices, and communicate wants and needs.
12. At the end of the 2016-2017 school year, the student was reported to be making sufficient progress towards achievement of the annual IEP goals.

August 17, 2017 IEP Team Meeting

13. On August 17, 2017, the IEP team considered the concerns of the parent that the student had been in school for over one year and continued to have difficulty with communication and social skills. The student's parent indicated that she believes that the private therapy that she was obtaining for the student in the areas of feeding, speech/language, and occupational therapy should be provided in school, and that the amount of services being provided through the IEP was insufficient. She also expressed concern that the student be able to interact with nondisabled students to assist him with language and social skills.
14. The team decided to conduct a reevaluation through which additional information would be obtained regarding the student's communication skills, intellectual functioning, functional and adaptive performance, fine motor skills, sensory processing and visual motor skills, and emotional, social and behavioral development.
15. The team also decided to add speech/language services in the group setting, consultation between the student's teachers and a speech/language therapist, strategies to prevent elopement, and a home-school communication system.
16. The team decided that special education instruction would be provided in a separate special education classroom with the use of "autism strategies," but that the student would receive instruction in a "non-categorical special education classroom" during music in order to participate with students who are more advanced in social skills and expressive language.

October 24, 2017 IEP Team Meeting

17. On October 24, 2017, the IEP team considered information from classroom observations and the results of assessments that had been conducted, and decided that the student continues to meet the criteria for identification as a student with Autism under the IDEA.
18. The speech/language assessment report that was considered by the team stated that the student's overall eye contact was improving, his communicative attempts were increasing given multi-modality communication supports and repetition of routines, and he was beginning to follow directions for activities involving classroom routines. However, it reflected that the student was unable to consistently respond to his name, identify objects or caregivers, look for objects that have fallen out of sight, take turns when vocalizing, play simple games while using appropriate eye contact, and imitate and produce sounds and words.

19. The fine motor skills assessment report that was considered by the team reflected that the student required headphones to minimize stimulation from auditory noise. It also reflected that the student had difficulty opening containers and inserting straws into them, using toys for functional play, paying attention, and calming down after gross motor tasks. It stated that the student demonstrated “decreased oral motor skills for eating,” and that there had been “limited progression due to relying on adults to feed, bathe, and dress him.” It further stated that the student “is inconsistent with arriving to school or attends later in the day when breakfast has already occurred making treatment for feeding goals very limited.”
20. The psychological assessment report considered by the team reflected that an assessment of the student’s intellectual and adaptive functioning was attempted, and that reliable scores could not be calculated in the areas of nonverbal reasoning and spatial domains due to the student’s lack of task engagement. The report stated that the student’s performance during informal testing “implied that his cognitive skills are significantly delayed.” It also stated that the student’s adaptive behavior score fell in the “low” range based on parent, grandparent, and teacher responses. The report further stated that “although [the student’s] delays in cognitive and adaptive functioning are apparent across home and school settings, an intellectual disability may not describe [him] best at this time given his difficulties orienting his gaze to assessment materials and minimal interest in engaging with assessment tasks.”
21. The team discussed that the student was having a difficult time transitioning from parent drop off to the classroom, and considered the parent’s concern that the student was having difficulty on the way to school and was attempting to elope in public. Based on that information, the team decided to use social stories to assist the student with his transition from home to school and his behavior in public. It also decided that the school staff would pick the student up in the front office in the morning and collect data on his behavior during transitions.
22. The IEP team considered information from the student’s teacher about the student’s responsiveness to the use of the *Go Talk* application⁵ on his iPad, as well as information from the student’s parent that, as a result of a private assessment, a recommendation was made for the student to use the *Proloquo* application⁶ on the iPad.
23. The IEP team also documented a recommendation by the occupational therapist for services to focus on functional use of feeding because the student had the skills to achieve the feeding goal, but was not demonstrating skills in this area unless motivated.

⁵ The *Go Talk Now* is a customizable augmentative and alternative communication (AAC) tool that allows users to select combinations of symbols, words, and sounds, and convert them to synthesized speech (<http://spotidoc.com>).

⁶ The *Proloquo2Go* is another AAC tool with mobile technology and symbol options (<http://spotidoc.com>).

24. The IEP team discussed that the student was transitioning from a three year old preschool program to a full day four year old program, and decided to obtain additional information, such as a feeding plan from the student's private provider and additional data on the student's progress with speech/language services, before making decisions about the application to be used on the iPad and revising the feeding goal. The team documented that the parent provided consent for the school system to obtain information from the private assessment recommending the use of the application on the iPad.

November 17, 2017 IEP Team Meeting

25. On November 17, 2017, the IEP team reconvened. At the meeting, the team considered information from the student's teacher that the student was not making sufficient progress towards achievement of the goal to improve peer interaction in the classroom. Based on this information, the team revised the goal to improve peer interaction to require adult support with modeling, and decided to collect data on the student's progress every four weeks and to share the data with the parent on a monthly basis.
26. The IEP team also decided to break up the communication goals into separate areas for pragmatics, receptive language, and expressive language and that the speech/language service provider would consult with the classroom teacher when collecting data on the student's progress.
27. The written summary of the meeting states that the team decided that the student would be provided with both "high and low tech" assistive technology communication devices and that the assistive technology specialist would explore different devices and collect data to determine if the student experiences success with one specific device over another.
28. The IEP team revised the feeding goal to reflect the student's functional ability to use a spoon and to increase the number of consecutive scoops he uses given verbal prompts and behavioral incentives. The IEP team decided to continue the provision of occupational therapy to assist the student with development of this skill and to provide the student with a weighted spoon and adapted bowl for meals.
29. The team decided to add monthly consultation between the occupational therapist and the student's teacher to address the student's sensory and feeding needs. The team also decided that sensory-based strategies would be used on a trial basis to attempt to decrease challenging behaviors during classroom activities, including noise reduction headphones, the use of which would be decreased, as appropriate. In addition, the team decided that a sensory profile would be completed.

30. In February 2018, the student was reported to be making sufficient progress towards achievement of the annual IEP goals.

March 6, 2018 IEP Team Meeting

31. On March 6, 2018, the IEP team considered the report of the results of the sensory processing assessment that stated that the student was found to have “definite dysfunction” in social participation, vision, balance, and play, and that he “may become overwhelmed with sensory input to the point that it may interfere with his participation.” The report recommended facilitated play within a structured environment to promote joint attention, activities in which the student is encouraged to take turns, practice activities that require visual attention and imitation of the teacher, and extended time to respond to verbal commands. It also recommended that the student continue to be allowed to wear headphones “in auditory stimulating environments.”
32. A review of the audio recording of the meeting reflects that the team discussed the trials of sensory strategies being used to increase the student’s attention to tasks, and that the student’s family expressed concern that the team had not yet identified the strategy that is most appropriate. The family requested that the team accept the sensory integration model recommended by the student’s private providers, and the team rejected the request based on reports of the school staff that the student was making progress with the strategies being used in the classroom.
33. The written summary of the meeting states that the IEP team decided to use a compression vest, chewy necklace, swing, and scooter board on a trial basis to address the student’s sensory needs and to continue the use of headphones to address the student’s auditory sensory needs. At the time of the meeting, the IEP included a goal for the student to increase his attention to tasks given visual, verbal, and gestural prompts. The team decided that the goal would be revised to require the student to visually attend to a structured academic task with the use of the sensory strategy determined to best address the student’s needs as a result of the strategies being trialed. The team also decided to increase the occupational therapy and consultation from monthly to weekly.
34. At the meeting, the team considered the concerns of the parent and family that the student was not yet toilet trained, and added visual and temporal support to the IEP to assist with bathroom training and a strict bathroom schedule to reinforce proper toileting skills.
35. A review of the audio recording of the meeting reflects that the family expressed concern that they have been requesting that the student be provided with ABA therapy and that the team has consistently rejected the request. The team decided to continue the meeting on another date with representation from the PGCPSS Central Office to consider the family’s concerns about the program and determine the student’s educational placement for the 2018-2019 school year.

XXX

Ms. Trinell Bowman

November 21, 2018

Page 10

36. In April 2018, the student was reported to be making sufficient progress towards achievement of the annual IEP goals.

April 24, 2018 IEP Team Meeting

37. On April 24, 2018, the IEP team convened with representation from staff in the PGPCS Central Office. At that time, the student's parent expressed concern about the progress the student was making with communication and how his sensory needs were being addressed because he was not yet communicating verbally and was continuing to demonstrate sensitivity to noise requiring the use of headphones.
38. The IEP team discussed that the student had missed nineteen days of school and that when he did attend, he was often tardy due to the provision of private ABA therapy in the morning before school that was arranged by the parent. The student's parent reported that the student receives private ABA therapy after school as well, for a total of four hours per day, and that he would begin receiving private speech and occupational therapy services in May 2018.
39. The student's private ABA therapist reported having observed the student in the classroom and that he was making progress with learning colors, working with puzzles and recognizing numbers. She also reported that she observed that the teacher working with the student on toileting, and believes that the student needs to "interact with the toileting schedule himself" with less guidance from the teacher. She further reported that the student appears lethargic at school and suggested the use of a trampoline at school to keep the student energized between activities as they do in the home.
40. A review of the audio recording of the meeting reflects that the school staff reported that the student has made steady progress, and that they explained that they expect to see the student make slower progress than what the family expects due to the student's cognitive ability and limited language and adaptive skills. The school staff discussed information about the student's cognitive functioning and adaptive behavior from multiple sources over a period of time, and his need for extensive, direct, individualized, and repeated instruction and substantial supports to achieve gains in adapted and modified curriculum aligned with grade level content standards across multiple settings.
41. The school-based members of the team reported that the interventions being used had assisted the student with getting on and off of the school bus and entering the school, improving his attention to tasks, and motivation, and that he was beginning to access his own personal care and react and interact with peers and follow two step directions with prompting and modeling.

42. A review of the audio recording of the meeting reflects that the team discussed that there are seven students and three adults in the student's class, and that the ABA therapist recommended having the more one-to-one attention for the student as is provided in the home. The family expressed the belief that the student's progress can be attributed to the private ABA therapy being provided, and their concern that their requests for ABA therapy in the school, which has been recommended by private providers, have been consistently denied.
43. The school staff reported that the student needs to interact with other students in order to develop needed social skills. They also reported the belief that the student's progress can be attributed to the use of Discrete Trial Training (DDT),⁷ along with other teaching methods being used. The school staff also explained that, while the family has requested additional related services such as speech and occupational therapy during the school day, the student is receiving these services throughout the school day in the education program being provided in addition to the related services he is receiving. The school staff further explained that it would be inappropriate to permit the private ABA therapist to provide services to the student during the school day because it would take away from the instruction that the IEP team believes the student needs.
44. Based on the information, the IEP team decided to increase the amount of special education instruction to be provided. The team decided that the Least Restrictive Environment (LRE) in which the IEP could be implemented with the provision of supplementary aids and services was a separate special education school for the 2018-2019 school year due to the student's need for a small, therapeutic school program to address academic and emotional regulation.
45. A review of the audio recording of the meeting reflects that the team discussed that the general academic standards are inappropriate for the student even with accommodations and that alternate standards are more appropriate for him. They also discussed that students placed at the XXXXXXXXXXXXXXXXXXXX receive instruction on the general curriculum using alternate academic achievement standards, and that this would be an appropriate placement for the student. However, the recording does not reflect that consent for the provision of instruction using alternate academic achievement standards was sought from the parent, and there is no documentation of the provision of such consent.

⁷ Discrete Trial Training (DDT) is a method of teaching in simplified and structured steps so that a skills is broken down and built up using discrete trials that teach each step one at a time. It is commonly used within ABA, and is regarded as an effective teaching method for students with Autism (www.educateautism.com).

46. The student's educational record contains a copy of a notice addressed to the student's parent and dated April 25, 2018, indicating that at the April 24, 2018 IEP team meeting, the team recommended an increase in the amount of special education instruction and an educational placement at the XXXXXXXXXXXXXXXXXXXXXXXX. However, the notice does not reflect all of the decisions made by the IEP team on April 24, 2018 and the basis for the decisions, including the rejection of the request for ABA therapy and additional related services, as well as the decision that the student requires instruction on the general curriculum using alternate academic achievement standards.

August 24, 2018 IEP Team Meeting

47. On August 24, 2018, the IEP team conducted an initial evaluation following the student's reenrollment in the school system.⁸ A review of the audio recording of the meeting reflects that the team considered information from the complainant that the student had been dismissed from special education at the time of his withdrawal from the school system without a reevaluation having been conducted. The team reviewed the existing data and decided that the student meets the criteria for identification as a student with Autism under the IDEA.
48. A review of the audio recording of the meeting reflects that the family, again, requested the provision of ABA therapy and expressed the belief that the student needs more one-to-one support from an adult in the classroom. The school staff explained that the program utilizes ABA techniques, that the student's class will include five students and three adults, and that they have staff who have completed ABA training.
49. A review of the audio recording also reflects that the complainant expressed concern that, while there are supplementary aids and services to assist the student with toileting, the IEP does not include a goal for the student to become toilet trained. The IEP team decided that, because the student had not been gone from the school system very long, the current IEP would be continued, and that it would reconvene in thirty days to consider the student's progress, at which time the request for a toileting goal would be considered.

October 10, 2018 IEP Team Meeting

50. On October 10, 2018, the IEP team convened at XXXXXXXXXXXXXXXXXXXXXXXX to consider the student's progress. A review of the audio recording of the meeting reflects that the school staff reported that the student had transitioned well to the program, and that they observed no problems with attempted elopement or chewing, and that he was engaging well in school activities. The school staff reported that the student has a good grip and can scoop food with a spoon with modeling and verbal prompting.

⁸ The PGCPS previously withdrew the student from the school system following the April 24, 2018 IEP team meeting for lack of regular attendance, consistent with the PGCPS Administrative Procedure 5113.

51. The team discussed that the student is using the *Proloquo* application on the iPad for communication purposes and that a member of the school staff, at her suggestion, would work with the family to remove some of the icons from the student's assistive technology device to eliminate those that he does not need in order to use the device exclusively for communication purposes and to ensure that it enables him to use the device to communicate his need to use the toilet.
52. There is no documentation of the need to reduce clutter on the assistive technology device prior to October 10, 2018.
53. The student's private service provider reported that the student was observed to increase engagement in activities at home when placed in a swing, and the family requested that he be placed in a swing at school as well. The school staff reported that they were not observing problems with the student engaging, and that there were sensory items, such as a trampoline at the school that he could use if needed, which had previously been recommended by one of the student's private service providers.
54. The family expressed concern that the student is using headphones throughout the school day, limiting his ability to hear and to engage more in classroom activities. The student's grandmother requested that the team consider the use of a swing in the classroom as a method to calm the student if he becomes overstimulated by noise, as an alternative to the use of headphones throughout the school day. The IEP team agreed to investigate obtaining a swing and whether there are other methods of providing the student with motion in order to comfort and calm him when overstimulated by noise.
55. There is no documentation that the team considered the effectiveness of the use of a swing consistent with the decision on March 6, 2018 that it would be used on a trial basis.
56. The family, once again, requested that the private ABA therapist be permitted to provide services to the student during the school day. The school staff responded that the team would have to determine that the student requires ABA therapy as part of his education program, and then determine whether the private ABA therapist meets the requirements for a service provider.
57. The family expressed the belief that the student does not have a significant cognitive disability and that they are unwilling for the student to be provided with instruction on the general curriculum using alternate academic achievement standards.

58. There is no documentation that the IEP team has determined that the student will be provided with assessment using alternate academic achievement standards. A review of the audio recordings of the IEP team meetings reflects that the team discussed that a decision on this matter was being deferred to a later date because the student is too young to participate in State and districtwide assessments.
59. The documentation of the meeting states that the team decided to continue the current goals and objectives and that the parent had fifteen days to decide whether to provide consent for the student to receive instruction on the general curriculum using alternate academic achievement standards. However, there is no documentation of the basis for the team's decisions regarding the IEP and the need for instruction using alternate academic achievement standards and there is no documentation of the remaining decisions made by the team.
60. The team discussed that additional data would be collected on the student's toileting skills in order to determine whether a goal to improve this skill is needed. Another IEP team meeting is scheduled to take place on November 26, 2018.

DISCUSSION/CONCLUSIONS:

Allegation #3 IEP that Addresses the Student's Needs

Feeding Needs

Based on the Findings of Facts #9 - #14, #17, #19, #20, #23, #24, #28 - #30, #36, #43, #44, #47, and #50, the MSDE finds that the IEP has addressed the student's feeding needs consistent with the data, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Communication/Assistive Technology Needs

Based on the Findings of Facts #9 - #18, #21, #22, #24 - #27, #30, #36, #43, #44, #47, #51, and #52, the MSDE finds that the IEP has addressed the student's communication needs, including his need for a high-tech communication device and speech/language services, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Use of a Swing

Based on the Findings of Facts #52 - #54, the MSDE finds that, at the October 10, 2018 IEP team meeting, the team considered the concern for the use of a swing to increase the student's engagement, and is addressing the request for the use of a swing as a method to calm the student if he becomes overstimulated by noise as an alternative to the use of noise reducing headphones throughout the school day, in accordance with 34 CFR §300.324.

However, based on the Findings of Facts #33 and #55, the MSDE finds that the team did not previously consider the effectiveness of the use of a swing, consistent with its decision on March 6, 2018. Therefore, this office finds that there has been a delay in the consideration of the student's need for a swing to address sensory needs and that a violation occurred with respect to this aspect of the allegation.

ABA Therapy

Based on the Findings of Facts #9 - #12, #20, #21, #35 - #43, #48, and #56, the MSDE finds that the IEP team has considered the family's requests for both publically-funded ABA therapy and permission for the private ABA therapist to provide services in the classroom, and that there is data to support the IEP team's decisions, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Noise Reducing Headphones

Based on the Findings of Facts #9 - #12, #29, #31, #33, #37, and #54, the MSDE finds that there has been a delay in the team's consideration of alternatives to the use of noise reducing headphones throughout the school day, consistent with the team's decision to reduce their use as appropriate, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Personalized Bathroom Schedule

Based on the Findings of Facts #9 - #12, #14, #34, #39, #41, #49, and #50, the MSDE finds that the student has been provided with a personalized bathroom schedule, that he has increased his self-care skills, and that the IEP team is continuing to collect data in order to address the August 24, 2018 request that an toileting goal be added to the IEP, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #4 Identifying Strategies to Address Sensory Needs

Based on the Findings of Facts #29, #31 - #33, #37, #39, #50, #53, and #54, the MSDE finds that the team has been using sensory strategies on a trial basis and has considered the effectiveness of some of those strategies. However, based on those Findings of Facts, this office finds that the team has not determined the most effective strategy or strategies and revised the IEP consistent with its March 6, 2018 decision, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #5 Provision of Prior Written Notice

Based on the Findings of Facts #45, #46, and #50 - #56, the MSDE finds that the PGCPs did not provide prior written notice of the decisions made by the IEP team, in accordance with 34 CFR §300.530. Therefore, this office finds that violations occurred with respect to this aspect of the allegation.

Allegation #6 Instruction and Assessment Based on Alternate Academic Achievement Standards

Based on the Finding of Fact #58, the MSDE finds that there is no documentation that the IEP team has decided that the student will be assessed using alternate academic achievement standards. Therefore this office does not find a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #45, #57, and #59, the MSDE finds that, at the April 24, 2018 and October 10, 2018 IEP team meetings, the IEP team recommended that the student receive instruction based on alternate academic achievement standards.

Based on the Findings of Facts #40, #45, and #57, the MSDE finds that the team has considered all of the required factors when making the recommendation, in accordance with 34 CFR §§300.160 and .320, and the *Maryland Guidance for IEP Teams on Participation Decisions for the Alternate Assessments*, July 1, 2017.

However, based on the Findings of Facts #20, #40, #45, and #57, the MSDE finds that there is no documentation that the IEP team has considered information in the psychological assessment that the student's scores may be a function of his behavior as opposed to cognitive ability. Therefore, this office finds that a violation occurred with respect to this allegation.

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 and the student's family have disagreed with the decisions about the data it has chosen to rely upon. However, where there is data to support the team's decisions, this office is unable to overturn those decisions. The complainant is reminded of the parent's right to request mediation or to file a due process complaint in order to resolve any continuing disagreement.

**ALLEGATION #7 PROVISION OF SPECIAL EDUCATION INSTRUCTION
CONSISTENT WITH THE IEP**

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #45, #57, and #59, the MSDE finds that the student is being provided with instruction using alternate academic achievement standards without written consent from the parent, in accordance with the Annotated Code of Maryland, Ed. Art., §8-405. Therefore, this office finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Based

The PGCPS is required to provide the MSDE with documentation by December 15, 2018 that it has either obtained written consent from the student's parent for the provision of special education services or has discontinued the provision of those services.

XXX

Ms. Trinell Bowman

November 21, 2018

Page 18

The PGCPS is required to provide the MSDE with documentation by January 15, 2019 that the IEP team has done the following:

- a. Determined the effectiveness of the sensory strategies that have been trialed and revised the IEP, if appropriate, to reflect specific strategies to be used;
- b. Developed a plan for the decreased use of noise reducing headphones during the school day and the use of calming strategies to address the student's sensitivity to noise;
- c. Determined whether the student is a student with a significant cognitive disability consistent with the data; and
- d. Determined the appropriate educational placement for the student if the team continues to recommend that instruction be provided based on alternate academic achievement standards and parental consent is not provided.

System/School-Based

The PGCPS is required to provide the MSDE with documentation by March 1, 2019 of the steps taken to ensure the following:

- a. That students with disabilities who are withdrawn from the school system are not dismissed from special education without convening a reevaluation;
- b. That special education instruction is not provided without parental consent following a student's dismissal from special education and subsequent initial evaluation;
- c. That decisions made about a student's need for instruction based on alternate academic achievement standards are based on the data;
- d. That students are not provided with instruction based on alternate academic achievement standards without parental consent; and
- e. That proper prior written notice of IEP team decisions is provided to parents.

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

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties from Dr. Nancy Birenbaum, Compliance Specialist, MSDE at (410) 767-7770.

XXX

Ms. Trinell Bowman

November 21, 2018

Page 19

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 parent 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 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,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Early Intervention/
Special Education Services

MEF/am

c: Kevin W. Maxwell
Gwendolyn Mason
Barbara Vandyke
Monica Wheeler
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXX
Dori Wilson
Anita Mandis
Janet Zimmerman
Nancy Birenbaum