




Mohammed Choudhury
State Superintendent of Schools

November 9, 2021



Ms. Bobbi Pedrick
Co-Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401


Ms. Diane McGowan
Co-Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: 
Reference: #22-035

Dear Parties:

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

ALLEGATIONS:

On September 29, 2021, the MSDE received a State complaint from Ms. , 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 student.

The MSDE investigated the following allegations:

1. The AACPS did not follow proper procedures when identifying and evaluating the student to determine if she is a student with a disability requiring special education and related services, since January 2021, in accordance with 34 CFR §§300.301-.311 and

COMAR 13A.05.01.06. The allegation specifies that the student was not assessed in all areas of need, and that the Individualized Educational Program (IEP) team did not appropriately apply eligibility criteria in a timely manner.

2. The AACPS did not ensure that the student's IEP addressed her identified needs in the areas of reading and communication, since June 2021, in accordance with 34 CFR §§300.101 and .324.
3. The AACPS did not ensure that the student was provided with the supports and services required by the IEP and Behavioral Intervention Plan (BIP), since May 2021, in accordance with 34 CFR §§ 300.101 and .323.
4. The AACPS did not provide the complainant with a written invitation to the September 14, 2021 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.
5. The AACPS did not ensure that the complainant was provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the September 14, 2021 IEP team meeting at least five (5) business days before the scheduled meeting, in accordance with Md. Code Ann., Educ., § 8-405 (2010).
6. The AACPS did not follow proper procedures when using physical restraint since September 2021, in accordance with COMAR 13A.08.04.05.

BACKGROUND:

The student is seven (7) years old and is identified as a student with Autism under the IDEA. She has an IEP that requires the provision of special education and related services and attends

ALLEGATION #1:

IDEA IDENTIFICATION/EVALUATION

FINDINGS OF FACTS:

1. On January 20, 2021, the complainant forwarded correspondence to school staff from the student's private psychologist requesting that the student be evaluated for Autism Spectrum Disorder and/or developmental disabilities, however, the complainant also indicated via email on the same day that she needed time to think about proceeding with the evaluation.
2. On February 9, 2021, a written referral was made for the student to be evaluated for special education services under the IDEA. The referral reflected concerns in the following areas: fine motor skills, behavior, cognition, attention, adaptive skills, social emotional skills, academic performance and learning behaviors.

3. The complainant completed a parent questionnaire on February 23, 2021, which reflected her concerns regarding cognitive difficulties and learning behaviors, anxiety, handwriting, math calculation and gross motor skills. The questionnaire indicates “no problem suspected” in the area of Speech Language.
4. On March 2, 2021 the IEP team convened for an evaluation of the student. The written summary of the IEP team meeting reflects that the team determined that assessments would be conducted in the areas of:
 - cognitive ability
 - psychological processing
 - academic achievement
 - fine motor/visual motor
 - social emotional/behavioral skills
5. It was noted on the Student Evaluation Plan that a Functional Behavior Analysis (FBA) was in the process of being conducted and that an observation of the student had been completed.
6. There is documentation that consent for the assessments recommended at the March 2, 2021 IEP team meeting was provided by the complainant on March 8, 2021.
7. On April 16, 2021, the complainant requested, via email, an additional assessment in the area of Speech and Language articulation.
8. On April 27, 2021, the IEP team convened to determine whether additional assessments were needed in the area of speech articulation. The written summary of the IEP team meeting reflects that the IEP team reviewed findings presented by the complainant, which consisted of screening results performed by a private speech language pathologist. The IEP team determined that assessments were warranted in the area of speech articulation and consent was obtained.
9. On May 4, 2021, the IEP team convened to determine the student’s eligibility as a student with a disability requiring specialized education. The written summary of the IEP team meeting reflects that the team reviewed the results of the psychological, academic and occupational assessments. Based on this review, the IEP team determined that the student met the criteria for eligibility as a student with a Developmental Delay in the area of social emotional development and learning behavior.
10. The written summary of the IEP team meeting held on May 4, 2021 also reflects that the team further determined that additional assessments were needed in the areas of receptive/expressive language and pragmatics, and the complainant requested that a comprehensive speech evaluation be conducted through an Independent Education Evaluation (IEE).

11. On May 5, 2021, the AACPS contacted the complainant by email and agreed to the complainant's request to conduct a comprehensive Speech Language evaluation funded by the AACPS.
12. On June 1, 2021, the IEP team convened to develop the student's IEP based on the May 4, 2021 eligibility determination.
13. The email dated August 3, 2021, from school staff to the complainant reflects that the school received the student's IEE report of the comprehensive speech evaluation.
14. On August 19, 2021, the IEP team convened and reviewed the student's IEE. The IEP team determined that, based on the assessment results provided through the IEE, the student was eligible for special education services as a student with Autism.
15. On September 14, 2021, the IEP team convened to revise the student's IEP to reflect the results of the IEE and amend the IEP to reflect eligibility for special education services as a student with Autism.

DISCUSSION/CONCLUSION:

Based on Findings of Facts #1-#15, the MSDE finds that the IDEA evaluation that was initiated on February 9, 2021 was completed in a timely manner and that the student was assessed in all areas of the suspected disability, based on the information available at that time, in accordance with 34 CFR §§300.301-.311 and COMAR 13A.05.01.06. When additional information became available, the IEP team reviewed and revised the IEP accordingly. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #2:

READING AND COMMUNICATION NEEDS NOT ADDRESSED BY IEP SINCE JUNE 2021

FINDINGS OF FACTS:

16. The IEP developed on June 1, 2021 contains present levels of performance in the area of reading which are based on formal assessments and state that the student is on grade level in this area. Additionally, the present levels of performance reflect that the student is performing between average and above-average in basic reading and reading comprehension.
17. The IEP dated June 1, 2021 reflects that the areas of need affected by the student's Developmental Delay were social/emotional, learning behaviors, and fine/visual motor. The IEP does not reflect that the student had communication needs at that time.
18. On September 14, 2021 the IEP team convened and revised the IEP to reflect new information provided through the comprehensive speech IEE. Present levels of performance were added in the areas of articulation, receptive language, expressive language and pragmatic language. Annual speech goals were added to assist the student

in progressing through the general education curriculum, and supports and related speech services were also added to the IEP.

19. The written summary of the IEP team meeting dated September 14, 2021 reflects that the team considered new data regarding the student's reading skills presented by the complainant through a private assessment. The team determined that the student's present levels of performance in the area of reading would be updated and a reading goal would be added to the student's IEP.
20. On October 25, 2021, the IEP team convened and the IEP was revised to include goals, special education instruction and supports in the area of reading.

DISCUSSION/CONCLUSION:

Communication

Based on Findings of Facts #17 and #18, the MSDE finds that prior to the September 14, 2021 IEP team meeting, communication needs were not identified for the student and that subsequent to the review of the IEE, the IEP was revised to reflect those needs in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Reading

Based on Findings of Facts #16, #19 and #20, the MSDE finds that the IEP has been revised to reflect the student's needs in the area of reading, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #3:

IEP/BIP IMPLEMENTATION

FINDINGS OF FACTS:

21. The reports written in response to disciplinary events that occurred on September 29, 2021 and September 30, 2021 reflect that some of the student's IEP and BIP supports were provided to the student, however there is no documentation that all of the supports required by the IEP and BIP were consistently provided to the student.
22. The AACPS acknowledges that lapses in the implementation of the BIP, initiated on May 25, 2021, and IEP, developed on June 1, 2021, occurred due to the unexpected departure of staff members.

DISCUSSION/CONCLUSION:

Based on Findings of Facts #21 and #22, the MSDE appreciates the AACPS' acknowledgment and concurs that the AACPS did not ensure that the student's IEP and BIP were consistently

implemented, since May 2021, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #4

IEP TEAM MEETING INVITATION

FINDINGS OF FACTS:

23. The AACPS acknowledges that timely notice was not provided prior to the September 14, 2021 IEP team meeting.

DISCUSSION/CONCLUSION:

Based on Finding of Fact #23, the MSDE appreciates the AACPS' acknowledgment and concurs that the AACPS did not ensure that the complainant was provided with a timely written invitation to the September 14, 2021 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on Findings of Facts #18 and #19, the MSDE finds that, while the complainant was not provided with a timely written invitation to the September 14, 2021 IEP team meeting; the complainant attended and participated in the IEP team meeting on that date. Therefore, no student specific corrective action is necessary.

ALLEGATION #5

PROVISION OF DOCUMENTS PRIOR TO IEP TEAM MEETING

FINDING OF FACT:

24. While there is documentation that the AACPS generated a Notice of Documents Provided for Parent Review Prior to IEP Meeting, the description of documents that are "unavailable prior to the meeting date" is unclear and there is no documentation that all of the documents to be discussed at the September 14, 2021 were actually provided to the complainant.

DISCUSSION/CONCLUSION:

Based on the Finding of Fact #24, the MSDE finds that the AACPS did not ensure that the complainant was provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the September 14, 2021 IEP team meeting at least five (5) business days before the scheduled meeting, in accordance with Md. Code Ann., Educ., § 8-405 (2010). Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on Findings of Facts #18 and #19, the MSDE finds that, while there is no documentation that the complainant was provided with all of the documents the IEP team planned to discuss at the September 14, 2021 IEP team meeting; the complainant

attended and participated in the IEP team meeting on that date. Therefore, no student specific corrective action is necessary.

ALLEGATION #6

USE OF PHYSICAL RESTRAINT

FINDINGS OF FACTS:

25. The AACPS acknowledges that four (4) incidents of physical restraint occurred in a two day period on September 29, 2021 and September 30, 2021.
26. The Document of Student Restraint Forms for the incidents reflect the following:
 - a. a description of other less intrusive interventions that were attempted;
 - b. a description of the precipitating event(s) that prompted the restraint;
 - c. the names of the school personnel who observed the behavior which prompted the restraint;
 - d. the names of the staff members who implemented and monitored the use of restraint;
 - e. a description of the type of restraint;
 - f. notification of the length of time in the restraint;
 - g. a description of the student's behavior and reaction during the restraint;
 - h. the name of the administrator informed of the restraint; and
 - i. provision of oral or written notification to the parent within twenty-four (24) hours of the restraint.
27. There is documentation that the school staff members who implemented the restraint were trained in the appropriate use of physical restraint.
28. While there is documentation for one incident on September 29, 2021 that includes the signatures of the staff implementing and monitoring the restraint and the signature of the administrator informed of the restraint, there are no similar signatures provided for the other three incidents.
29. While there is documentation that the IEP team met on October 25, 2021 and reviewed and revised the student's IEP and BIP to address interfering behaviors, there is no documentation that this occurred within ten (10) days of the incidents involving physical restraint.
30. There is no documentation that the description of the events leading up to the use of physical restraint constituted imminent, serious physical harm to the student or another person.

DISCUSSION/CONCLUSION:

Based on Findings of Facts #25 - #30, the MSDE finds that the AACPS did not follow proper procedures when using physical restraint on September 29, 2021 and September 30, 2021, in

accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on Finding of Fact #29, the MSDE finds that the IEP team has convened and revised the student's IEP and BIP, which includes goals, supports and services to assist the student in addressing interfering behaviors, therefore, no student specific corrective action is required.

CORRECTIVE ACTION/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152).

Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.¹ This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770 or by email at nancy.birenbaum@maryland.gov.

Student-Based

The MSDE requires the AACPS to provide documentation of the following:

1. The student's IEP and BIP are being implemented.
2. The IEP team has determined the amount and nature of compensatory services or other remedy to address the violation identified in this Letter of Findings.

School-Based

The MSDE requires the AACPS to provide documentation of the steps taken at [REDACTED] to ensure the following:

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

1. The IEPs of all students affected by staff changes in September and October of 2021 are reviewed to determine if there was an educational impact caused by lack of IEP implementation due to staff changes and departures. If such an impact occurred for any student, the IEP team must determine the amount and nature of compensatory services or other remedy to address the violation for that student.
2. The IEP team ensures that all students at the school receive timely IEP team meeting invitations and that all documents to be reviewed at IEP team meetings are provided to parents in a timely manner.
3. Proper procedures are followed when using physical restraint.

The documentation must include a description of the action that will be taken to monitor the effectiveness of the steps taken.

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 school system and the complainant 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/Special Education Services

MEF:dee

c: George Arlotto
Brian Morrison

Alison Barmat
Diane Eisenstadt


Nancy Birenbaum