



OFFICE OF SPECIAL EDUCATION

FINAL DECISION for State Complaint 13-00320
against the Education Achievement Authority of Michigan
December 6, 2013

BACKGROUND INFORMATION

Date Filed:	August 5, 2013
MDE Case Manager:	Robert Hove
Complainant:	Marcie Lipsitt
Address:	27260 Willowgreen Court Franklin, Michigan 48025
Telephone:	248-514-2101
Student:	[REDACTED]
Date of Birth:	[REDACTED]
Grade:	[REDACTED]
Eligibility:	Physical impairment
Program/Service:	Elementary resource program, physical therapy, occupational therapy
District:	Education Achievement Authority of Michigan (District)

INDIVIDUALS CONTACTED

1. Complainant
2. Joseph Kulkulski, Special Education Director, District
3. Kevin Magin, Executive Special Education Director, District
4. Frances Lowe, Special Education Supervisor, District
5. Marquis Stewart, Principal, Brenda Scott Academy, District
6. Aimee Babbitt, Special Education Teacher, District
7. Deborah Ake, Compliance Supervisor, Detroit City School District (District 2)
8. Rose Mendola, Special Education Consultant, Wayne Regional Education Service Agency (RESA)

DOCUMENTS REVIEWED

1. Individualized Education Program (IEP) dated April 27, 2012
2. IEP at a Glance form for the student, updated periodically
3. IEP dated November 11, 2012 (Version 1)
4. IEP dated November 11, 2012 (Version 2)
5. IEP goals and objectives dated November 11, 2012
6. Notice dated November 11, 2012
7. IEP Amendment dated March 5, 2013

8. Transportation directive for student signed by Special Education Supervisor and Team Leader dated March 5, 2013
9. Progress reports dated May 17, 2013
10. IEP dated May 17, 2013
11. IEP goals and objectives dated May 17, 2013
12. Email communications among district personnel regarding transportation for the student dated from March 13, 2013 through April 22, 2013.
13. Summary of transportation issues for the student from the district general manager for transportation, undated
14. Review of existing evaluation data dated May 20, 2013
15. Occupational therapy goals dated May 31, 2013
16. Occupational therapy log for 2012-2013 school year
17. Student Profile dated August 14, 2013
18. School psychologist report dated July 31, 2013
19. Multidisciplinary evaluation team (MET) report dated July 31, 2013
20. Meeting notice dated July 24, 2013
21. IEP dated July 31, 2013
22. Educational Entity Master Report for the Education Achievement Authority, undated
23. EAASpecialEducationDataPortraits_EducationalSettingandDemographicsSnapshot [1].pdf
24. IEP dated September 28, 2012 for student A (including review of existing evaluation data parent consent and prior written notice)
25. IEP dated November 14, 2012 for student B (including review of existing evaluation data parent consent and prior written notice)
26. IEP dated November 26, 2012 for student C (including review of existing evaluation data parent consent and prior written notice)
27. IEP dated March 13, 2013 for student D (including review of existing evaluation data parent consent and prior written notice)
28. IEP dated March 15, 2013 for student E (including review of existing evaluation data parent consent and prior written notice)
29. IEP dated April 17, 2013 for student F (including review of existing evaluation data parent consent and prior written notice)
30. IEP dated March 27, 2013 for student G (including review of existing evaluation data parent consent and prior written notice)
31. IEP dated June 21, 2013 for student H (including review of existing evaluation data parent consent and prior written notice)
32. IEP dated December 3, 2012 for student I (including review of existing evaluation data parent consent and prior written notice)
33. IEP dated February 12, 2013 for student J (including review of existing evaluation data parent consent and prior written notice)
34. IEP dated March 27, 2013 for student K (including review of existing evaluation data parent consent and prior written notice)
35. IEP dated November 9, 2012 for student L (including review of existing evaluation data parent consent and prior written notice)

ALLEGATION AND CONCLUSION

Conclusion	Allegation	
Noncompliant	Allegation 1	Whether the district completed the student's reevaluation within three years
Dismissed	Allegation 2	Whether the district invited the parent to the May 17, 2013 IEP
Noncompliant	Allegation 3	Whether the district offered an alternate means of participation to the parent in the November 2012 or July 2013 IEPs
Compliant	Allegation 4	Whether the student's teachers had access to the student's IEP
Noncompliant	Allegation 5	Whether the district included current baseline data in the student's November, May and July IEPs
Noncompliant	Allegation 6	Whether the district implemented the November IEP regarding physical therapy services
Compliant	Allegation 7	Whether the district had a physical therapist present at the November IEP to interpret evaluation data
Noncompliant	Allegation 8	Whether the district implemented the November IEP regarding occupational therapy services
Compliant	Allegation 9	Whether the district considered positive behavior interventions and supports for the student after identifying the negative impact of behavior with peers in the November, May and July IEPs
Dismissed	Allegation 10	Whether the district provided transportation in accordance with the student's IEP
Noncompliant	Allegation 11	Whether the district provided annual goals and short-term objectives and teacher input in the IEP and notice for November 12, 2012
Dismissed	Allegation 12	Whether the district provided progress reports to the parent according to the schedule in the IEP
Compliant	Allegation 13	Whether the district identified an educational need for the student in the PLAAFP regarding access to instructional materials without providing assistive technology or research-based methodology in the supplementary aids and services
Compliant	Allegation 14	Whether the district considered adaptive physical education due to the student's difficulty with hopping, skipping, climbing, jumping and walking
Noncompliant	Allegation 15	Whether the district provided a Physical or other health impairment (POHI) teacher consultant in accordance with the November 11, 2012 IEP
Compliant	Allegation 16	Whether the district considered extended school year services at the November 2012, May 2013 and July 2013 IEPs
Dismissed	Allegation 17	Whether the district accommodated the parent's

		disability by ensuring that the parent understood that the district school year extended to August and that the student would be retained if the student failed to attend school in June, July and August.
Noncompliant	Allegation 18	Whether the district included a medical service in the student's IEP dated November 11, 2012 without identifying an educational need for the service
Noncompliant	Allegation 19	Whether the district provided a medical service in accordance with the student's November 11, 2012 IEP
Dismissed	Allegation 20	Whether the district provided the parent with prior written notice regarding the student's retention
Compliant	Allegation 21	Whether the district provided the parent with prior written notice that transportation was not available for the 2013-2014 school year
Dismissed	Allegation 22	Whether the district told the parent that the student should return to district 2 because the district cannot meet the student's educational needs

Corrective action and proof of compliance for the district's noncompliance is directed under separate cover.

INVESTIGATION

Allegation 1 Whether the district completed the student's reevaluation within three years

Legal Requirement for Allegation 1:

34 CFR § 300.303(a) of the implementing regulations of the Individuals with Disabilities Education Act (IDEA) indicates in part that the district must ensure that a reevaluation of each student with a disability must be conducted at least every three years unless the parent and the district agree it is unnecessary.

Findings of Fact for Allegation 1:

The student's records indicated that the previous reevaluation was completed with an IEP dated March 15, 2010. The district completed a reevaluation on July 31, 2013. The special education director indicated that there was no agreement with the parent that a reevaluation was not necessary and acknowledged that the district was noncompliant with the timelines for reevaluations.

Conclusion for Allegation 1:

The district did not meet the timeline for completing a reevaluation at least once every three years. There was no agreement with the parent that a reevaluation was not necessary. Therefore the district is noncompliant with 34 CFR § 300.303(a).

Allegation 2 Whether the district invited the parent to the May 17, 2013 IEP

Legal Requirement for Allegation 2:

There is no rule or regulation in the IDEA or the MARSE that requires the SEA to repeatedly resolve the same allegation.

Findings of Fact for Allegation 2:

This allegation was addressed in Allegation 4 of the Final Decision for state complaint 13-00383. The district was compliant.

Conclusion for Allegation 2:

This allegation has already been addressed. The allegation is dismissed.

Allegation 3 Whether the district offered an alternate means of participation to the parent in the November 2012 or July 2013 IEPs

Legal Requirement for Allegation 3:

34 CFR § 300.322(c) indicates that if neither parent can attend the IEP team meeting the district must use other methods to ensure parent participation including individual or conference telephone or video calls.

Findings of Fact for Allegation 3:

The special education teacher's phone log indicates that the special education teacher spoke to the parent by phone on November 7, 2012 to schedule the IEP. The special education teacher's log did not indicate that parent participation via phone or other video call was discussed. An invitation to the IEP team meeting was mailed on November 7, 2012. This invitation did not include information regarding participation via phone or other video call.

The special education teacher's phone log indicates that the special education teacher spoke to the parent on July 23, 2013 to schedule the IEP team meeting. The special education teacher's log did not indicate that parent participation via phone or other video call was discussed. An invitation to the IEP team meeting was mailed on July 24, 2012. This invitation did not include information regarding participation via phone or other video call. The special education teacher called the parent at the scheduled time for the IEP team meeting on July 31, 2013 but the parent did not answer according to the phone log.

Conclusion for Allegation 3:

The district did not offer an alternate means of participation to the parent in the November 2012 or July 2013 IEPs and therefore is noncompliant with 34 CFR § 300.322(c).

Allegation 4 Whether the student's teachers had access to the student's IEP

Legal Requirement for Allegation 4:

Consistent with 34 CFR § 300.323(d) the district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related services provider and any other service provider who is responsible for its implementation and that each teacher and service provider is informed of his or her responsibilities related to implementing the IEP including the specific accommodations, modifications and supports that must be provided in accordance with the student's IEP.

Findings of Fact for Allegation 4:

The special education teacher indicated that all professional staff had access to the student's IEP during the 2012-2013 school year. The IEPs were stored in a file room and the general education staff were informed how to access the IEPs. Special education staff had electronic access to the IEP. If a general education teacher requested it, the special education teacher would also assist with access.

In addition, the special education teacher provided each general education teacher and other professional staff with a copy of the student's IEP-at-a-Glance, a form that included the specific accommodations, modifications and supports that must be provided in accordance with the student's IEP.

A review of the student's IEP-at-a-Glance included all of the specific accommodations, modifications and supports that were required to be provided in accordance with the student's IEP.

Conclusion for Allegation 4:

The district provided access to the student's IEP for each general education teacher, special education teacher, related services provider and any other service provider who was responsible for its implementation, including the specific accommodations, modifications and supports that must be provided in accordance with the student's IEP. The district is compliant with 34 CFR § 300.323(d).

Allegation 5 Whether the district included current baseline data in the student's November, May and July IEPs

Legal Requirement for Allegation 5:

34 CFR § 300.320(a)(1) indicates that an IEP is a written statement that includes a statement of the student's present levels of academic achievement and functional performance.

Findings of Fact for Allegation 5:

A review of the November 11, 2013 IEP indicates that there are two versions – one supplied by the parent and one supplied by the district. The parent's version included a written description of the student's present level of academic achievement and functional performance in the areas of reading and math skills but not fine motor skills or gross motor skills and no annual goals or short term objectives. The version provided by the district included a written description of the student's present level of academic achievement and functional performance in the areas of reading, math skills and fine motor skills but the information provided on gross motor skills was not current. In addition, the district version contains the statement: "As of school year 2012/2013 no Physical therapists available to provide service."

The May 17, 2013 and July 31, 2013 IEPs each contain current data.

Conclusion for Allegation 5:

Because the district did not include current baseline data in the November 11, 2012 IEP, the district is noncompliant with 34 CFR § 300.320(a)(1).

Allegation 6 Whether the district implemented the November 11, 2012 IEP regarding physical therapy services

Legal Requirement for Allegation 6:

Rule 340.1722(2) of the Michigan Administrative Rules for Special Education (MARSE) requires the district to provide programs and services in accordance with each student's IEP.

Findings of Fact for Allegation 6:

The April 27, 2012 IEP, the November 11, 2012 IEP and the May 17, 2013 IEP all include direct physical therapy services. The district did not submit physical therapy logs or other documentation to demonstrate that it provided physical therapy services in accordance with the student's IEP.

Conclusion for Allegation 6:

The district did not provide physical therapy services in accordance with the student's IEP. The district is noncompliant with R 340.1722(2).

Allegation 7 Whether the district had a physical therapist present at the November IEP to interpret evaluation data

Legal Requirement for Allegation 7:

Consistent with 34 CFR § 300.321(a) the district must ensure that the IEP team for each student includes the parents of the student, not less than one general education teacher of the student, not less than one special education teacher, a representative of the district and an individual who can interpret the instructional implications of evaluation results.

Findings of Fact for Allegation 7:

The November 11, 2012 IEP team included the special education teacher as the individual who can interpret the instructional implications of evaluation results.

Conclusion for Allegation 7:

The requirement is for an individual who can interpret the instructional implications of evaluation results not an individual who is certified to conduct the evaluations. The district is compliant with 34 CFR § 300.321(a).

Allegation 8 Whether the district implemented the November IEP regarding occupational therapy services

Legal Requirement for Allegation 8:

R 340.1722(2) requires the district to provide programs and services in accordance with each student's IEP.

Findings of Fact for Allegation 8:

The November 11, 2012 IEP and the May 17, 2013 IEP each required the district to provide direct occupational therapy services for 30 minutes three times per month. The occupational therapy log indicated that this was provided except September 2012 (provided once), March 2013 (provided twice) and April 2013 (not provided).

Conclusion for Allegation 8:

The district did not provide occupational therapy services in accordance with the student's IEP. The district is noncompliant with R 340.1722(2).

Allegation 9 Whether the district considered positive behavior interventions and supports for the student after identifying the negative impact of behavior with peers in the November, May and July IEPs

Legal Requirement for Allegation 9:

Consistent with 34 CFR § 300.324(a)(2)(i) in the case of a student whose behavior impedes the student's learning or that of others the IEP team must consider the use of positive behavioral interventions and supports and other strategies to address that behavior.

Findings of Fact for Allegation 9:

A review of the IEPs dated November 11, 2012, May 17, 2013 and July 31, 2013 indicates that in each case the IEP team did not determine that the student's behavior was interfering with the student's learning or that of others.

Conclusion for Allegation 9:

The IEP team did not determine that the student's behavior was interfering with the student's learning or that of others. Because of this, the IEP team was not required to consider the use of positive behavioral interventions and supports and other strategies to address that behavior. The district is compliant with 34 CFR § 300.324(a)(2)(i).

Allegation 10 Whether the district provided transportation in accordance with the student's IEP

Legal Requirement for Allegation 10:

There is no rule or regulation in the IDEA or the MARSE that requires the SEA to repeatedly resolve the same allegation.

Findings of Fact for Allegation 10:

This allegation was addressed in Allegation 2 of the Final Decision for state complaint 13-00383. The district was noncompliant.

Conclusion for Allegation 10:

This allegation has already been addressed. The allegation is dismissed.

Allegation 11 Whether the district provided annual goals and short-term objectives and teacher input in the IEP and notice for November 12, 2012

Legal Requirement for Allegation 11:

Consistent with 34 CFR § 300.320(a)(2)(i) an IEP is a written document that includes a statement of measurable annual goals.

Consistent with 34 CFR § 300.503(a) the district must provide written notice a reasonable time before it proposes to initiate or change the educational placement of the provision of a FAPE for a student.

Findings of Fact for Allegation 11:

The special education director indicated that the software used to produce IEPs generated a separate document for goals and objectives so it was possible that the goals and objectives were not mailed to the parent at the same time as the IEP. The special education teacher indicated that she believed that the two documents were mailed at the same time but did not have any records to indicate that.

The parent and the district submitted two different versions of the November 11, 2012 IEP. The parent's version did not include goals and objectives and also did not include the portions of the Present Levels of Academic Achievement and Functional Performance relating to fine motor skills and gross motor skills. The district's version was submitted in two documents, a goals and objectives document and the rest of the IEP in another document.

The Notice for Provision of Programs and Services dated November 12, 2012 indicates in part that "this notice and the student's IEP constitute the district's offer of a FAPE."

Conclusion for Allegation 11:

The preponderance of evidence indicates that the district did not provide the parent with the goals and objectives when it provided the parent with its notice of an offer of a FAPE. The district is noncompliant with 34 CFR § 300.320(a)(2)(i) and 34 CFR § 300.503(a).

Allegation 12 Whether the district provided progress reports to the parent according to the schedule in the IEP

Legal Requirement for Allegation 12:

There is no rule or regulation in the IDEA or the MARSE that requires the SEA to repeatedly resolve the same allegation.

Findings of Fact for Allegation 12:

This allegation was addressed in Allegation 3 of the Final Decision for state complaint 13-00383. The district was noncompliant.

Conclusion for Allegation 12:

This allegation has already been addressed. The allegation is dismissed.

Allegation 13 Whether the district identified an educational need for the student in the PLAAFP regarding access to instructional materials without providing assistive technology or research-based methodology in the supplementary aids and services

Legal Requirement for Allegation 13:

Consistent with 34 CFR § 300.324(a)(v) in developing each student's IEP the IEP team must consider whether the student needs assistive technology devices and services.

Findings of Fact for Allegation 13:

A review of the IEPs dated November 11, 2012, May 17, 2013 and July 31, 2012 indicate that during each of the IEP team meetings, the IEP team considered assistive technology devices and services. None of the IEPs identified assistive technology devices and services as an educational need.

Conclusion for Allegation 13:

The district considered but did not identify assistive technology devices and services as an educational need. The district is compliant with 34 CFR § 300.324(a)(v).

Allegation 14 Whether the district considered adaptive physical education due to the student's difficulty with hopping, skipping, climbing, jumping and walking

Legal Requirement for Allegation 14:

Consistent with 34 CFR § 300.108(c) if specially designed physical education is prescribed in a student's IEP the district must provide the services directly or make arrangements for these services to be provided.

Findings of Fact for Allegation 14:

The IEP team in developing the IEP on November 11, 2012, May 17, 2013 and July 31, 2013 decided to address the student's difficulties with hopping, skipping,

climbing, jumping and walking through the provision of physical therapy services. Specially designed physical education was not prescribed in the student's IEP.

Conclusion for Allegation 14:

Specially designed physical education was not prescribed in the student's IEP. The IEP team can consider specially designed physical education for a student but is not required to do so. The district is complaint with 34 CFR § 300.108(c).

Allegation 15 Whether the district provided a POHI teacher consultant in accordance with the November 11, 2012 IEP

Legal Requirement for Allegation 15:

R 340.1722(2) requires the district to provide programs and services in accordance with each student's IEP.

Findings of Fact for Allegation 15:

The special education director indicated that he thought the district contracted with Wayne RESA for POHI consultants. The Wayne RESA special education consultant indicated that Wayne RESA did not provide POHI teacher consultants to any district. The district 2 compliance supervisor indicated that district 2 did not provide POHI teacher consultants to the district. The district did not provide a service log for a POHI teacher consultant.

Conclusion for Allegation 15:

The district did not provide POHI teacher consultant services in accordance with the November 11, 2012 IEP. The district is noncompliant with R 340.1722(2).

Allegation 16 Whether the district considered extended school year services at the November 2012, May 2013 and July 2013 IEPs

Legal Requirement for Allegation 16:

Consistent with 34 CFR § 300.106(a) the district must ensure that extended school year services are available as necessary to provide a FAPE. Extended school year services must be provided only if a student's IEP team determines on an individual basis that the services are necessary for the provision of a FAPE for the student.

Consistent with R 340.1721e(2) when considering extended school year services the IEP team must determine if the student's current annual goals address one or more skills that require extended school year services.

Findings of Fact for Allegation 16:

The special education teacher participated in the IEP dated November 11, 2012. She indicated that the student's annual goals were reviewed and extended school year services discussed with the entire IEP team. The IEP team determined that extended school year services were not needed for any of the student's annual goals. A review of the IEP dated November 11, 2012 indicates that a check mark was placed next to the statement "No goal areas of concern – ESY not needed."

The special education supervisor and the special education teacher participated in the IEP dated July 31, 2013. They indicated that the student's annual goals were reviewed and extended school year services discussed with the entire IEP team. The IEP team determined that extended school year services were not needed for any of the student's annual goals. A review of the IEP dated July 31, 2013 indicates that a check mark was placed next to the statement "No goal areas of concern – ESY not needed."

The issue of consideration of extended school year services during the May 17, 2013 IEP team meeting was addressed in Allegation 10 in the Final Decision for state complaint 13-00383. The district was found compliant.

Conclusion for Allegation 16:

The IEP team reviewed the student's annual goals and determined that extended school year services were not necessary for the provision of a FAPE in each of the three IEP team meetings. The district is compliant with 34 CFR § 300.106(a) and R 340.1721e(2).

Allegation 17 Whether the district accommodated the parent's disability by ensuring that the parent understood that the district school year extended to August and that the student would be retained if the student failed to attend school in June, July and August

Legal Requirement for Allegation 17:

There is no special education rule, regulation or law that governs the alleged violation as defined in R 340.1701a(c).

Findings of Fact for Allegation 17:

Accommodation of a parent's disability is covered by the Americans with Disabilities Act. Retention is a general education procedure.

Conclusion for Allegation 17:

The allegation is not governed by the IDEA or the MARSE. The allegation is dismissed.

Allegation 18 Whether the district included a medical service in the student's IEP without identifying an educational need for the service

Legal Requirement for Allegation 18:

Consistent with 34 CFR § 300.320(a)(4) indicates that an IEP is a written document that includes a statement of special education and related services that enable the student to advance towards attaining the annual goals.

Findings of Fact for Allegation 18:

The special education director acknowledged noncompliance. A review of the November 11, 2012 IEP confirmed the noncompliance.

Conclusion for Allegation 18:

The district included a medical service in the student's IEP without identifying an educational need for the service. The district is noncompliant with 34 CFR § 300.320(a)(4).

Allegation 19 Whether the district provided a medical service in accordance with the student's IEP

Legal Requirement for Allegation 19:

R 340.1722(2) requires the district to provide programs and services in accordance with each student's IEP.

Findings of Fact for Allegation 19:

The special education director acknowledged noncompliance. The special education teacher confirmed that no medical service was provided.

Conclusion for Allegation 19:

The district did not provide medical service in accordance with the student's IEP. The district is noncompliant with R 340.1722(2).

Allegation 20 Whether the district provided the parent with prior written notice regarding the student's retention

Legal Requirement for Allegation 20:

There is no special education rule, regulation or law that governs the alleged violation as defined in R 340.1701a(c).

Findings of Fact for Allegation 20:

Retention is a general education procedure.

Conclusion for Allegation 20:

The allegation is not governed by the IDEA or the MARSE. The allegation is dismissed.

Allegation 21 Whether the district provided the parent with prior written notice that transportation was not available for the 2013-2014 school year

Legal Requirement for Allegation 21:

R 340.1722(2) requires the district to provide programs and services in accordance with each student's IEP.

Findings of Fact for Allegation 21:

The July 31, 2013 IEP indicates that special transportation for the student is required. The student transferred to district 2 before the IEP was implemented.

Conclusion for Allegation 21:

The district included special transportation in the student's IEP and was prepared to provide transportation for the 2013-2014 school year. The district is compliant with R 340.1722(2).

Allegation 22 Whether the district told the parent that the student should return to district 2 because the district cannot meet the student's educational needs

Legal Requirement for Allegation 22:

There is no special education rule, regulation or law that governs the alleged violation as defined in R 340.1701a(c).

Findings of Fact for Allegation 22:

Allegations of employee misconduct are not governed by the IDEA or the MARSE.

Conclusion for Allegation 22:

The allegation is not governed by the IDEA or the MARSE. The allegation is dismissed.