



**Arizona Department of Education  
Exceptional Student Services**

January 13, 2025

Annette Reichman, Superintendent  
AZ State School for the Deaf and Blind  
P. O. Box 88510  
Tucson, AZ 85754

**RE: AZ State School for the Deaf and Blind: Reference Number: 3546**

Dear Superintendent Reichman:

On November 14, 2024, our office received a formal state administrative complaint from [REDACTED] (Complainant), alleging that the AZ State School for the Deaf and Blind – Public Education Agency (PEA) is in noncompliance in special education matters relating to [REDACTED] (Student). As required by 34 C.F.R. §§ 300.151-300.153 and the Arizona Administrative Code R7-2-405.01, the Arizona Department of Education/Exceptional Student Services/Dispute Resolution Unit (ADE/ESS/DR) conducted an investigation into this matter. This investigation included contact with the following: the Complainant; Annette Reichman, Superintendent; Debra Sterling, Attorney General for the PEA; Oran Tkatchov, Assistant Superintendent; Rebecca Jasinski, Complaints Administrator; and Sarah Sottile, Director of Special Education. In addition, the Student's records maintained by your PEA were reviewed, as were documents provided by the Complainant.

Enclosed please find our Investigative Report on this matter, which is ADE/ESS's independent determination as to whether the PEA has violated a requirement of Part B of the Individuals with Disabilities Education Act (IDEA). In accordance with 34 C.F.R. § 300.152(a), this written decision addresses each allegation in the complaint, as clarified by the Complainant during an initial interview with the investigator on November 21, 2024, and includes our findings of fact, conclusions of law, and the reasons for ADE/ESS's final decision. A copy of the Investigative Report has also been sent to the Complainant.

Investigative Reports are confidential Student records, and Complainants who are not the parents of a student referenced in the report are only entitled to receive a copy of the Investigative Report if the parents provide this office with written consent. Written permission to provide the Complainant with a copy of the investigation report was received from the IDEA parent via email on December 6, 2024.

As explained in further detail in the attached Investigative Report, noncompliance with one or more requirements of Part B of the IDEA was identified during this investigation. To ensure the timely correction of the identified noncompliance, corrective action has been ordered by ADE/ESS in a separate corrective action letter which is also enclosed. In order to verify understanding and confirm the timely completion of the assigned corrective action, please contact Ms. Christina Lane, Compliance Coordinator, with any questions.



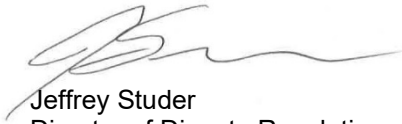
Dispute Resolution Unit

1535 W. Jefferson St. Bin #62 Phoenix, AZ 85007  
(602) 542-3084 [www.azed.gov/specialeducation](http://www.azed.gov/specialeducation)

Although not defined in IDEA and its implementing regulations, the Office of Special Education Program's (OSEP) longstanding practice of requiring States to address an "area of concern" means an IDEA policy, procedure, practice, or other requirement that raises one or more potential implementation or compliance issues, if confirmed true. When a State is made aware of an area(s) of concern regarding the implementation of IDEA, the State must conduct its due diligence in a timely manner to address the area of concern and reach a conclusion in a reasonable amount of time.<sup>1</sup> Information regarding identified areas of concern will be forthcoming.

Arizona Department of Education/Exceptional Student Services ADE/ESS appreciated the cooperation of your staff during this process. Please do not hesitate to contact the ADE/ESS Education Program Specialist assigned to your PEA, or me, if ADE/ESS can be of further assistance to you.

Sincerely,



Jeffrey Studer  
Director of Dispute Resolution  
Exceptional Student Services  
Arizona Department of Education  
[Jeffrey.Studer@azed.gov](mailto:Jeffrey.Studer@azed.gov)  
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ec: [REDACTED], Complainant  
Amanda Glass, Attorney for the Complainant  
Sarah Sottile, Director of Special Education, PEA  
Debra Sterling, Attorney for the PEA  
Scott Dobkovsky, Director of Program Implementation, Program Support and Monitoring, ESS, ADE  
ADE Fil

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<sup>1</sup> State General Supervision Responsibilities Under Parts B and C of the IDEA, Monitoring, Technical Assistance, and Enforcement, OSEP QA 23-01 [United States Department of Education/Office of Special Education Programs (OSEP)] July 24, 2023.

## CONFIDENTIAL STUDENT RECORD

Complainant: [REDACTED]

Public Education Agency: Arizona State School for the Deaf and Blind

Reference Number: 3546

Investigator: Nicole Barnette

Date Issued: January 13, 2025

## INVESTIGATIVE REPORT

### INTRODUCTION

The Student is 15 years old and eligible to receive special education and related services under the disability category of multiple disabilities with severe sensory impairment (autism, hearing Impairment, and speech-language impairment). The Student currently resides with his grandmother, through a kinship placement, [REDACTED]. During the 2023-2024 school year, the Student was enrolled in the Arizona State School for the Deaf and Blind. The Student is currently receiving special education and related services at a different in-state public education agency (PEA) for the 2024-2025 school year.

The complaint process falls under the State's general supervisory authority and is a process through which members of the community can alert the state education agency (SEA) of potential noncompliance with the IDEA in public schools. Accordingly, although a written state administrative complaint was filed by an individual complainant, the investigation is the SEA's investigation, and the wording of issues falls to ADE/ESS's discretion to ensure clarity and an accurate understanding of the alleged noncompliance can be assured. Similarly, it falls to ADE/ESS to determine whether to combine similar issues. The allegations in this State Complaint, as amended orally through an interview and shared electronically with both Parties, raise the following issues for investigation.

### ISSUES INVESTIGATED

1. **Whether the Public Education Agency (PEA) provided the Student a Free Appropriate Public Education (FAPE) from November 14, 2023, through November 14, 2024, in accordance with the Arizona Administrative Code (AAC) and Individuals with Disabilities Education Act (IDEA) regarding:**
  - a. **The implementation of speech-language therapy and occupational therapy in conformity with the Student's May 8, 2023, and April 9, 2024, IEPs and**
  - b. **The provision of behavioral support and counseling services.**
2. **Whether the PEA reconvened the Student's IEP team from November 14, 2023, through November 14, 2024, to review and revise the Student's IEP as necessary to address the Student's behavioral needs?**
3. **Whether the PEA conducted a functional behavioral analysis (FBA) and developed a behavioral intervention plan (BIP) as part of the Student's February 6, 2024, manifestation determination review (MDR) meeting in accordance with the Individuals with Disabilities Education Act (IDEA) procedural requirements?**

4. Whether the PEA provided the December 20, 2023, prior written notice (PWN) to the Complainant in accordance with the Arizona Administrative Code (AAC) and Individuals with Disabilities Education Act (IDEA) procedural requirements when the PEA decided to remove counseling as a related service from the Student's IEP?
5. Whether the PEA included a representative from the Student's home school district and located or established a program to meet the Student's needs when determining the Student's educational placement in accordance with the Arizona Revised Statutes (A.R.S) procedural requirements?
6. Whether the PEA provided the Student's special education records to the Complainant within 45 days of the Complainant's May 22, 2024, request in accordance with the Arizona Administrative Code (AAC)?

## FINDINGS OF FACT

As part of the investigation into the allegations, the investigator interviewed or made contact with the following individuals:

1. The Complainant
2. The Director of Special Education for the PEA
3. The Attorney for the PEA
4. The Superintendent for the PEA
5. The Assistant Superintendent for the PEA
6. The ADA/Complaints Administrator for the PEA

The investigator reviewed the following documents:

1. State Complaint form
2. Emails provided by the Complainant
3. Student's special education records and emails provided by the PEA

The following findings of fact are based upon the interviews conducted and a complete review of the documents and emails provided, including conversations or documents not specifically noted in the findings of fact.

**Issue #1: Whether the Public Education Agency (PEA) provided the Student a Free Appropriate Public Education (FAPE) from November 14, 2023, through November 14, 2024, in accordance with the Arizona Administrative Code (AAC) and Individuals with Disabilities Education Act (IDEA) regarding:**

**a. The implementation of speech-language therapy and occupational therapy in conformity with the Student's May 8, 2023, and April 9, 2024, and**

**b. The provision of behavioral support and counseling services.**

### *Implementation of the Student's IEPs*

1. The Student began the 2023-2024 school year at the PEA with an IEP dated May 8, 2023.<sup>3</sup>
2. The Student's May 8, 2023, IEP incorrectly identifies [REDACTED] as the Student's home school district and the PEA as the district of attendance.<sup>4</sup>
3. The Student's May 8, 2023, IEP entitled the Student to the following services, among other things:

<sup>3</sup> Arizona Education Data Standards (AzEDS), the Arizona Department of Education's Data Reporting System.

<sup>4</sup> As documented in finding of fact #1, the ESS/Vouchers Unit verified the PEA's statement that Mesa Unified School District is the home school district.

Special Education Services	Instructional Setting/ Location	Start Date	Total Minutes	Provider	Duration/End Date
Reading Comprehension	General Ed. Classroom	4/18/2023	240 minutes per month	Teacher of the Deaf/ HH	4/10/2024
Written Expression	Special Ed. Classroom	4/18/2023	240 minutes per month	Teacher of the Deaf/ HH	4/10/2024
Math Calculation	Special Ed. Classroom	4/18/2023	600 minutes per month	Teacher of the Deaf/ HH	4/10/2024
<b>Related Services</b>					
Speech	Special Ed. Classroom	4/18/2023	150 minutes per month	SLP/SLT/SLP-A; Communication Teacher	4/10/2024
	<b>Frequency and Duration:</b> Six 25-minute sessions per month, based on a 3-week calendar month				
	[Student] will be provided with 1:1 or small group instruction to improve his use of expressive language using the communication application, TouchChat Lite. He will be provided with modeling, visual cueing, and ASL support to address his areas of need.				
Occupational Therapy	Special Ed. Classroom	4/18/2023	15 minutes per month	OT/OTA	4/10/2024
	No goals are identified.				
American Sign Language Services	Special Ed. Classroom	4/18/2023	150 minutes per month	ASL Teacher	4/10/2024
	<b>Frequency and Duration:</b> six 25-minute sessions per month, based on a 3-week calendar month				
	[Student] will be provided with 1:1 or small group instruction to improve his use of expressive language using ASL. He will be provided with modeling, visual cueing, and ASL support to address his areas of need.				

4. The following exit criteria for the Instructional Setting are documented within the Student’s May 8, 2023, IEP:

Because [Student] does not have one language that he is completely fluent in, the team determined that before he could return to his district [PEA], he needs to have age appropriate communication skills in ASL and English. He also needs to be able to tolerate larger class sizes, as previously, he couldn’t tolerate large classes and wouldn’t communicate or interact appropriately with others. The team agrees that these needs are still valid.

5. The May 8, 2023, IEP documents under *Functional Performance for Social Emotional and Behavior* that the Student’s behavior significantly and adversely impacts his progress in the general curriculum. As such, the Student’s teachers are to request assistance from the behavioral support team as soon as the Student presents with “aggressive behavior or hurts someone.”

6. A December 14, 2023, IEP Meeting Notice documents that the Student's IEP team will convene on December 20, 2023, to review reevaluation data and determine the Student's eligibility, consider change of placement, and review and revise the Student's IEP.
7. The Student's December 20, 2023, IEP team convened and amended the Student's May 8, 2023, IEP as follows: removal of ASL as a related service and updated the Student's present level of functioning performance information to align with the December 20, 2023, Multidisciplinary Evaluation Team (MET) report. <sup>5</sup>
8. A March 22, 2024, IEP Meeting Notice documents that the Student's IEP team will convene on April 9, 2024, to review and revise the Student's IEP, consider extended school year services and discuss current academic program and progress.
9. The Student's April 9, 2024, IEP entitles the Student to the following special education services, among other things:

Special Education Services	Instructional Setting/ Location	Start Date	Total Minutes	Provider	Duration/End Date
Reading Comprehension	General Ed. Classroom	4/11/2024	360 minutes per month	Teacher of the Deaf/ HH	4/08/2025
	<b>Frequency and Duration:</b> 4 sessions per week for 30 minutes per session based on three-week a month				
	Specially designed instruction to include materials at his reading level (first grade). [Student] greatly benefits from utilizing colors to break up the passages and identify key words in the WH- questions. He also needs breaks to allow him to manage strong emotions such as frustration, or anger. [Student's] specially designed instruction is to include a task card and a very strong daily routine. Acting out information is also beneficial for [Student's] instruction. Whenever possible, high interest topics should be used to ensure [Student] will engage in his learning.				
Written Expression	Special Ed. Classroom	4/11/2024	360 minutes per month	Teacher of the Deaf/ HH	4/08/2025
	<b>Frequency and Duration:</b> 4 sessions per week for 30 minutes per session based on three-week a month				
	In the area of Written Expression, SDI includes a small group and individualized instruction on the vocabulary picture cards. [Student] will receive specially designed instruction in the area of using two languages: American Sign Language (ASL) and English language to reinforce vocabulary words in writing. Reteaching necessary skills, analyzing errors, providing feedback, and a student handout will be utilized.				

<sup>5</sup> Multidisciplinary evaluation team means a team of persons including individuals described as the individualized education program team and other qualified professionals who shall determine whether a child is eligible for special education." [A.R.S. § 15-761(16)]

Math Calculation	Special Ed. Classroom	4/11/2024	840 minutes per month	Teacher of the Deaf/ HH	4/08/2025
	<b>Frequency and Duration:</b> 8 sessions per week for 35 minutes per session based on three-week a month				
	SDI will allow [Student] to check his understanding and redirect his work using the following questions. With SDI, he can count the number using colored cubes. Using SDI accommodations, he was able to break down the task into smaller pieces and complete them one at a time.				
<b>Related Services</b>					
Speech	Special Ed. Classroom	4/11/2024	150 minutes per month	SLP/SLT/SLP-A; Communication Teacher	4/08/2025
	<b>Frequency and Duration:</b> Six 25-minute sessions per month, based on a 3-week calendar month				
	[Student] will be seen in a small group and/or 1:1 by a school-based SLP/T/A to work on language skills to express his wants/needs. Services may be provided in the classroom and/or speech room. Direct instructions will be provided using modeling, cues, and scaffolding to develop independence in these skills. Hearing Assistive Technology and use of ASL may also be utilized to support [Student's] understanding of the tasks at hand. The [PEA] provides services in the area of Speech/Language Therapy. At this time, [PEA] is not able to provide these services due to vacancies. [PEA] is currently in the process of recruiting qualified providers to address the SLP needs for [PEA] students in 5th-12th grade. [PEA] is monitoring this situation and will provide compensatory services as needed.				
Occupational Therapy	Special Ed. Classroom	4/11/2024	15 minutes per month	OT/OTA	4/08/2025
	<b>Frequency and Duration:</b> sensory support				
	Sensory support				

10. The Student's Progress reported in the area of Communication in the Student's May 8, 2023, and April 9, 2024, IEPs from November 14, 2023, through November 14, 2024, are as follows:

Communication: December 21, 2023, and March 8, 2024: no progress reported. However, the PEA documented, "The [PEA] provides services in the area of Speech/Language Therapy. At this time, [PEA] is not able to provide these services due to vacancies. [PEA] is currently in the process of recruiting qualified providers to address the SLP needs for [PEA] students in 5-12th grade. [PEA] is monitoring this situation and will provide compensatory services as needed."

Communication: April 9, 2024: no progress reported. However, the PEA documented "Due to staffing vacancies, [Student] has not seen a school-based SLP since school began in August..."

11. The Student's May 8, 2023, and April 9, 2024, IEPs document that the PEA did not provide speech therapy services to the Student due to vacancies.

12. As of this writing, the PEA has not provided documentation of speech-language services offered to the Student in conformity with the Student's May 8, 2023, and April 9, 2024, IEPs when requested.
13. Though the Student's May 8, 2023, and April 9, 2024, IEPs entitled the Student to speech-language therapy and occupational therapy (OT) services, school staff reported during the November 25, 2024, interview that the School has experienced staff shortages and still is not fully staffed. Therefore, some students may have received either partial or no speech services.
14. Further, PEA staff reported during the November 25, 2024, interview that OT services were not provided to the Student in conformity with the Student's May 8, 2023, and April 9, 2024, IEPs as the PEA did not have an OT on staff for the 2023-2024 school year.
15. The Student's April 9, 2024, IEP entitles the Student to extended school year (ESY) services.<sup>6</sup>
16. In an April 5, 2024, letter from the PEA to families, the PEA shared that ESY would be held at the PEA on the following dates and times:
  - June 3 - June 28: Monday-Thursday from 8:30-11:30
  - July 8- July 19: Monday-Thursday from 8:30-11:30
17. The PEA would address the following IEP goals for the Student during ESY:
  - By April 2024, given 10 PowerPoint slides with pictures, [Student] will independently add a one word title with 8/10 or 80% accuracy as measured by a teacher made assessment to be assessed quarterly
  - Given passages at the first grade level and 20 multiple choice WH questions, [Student] will independently read and select the correct answer with 70% accuracy (14/20 questions) as measured by independently taken assessments to be assessed quarterly
  - Given 10 analog clock problems, [Student] will identify the time to match the analog clock with five minute, half hour, and hour increments with 80% accuracy as measured by teacher made assessment given at the end of each quarterly.
18. The PEA provided an ESY log which documents the Student's partial attendance in the extended school year at the PEA for a total of eight days from June 5, 2024, through June 19, 2024, even though the Student was not enrolled at the PEA or any other public education agency after April 11, 2024, until August 19, 2024, when the Student started attending another public education agency.

#### *Counseling Services*

19. The December 20, 2023, MET report documents the MET's "recommendation... [Student] still receive counseling services. It is anticipated that the counselor will provide services in 3 sessions per month one session per week) for approximately 30 minutes per session."
20. The December 20, 2023, MET documents the purpose of the counseling services to support the Student in the areas of coping skills, aggressive behavior, and cooperating with staff and students.
21. Although the Student's December 20, 2023, MET recommends continuing counseling services, the Student's May 8, 2023, April 9, 2024, or any amended IEPs from November 14, 2023, through November 14, 2024, does not entitle the Student to receive direct counseling or counseling as a related service.

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<sup>6</sup> Extended school year services are special education and related services that are provided to a child with a disability beyond the normal school year, are in accordance with a child's IEP, are provided at no cost to the parents, and are in alignment with the standards set by the state education agency (SEA). [34 C.F.R. § 300.106(b)]



22. Further, there is no documentation that the Student's IEP Team considered the provision of counseling support to the Student in the development or revision of the Student's IEPs from November 14, 2023, through November 14, 2024.

*Behavioral Support*

23. On December 15, 2023, the PEA emailed the Complainant stating that due to the Student's behavior and the short school week before Christmas break, "we are asking [Student] to stay home next week as part of his mental health. He is not suspended."
24. The December 21, 2023, PWN documents that the Student's behavior intervention plan (BIP) was "reinstated," and it was determined that behavior supports were required as the Student was not making progress in the educational environment and was refusing to participate in most academic tasks.
25. Although the December 21, 2023, PWN documents that the BIP was reinstated, the PEA did not present documentation of a previous BIP.
26. Further, the December 21, 2023, PWN documented that the PEA was "hoping to get help from [REDACTED] to get more support for the Student."
27. Beginning in January 2024, after returning from winter break, the PEA implemented the BIP discussed at the December 20, 2023, IEP team meeting.
28. In an email dated January 8, 2024, from the PEA to the Complainant, the PEA inquired if a behavioral coach would be available to "work with [Student] in the school system since the issues and the behaviors happen when he is in the school environment."
29. In an email dated January 12, 2024, to the Complainant, the PEA stated that they did not have additional staff or an aide to provide support for the Student at all times in the classroom, which is why a behavior coach would be good to work with the Student on social cues, coping skills and learning the school environment.
30. Further noted in the January 12, 2024, email, the PEA indicated that due to a previous behavior incident, the PEA "ask that [Student] does not attend big functions/events ...or House Day to prevent overwhelmed [sic] with a change in his routine or environment for safety purposes at this time." As such, the school asked the Complainant, in lieu of having the Student attend House Day on January 19, 2024, "the family may want to think about letting him stay home as part of mental health day (optional) so that he doesn't get confused why he is not with his other classmates if he comes to school that day." Additionally, staff noted that 1:1 extra support had previously benefited the Student.<sup>7</sup>
31. In an internal PEA email dated January 26, 2024, PEA staff noted that the Student's behavior chart was working. However, the Student required 1:1 instruction for support, which his teachers could not offer. Additionally, PEA staff noted that they felt the Student required "some kind of support" during transitions to prevent other students from instigating or provoking the Student.
32. In an internal PEA email dated February 16, 2024, in response to the Student's behavior, PEA staff reported that some of the Student's teachers were not following the Student's BIP.
33. On February 16, 2024, the PEA emailed the Complainant, providing the Student's current academic and behavioral update. Staff also noted in the email that a "majority of the teachers feel the class may be too much for [Student] without someone to help guide/prompt/assist him so that [Student] does not become lost or frustrated."

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<sup>7</sup> AzEDS does not report an absence or suspension for the Student on January 19, 2024. Therefore, it is unclear if this was in fact a disciplinary removal.

34. In an email to the Complainant on February 22, 2024, the PEA reported a behavioral incident in which the police were called per PEA policy. As a result of the Student's behavior, the Student was assigned to the "behavioral office" on February 23, 2024.<sup>8</sup>
35. In an internal PEA email dated February 23, 2024, Staff inquired about the PEA counselor coming to observe and provide feedback, updates regarding a behavior coach, or any programs or training that could help PEA staff better support the Student
36. On March 1, 2024, the PEA emailed the Complainant that the Student's ASL specials teacher was no longer with the PEA. As a result, the student's schedule would be changing.
37. Also included in the March 1, 2024, email, it was noted that the changes to the schedule caused confusion for the Student. As a result of this confusion and the Student's behavior, PEA staff selected to have the Student go to the "behavior office" during his specials' rotation.
38. Although the PEA met to review and revise the Student's BIP three times from December 20, 2023, to March 8, 2024, the BIP was the only behavioral intervention and support afforded to the Student from November 14, 2023, through November 14, 2024.

**Issue #2: Whether the PEA conducted a functional behavioral analysis (FBA) and developed a behavioral intervention plan (BIP) as part of the Student's February 6, 2024, manifestation determination review (MDR) meeting in accordance with the Individuals with Disabilities Education Act (IDEA) procedural requirements?**

39. On December 19, 2023, in an email to the Complainant, the PEA stated that the Student would have out-of-school suspension (OSS) for the week since he was asked to stay home for his mental health.
40. According to the Arizona Education Data Standards (AzEDS), the Arizona Department of Education's data reporting system, the Student's attendance was reported as excused absences from December 18 through December 21, 2023, totaling five instructional days of disciplinary removal.
41. On January 21, 2024, in an email to the Complainant, the PEA reported that due to the Student's behavior, the Student would serve six days of OSS from January 31, 2024, through February 6, 2024.
42. According to AzEDS, the Student's attendance was reported as excused absences from January 31 through February 6, 2024, totaling 11 instructional days of disciplinary removal.
43. The January 21, 2024, email also indicated that the Student's manifestation determination review (MDR) meeting would be scheduled for February 6, 2024.
44. On February 6, 2024, the Student's MDR team, which included the PEA, the Complainant, the Student's grandparent, and relevant members of the Student's IEP team, met and determined that the behavior was a result of the PEA not implementing the Student's IEP and was also a manifestation of his disability.
45. There is no documentation that the PEA conducted an FBA before revising the Student's BIP as a result of determining that the Student's behavior was a manifestation of the Student's disability.

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<sup>8</sup> At the time of this writing the PEA had not provided a description or definition for the term "behavioral office."

**Issue #3: Whether the PEA reconvened the Student's IEP team from November 14, 2023, through November 14, 2024, to review and revise the Student's IEP as necessary to address the Student's behavioral needs?**

46. The PEA convened an IEP team meeting on December 20, 2023, at which time, the IEP team determined to "reinstate" the Student's BIP.
47. During the February 6, 2024, MDR meeting, the IEP team documented in the PEAs MDR form that the Student's BIP was revised.
48. On March 8, 2024, the PEA reviewed and revised the Student's BIP.

**Issue #4: Whether the PEA provided the December 20, 2023, prior written notice (PWN) to the Complainant in accordance with the Arizona Administrative Code (AAC) and Individuals with Disabilities Education Act (IDEA) procedural requirements when the PEA decided to remove counseling as a related service from the Student's IEP?**

49. Although the Student's December 20, 2023, MET recommended continued counseling support for the Student, the December 20, 2023, IEP team did not act on the recommendation.
50. The Student's May 8, 2023, and April 9, 2024, IEPs did not include counseling services.
51. The PEA provided the Complainant with PWNs on December 20, 2023, December 21, 2023, and April 9, 2024, none of which mention counseling support for the Student.

**Issue #5: Whether the PEA included a representative from the Student's home school district and located or established a program to meet the Student's needs when determining the Student's educational placement in accordance with the Arizona Revised Statutes (A.R.S) procedural requirements?**

52. The Student was attending the PEA through a voucher documenting Mesa Unified School District as the home school district as verified by the ESS/Vouchers Unit and confirmed by the PEA during the November 25, 2024, interview.<sup>9</sup>
53. On February 1, 2024, the PEA emailed the Student's MDR meeting invite to PEA-specific staff and also included the special education director of [REDACTED].<sup>10</sup>
54. On February 2, 2024, the PEA also emailed the Student's MDR meeting invite to the special education director of Laveen Elementary School District.
55. In response to the February 2, 2024, email, the Laveen Elementary School District special education director notified the PEA that the Student's home address was not located within the District's boundaries. As such, Laveen Elementary School District representatives would not attend the Student's MDR meeting.
56. On February 5, 2024, in an email to Laveen Elementary School District, the PEA acknowledged that Laveen Elementary School District was not the Student's home school.

<sup>9</sup> "Home school district" means the (age-appropriate) school district or charter school that the child last attended or, if the child has not previously attended a public school in this state, the school district in which the person resides who has legal custody of the child, as provided in section 15-824, subsection B. If the child is a ward of this state and a specific person does not have legal custody of the child or is a ward of this state and the child is enrolled in an accommodation school pursuant to section 15-913, the home school district is the district that the child last attended or, if the child has not previously attended a public school in this state, the school district within which the child currently resides. [A.R.S. § 15-761(9)]

57. The PEA's February 5, 2024, email also states that [REDACTED] had also confirmed that it was not the Student's home school.
58. On March 22, 2024, the PEA emailed the Complainant, amongst others, including the special education director for [REDACTED] an invitation to the Student's April 9, 2024, IEP meeting.
59. On April 9, 2024, an IEP team convened, which included the following IEP team members: the Student's grandmother, the Student's legal representative, the Teacher of the Deaf, PEA Designee, a representative from [REDACTED] Individual to Interpret Implications, Speech Language Pathologist, School Psychologist, general education teacher, ASL Specialist, Assistant Principal for the PEA, Audiologist, ASL Interpreter, Transition Specialist, [REDACTED] Behavior Health Representative, and the District Representative with proposed high school.
60. The PEA did not invite a representative from the Student's home school District, Mesa Unified School District, to the April 9, 2024, IEP team meeting. As such, no representative from Mesa Unified School District attended the April 9, 2024, IEP team meeting.
61. The Student's April 9, 2024, IEP team determined that the PEA was no longer the best placement for the Student. As such, the Student would attend [REDACTED] effective immediately.
62. On April 9, 2024, the Complainant emailed the PEA informing the PEA of the Complainant's disagreement with the IEP team's decision regarding the change in placement of the Student and of the Complainant's intent to appeal the PEA's decision to transfer the Student to [REDACTED] for the last six weeks of the school year.
63. On April 10, 2024, the PEA emailed the Complainant and stated, as a follow-up to the April 9, 2024, IEP team meeting:

No one disagrees with the fact that [PEA] is not the least restrictive environment for the Student. The determination of the Student's LRE will take effect immediately. The Student's autism identification impacts his ability to access his education and is currently his primary need. [PEA's] area of specialty is communication and our board policy states Hearing Impairment must be the primary need when considering placement at [PEA]. The Student's last day at [PEA] will be tomorrow, April 11, 2024. The PEA has included staff with the receiving school and noted a plan for the Student to tour that school on Friday, April 12, 2024.

64. The April 10, 2024, PWN documents the following, among other things:

*The reasoning for rejecting services was documented as follows:*

[Student's] Autism identification impacts his ability to access his education and is currently his primary need. [PEA's] area of specialty is communication and our board policy states Hearing Impairment must be the primary need when considering placement at [PEA]. [Student] has refused any attempts at academics throughout the 23--24 school year and is not progressing on his IEP. His diagnosis of Autism is his primary disability to the point it overrides the need for placement in a school that provides an immersive ASL environment. The IEP team agrees the LRE is not [PEA].

*Description of each evaluation procedure, test, record, or report the agency used/will use as a basis for the proposed action:*

The IEP Team considered data provided from the following:

- Parent considerations and input
- considerations and input from school personnel
- data collected from formal / informal assessments, progress reports, report cards and IEP reviews,
- review of services available in the Home school District,
- Review of Services available in the Special School [PEA]
- Review of the current MET document

*Description of any other factors that are relevant to the agency's proposal or refusal:*

An ASL/English interpreter was provided for the entirety of the meeting for the guardian and grandma. It is noted the most recent audiogram is not reliable due to the aggression and refusal exhibited during testing. It is noted that the guardian disagrees with transferring back to the home district so close to the end of the year...

65. On April 11, 2024, [REDACTED] emailed the PEA and the Complainant, outlining their disagreements with the April 9, 2024, IEP team decision. The concerns raised by [REDACTED] included the proposed removal of the Student from their current PEA placement, the PEA's procedural violation in redetermining the Student's primary eligibility, the PEA's predetermination of services for the Student, the ability of [REDACTED] to provide the necessary support services for the Student, and the fact that the scheduled tour initiated by the PEA to [REDACTED] did not include the Student's legally appointed representative.
66. In an April 12, 2024, follow-up email from the PEA to the Complainant, the PEA referred to the PEA's board policy regarding the placement of students for services within the PEA. The PEA shared the following regarding the board policy:

Students must meet these initial and continuing requirements for campus placement at the [PEA]. Students shall be determined eligible for consideration for admissions to [PEA] campus based programs without charge if and only if all of the following conditions are met: Student is sensory impaired to an extent that an IEP team has determined that the primary educational needs resulting from or directly related to that sensory impairment exceed educational and related services currently available in the home school District/Charter. The district of residence is located within the geographical boundaries of Arizona. The student's district of residence has current immunization records indicating that all immunizations are current as required by Policy JLCB. Student is under twenty-two (22) years of age; Student must have a MET prior to placement. (ARS 15-1342 B & 15-766 A-C)
67. Additionally, in the April 12, 2024, email, the PEA reiterated that the IEP team agreed that the Student did not meet the criteria for continued enrollment at the PEA as the Student's primary eligibility of MDSSI (autism, HI, and SLI) was not a direct result or directly related to the Student's hearing impairment and superseded the Student's needs presented by his hearing loss. As such, the Student was not eligible for continued placement at the PEA.
68. According to AzEDS, the Student's last day of enrollment during the 2023 – 2024 school year at the PEA or any PEA was April 11, 2024.
69. On May 6, 2024, the PEA emailed a resolution IEP meeting invite to [REDACTED]
70. In a May 7, 2024, email from the PEA to [REDACTED] the PEA reported that a neighboring PEA shared that "because [Student] lives [REDACTED], the [REDACTED] is his home district school. His local LRE would be [REDACTED] ol."
71. On May 8, 2024, [REDACTED] staff emailed the PEA and stated, "I am happy to attend a meeting on behalf of the student; however, I must again express that [REDACTED] is a [REDACTED], and as such, is not to my understanding, the student's public school of residence."
72. As of this writing, the PEA has not provided documentation that indicates a representative of the Student's home district, Mesa Unified School District, and the PEA had identified an appropriate educational placement for the Student on or after the Student's April 9, 2024, IEP team meeting.

**Issue #6: Whether the PEA provided the Student's special education records to the Complainant within 45 days of the Complainant's May 22, 2024, request in accordance with the Arizona Administrative Code (AAC)?**

73. On May 21, 2024, the Complainant requested a copy of the Student's educational records via email.<sup>11</sup>
74. The PEA submitted a written statement indicating that the requested educational records had been provided to the Complainant via Google file transfer in May 2024. The PEA did not provide a confirmation email or electronic receipt for the file transfer as part of the investigation.
75. The Complainant reported within the State complaint and confirmed during the November 21, 2024, interview that the PEA provided the Student's educational records to the Complainant on June 7, 2024.

**STATEMENT OF APPLICABLE LAW**

**A. Free Appropriate Public Education (FAPE)**

The requirements of the provision of a Free Appropriate Public Education to students with disabilities under IDEA necessitate that special education and related services and supplemental aids and services are provided in conformity with the IEP.<sup>12</sup>

**B. Manifestation Determination, FBA and BIP**

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—(1) Either—(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.<sup>13</sup>

**C. Placement meeting**

The Arizona state schools for the deaf and the blind shall hold a placement meeting for a child who is enrolled in a campus-based model at least annually to review the child's placement status and shall invite a representative of the child's home school district. If a determination is made that the Arizona state schools for the deaf and the blind is no longer the least restrictive environment, the home school

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<sup>11</sup> "Education record" is a term defined under FERPA and incorporated into the IDEA by reference. FERPA defines education records as records that are directly related to a student and that are maintained by an educational agency. [20 U.S.C. § 1232g(d); 34 C.F.R. § 99.3] The regulations that implement the IDEA further delineate and narrow the FERPA definition to mean education records relating to eligible students that are collected, maintained, or used by the school under Part B of the IDEA. [34 C.F.R. § 300.613.(a)] Therefore, a "special education record" (relating to the identification, evaluation, educational placement, or the provisions of free appropriate public education to a child) under the IDEA is a smaller subset of the term "education record" as defined under FERPA.

<sup>12</sup> 34 C.F.R. §§300.17(d)

<sup>13</sup> 34 C.F.R. § 300.530

district shall enroll the child.<sup>14</sup> If the chief administrator of the home school district and the superintendent of the schools determine that the schools cannot provide the appropriate educational programs and services needed by the child, they shall locate or establish a program to meet the child's needs in consultation with the department of education and any other appropriate state agency.<sup>15</sup>

#### **D. Records Request**

In accordance with the regulations that implement the IDEA, schools must permit parents to inspect and review any education records relating to their child that are collected, maintained or used by the school, and must comply with such a request before any IEP meeting, due process hearing, or resolution session, and in no case later than 45 days from the date of the request.<sup>16</sup> The parents' right to inspect and review records includes the right to a reasonable explanation of the records and the right to request the school provide copies of the records if failure to do so would prevent parents from exercising their right to inspect and review records.<sup>17</sup>

#### **E. Prior Written Notice (PWN)**

The regulations require schools to provide parents with written notice a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child.<sup>18</sup> "In accordance with requirements of IDEA, prior written notice shall be provided to the parents of a child within a reasonable time after the PEA proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, educational placement or the provision of FAPE to the child, but before the decision is implemented."<sup>19</sup>

#### **F. Review and Revise**

"Each public agency must ensure that ... the IEP Team (i) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (ii) revises the IEP, as appropriate, to address (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate," the results of any reevaluation, information about the child provide to, or by the parents, the child's anticipated needs, or other matters.<sup>20</sup>

### **CONCLUSIONS AND FINDINGS**

#### **1. Whether the Public Education Agency (PEA) provided the Student a Free Appropriate Public Education (FAPE) from November 14, 2023, through November 14, 2024, in accordance with the Arizona Administrative Code (AAC) and Individuals with Disabilities Education Act (IDEA) regarding:**

- a. The implementation of speech-language therapy and occupational therapy In conformity with the Student's May 8, 2023, and April 9, 2024, and**
- b. The provision of behavioral support and counseling services.**

##### *Speech Therapy and Occupational Therapy*

The PEA acknowledged its failure to implement the Student's May 8, 2023, and April 9, 2024, Individualized Education Programs (IEPs). This failure was attributed to the PEA's insufficient staffing of speech-language and occupational therapists, which prevented the provision of the special education and related services specified in the Student's IEP from November 14, 2023, through the filing of this complaint on November 14, 2024. It is noted that a PEA/district's obligation to provide special education and related services does not change when it lacks adequate special education

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<sup>14</sup> A.R.S. § 15-1342(D)

<sup>15</sup> A.R.S. § 15-1342(G)

<sup>16</sup> 34 C.F.R. § 300.613(a)

<sup>17</sup> *Id.* at subsection (b)

<sup>18</sup> 34 C.F.R. § 300.503(a)

<sup>19</sup> A.A.C. R7-2-401(I)(2)

<sup>20</sup> 34 C.F.R § 300.324(b)

staffing. The IDEA requires that, as soon as possible following the development of an IEP, special education and related services be made available to the child in accordance with the IEP. The requirements of the provision of Free Appropriate Public Education to students with disabilities under IDEA necessitate that special education and related services and supplemental aids and services are provided in conformity with the IEP.

#### *Reasonably Calculated IEP*

As noted in the findings of fact, throughout the 2023-2024 school year, PEA staff consistently reported that the Student required additional behavioral support. The PEA requested that the Complainant seek an outside behavioral coach to work in the school with the Student, as the Student's behavioral issues appeared to occur only in the school setting. Following the Student's December 2023 MET and a behavioral incident in February 2024, PEA again inquired about securing outside behavior support from the Complainant. Although on at least three occasions, as described in the finding of facts, the PEA reviewed or revised the Student's BIP to address the Student's aversive behavior. The PEA did not convene an IEP team meeting to determine whether additional positive behavioral interventions and support were required in light of the Student's lack of progress in the educational setting due to the Student's unwarranted behavior.

Additionally, it is noteworthy that the Student's December 20, 2023, MET recommended continued counseling services for the Student even though the Student's May 8, 2023, IEP did not include counseling services. It also should be noted that counseling services were not added as part of the December 20, 2023, amendment to the Student's May 8, 2023, IEP. As noted in the finding of facts, several PEA staff made reference to or inquired about counseling services and supports throughout the 2023 – 2024 school year.

Although the Complainant's allegation that the Student's December 20, 2023, MET report documented the Student's need for continued counseling services and was verified during this investigation, as noted above, counseling services were not included in any IEPs or amendments in effect from November 13, 2023, to the filing of the complaint, November 14, 2024.

#### *Failure to Implement the IEP*

As noted in the findings of fact, the Student's behavior led to a disciplinary change in placement when the Student accumulated more than 10 days of removals. As a result, a manifestation determination review (MDR) team convened on February 6, 2024, and concluded that the Student's behavior led to a pattern of removals and was, in fact, a result of the PEA's failure to implement the Student's IEP. Additionally, the PEA did not provide the Student with the speech-language and occupational therapy services listed in the Student's IEP.

Further, the PEA did not develop an IEP that provided behavioral support and counseling to provide a FAPE because it did not fully address the Student's behavioral needs, as shown by the PEA's abdication of its responsibility for behavioral support through its requests that the Complainant seek outside behavioral support that would be provided to the Student at the PEA. Additionally, the Student's December 20, 2023, MET recommendation of continued counseling services and multiple staff emails inquiring about counseling service/support needs were not addressed in the Student's IEPs or amendments.

The requirements of the provision of a Free Appropriate Public Education to students with disabilities under IDEA necessitate that special education and related services and supplemental aids and services are provided in conformity with the IEP. Based on the above, ADE/ESS finds that the PEA did not provide the Student a Free Appropriate Public Education (FAPE) in conformity with the Student's May 8, 2023, and April 9, 2024, IEPs regarding the provision of speech-language therapy, occupational therapy, behavioral support, counseling services and the implementation of the Student's IEPs from November 14, 2023, through November 14, 2024, in accordance with the Arizona Administrative Code (AAC) and Individuals with Disabilities Education Act (IDEA) procedural requirements and is, therefore, in noncompliance regarding this issue.



**2. Whether the PEA reconvened the Student's IEP team to review and revise the Student's IEP as necessary to address the Student's lack of educational progress in the area of behavior?**

As noted above, the PEA developed a BIP to address the Student's behavioral needs during the December 20, 2023, IEP team meeting to be implemented upon the return of winter break on January 8, 2024. The PEA reviewed and revised the Student's BIP on March 8, 2024, to address the Student's lack of progress in the area of behavior. Given that the PEA developed a BIP, and reviewed and revised the BIP a few months later, ADE/ESS finds that the PEA reconvened the Student's IEP team to review and revise the Student's IEP as necessary to address the Student's lack of educational progress in the area of behavior and is, therefore, in compliance regarding this issue.

**3. Whether the PEA conducted a functional behavioral analysis (FBA) and developed a behavioral intervention plan (BIP) as part of the Student's February 6, 2024, manifestation determination review (MDR) meeting in accordance with the Individuals with Disabilities Education Act (IDEA) procedural requirements?**

As noted above, the PEA held a manifestation determination on February 6, 2024. It determined that the Student's behaviors were a result of the PEA's failure to implement the Student's IEP and was a manifestation of his disability. As a result, the PEA was obligated by the regulations to either conduct a functional behavioral assessment (FBA) unless the PEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and implemented a behavioral intervention plan for the Student, or review the behavioral intervention plan (BIP), and modify it, as necessary, to address the behavior. In this instance, although there is documentation that there was a BIP and that it was revised on April 8, 2023, there is no documentation that the BIP developed on December 20, 2023, was originally developed as a result of an FBA. Given that there is no documentation to support that an FBA was conducted, ADE/ESS finds that the PEA did not conduct a manifestation determination review in accordance with Individuals with Disabilities Education Act (IDEA) procedural requirements and is, therefore, in noncompliance regarding the procedures upon the determination that the Student's misconduct was a manifestation of the Student's disability.

**4. Whether the PEA provided prior written notice (PWN) to the Complainant in accordance with the Arizona Administrative Code (AAC) and Individuals with Disabilities Education Act (IDEA) procedural requirements when the PEA determined to remove counseling as a related service from the Student's IEP?**

As noted in the findings of fact, the Student's May 8, 2023, and April 9, 2024, IEPs did not include counseling as direct specially designed instruction or as a related service. Although the Student's December 20, 2023, MET report included a recommendation for continued counseling services, the Student's December 20, 2023, IEP team did not amend the Student's May 8, 2023, IEP to include such services. The PEA was not obligated to provide a PWN regarding such services because counseling services were not entitled to the Student as outlined in the Student's May 8, 2023, and April 9, 2024, IEPs. With that said, the PEA provided the Complainant with PWNs on December 20 and December 21, 2023, following the December 20, 2023, IEP team meeting. Additionally, the PEA provided a PWN on April 10, 2024, following the April 9, 2024, IEP team meeting. Therefore, the ADE/ESS finds the PEA provided prior written notice (PWN) to the Complainant in accordance with the Arizona Administrative Code (AAC) and Individuals with Disabilities Education Act (IDEA) procedural requirements and is, therefore, in compliance regarding this issue.

**5. Whether the PEA included a representative from the Student's home school district and located or established a program to meet the Student's needs when determining the Student's educational placement in accordance with the Arizona Revised Statutes (A.R.S) procedural requirements?**

The Student's April 9, 2024, IEP team convened and determined that the PEA was no longer the least restrictive placement for the Student. That said, the PEA failed to invite a representative of the Student's home school district to the April 9th IEP team meeting and instead invited a representative from [REDACTED]. As documented within the emails to the PEA and provided for this investigation, the [REDACTED] representative confirmed that it is not the Student's home school/ PEA and is, in fact, a [REDACTED]. Additionally, [REDACTED] representatives reported that [REDACTED] could not

provide the appropriate programming and services required to support the Student. As per A.R.S. § 15-1342, “[I]f the chief administrator of the home school district and the superintendent of the schools determine that the schools cannot provide the appropriate educational programs and services needed by the child, they shall locate or establish a program to meet the child’s needs...,” With that said, as noted in the findings of fact, the PEA acknowledged that the Student was placed at the PEA through the voucher system via the Student’s home school district, Mesa Unified School District. The PEA did not invite the Student’s home school district to the April 9th IEP team meeting in accordance with A.R.S. 13-1342(d). Based on the foregoing, ADE/ESS finds that the PEA did not include a representative from the Student’s home school district and did not locate or establish a program to meet the Student’s needs when determining the Student’s educational placement in accordance with the Arizona Revised Statutes (A.R.S) procedural requirements and is, therefore, in noncompliance regarding this issue.


**6. Whether the PEA provided the Student’s special education records to the Complainant within 45 days of the Complainant’s May 22, 2024, request in accordance with the Individuals with Disabilities Education Act (IDEA)?**

As noted in the findings of fact, the Complainant requested the Student’s educational records on May 22, 2024, which obligated the PEA to provide said records no later than July 6, 2024. As part of the investigation, the PEA provided a written statement reporting that the Student’s educational records were provided to the Complainant via a Google file transfer in May 2024. Additionally, in their admission, the Complainant acknowledged that the PEA had provided the Student’s educational records to the Complainant on June 7, 2024. Given that both parties agreed that the PEA provided the Student’s educational records to the Complainant before the 45-day timeline on July 6, 2024, ADE/ESS finds that the PEA did provide the Student’s special education records to the Complainant within 45 days of the Complainant’s May 22, 2024, request in accordance with the Individuals with Disabilities Education Act (IDEA) and is, therefore, in compliance regarding this issue.

As stated in the federal regulations, the State Educational Agency (SEA) has the responsibility to “Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (i) Findings of fact and conclusions; and (ii) The reasons for the SEA’s final decision.” [34 C.F.R. § 300.152(a)(5)] This Investigative Report constitutes the SEA’s final decision in this matter.

Done this 13th day of January 2024.

  
\_\_\_\_\_  
Nicole Barnette  
ADE/Dispute Resolution Complaint Investigator

  
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Jeffrey Studer  
Director of Dispute Resolution

The U.S. Department of Education has explained, “[i]f after the SEA’s final decision is issued, a party who has the right to request a due process hearing and who disagrees with the SEA’s decision may initiate a due process hearing, provided that the subject of the State complaint involves an issue about which a due process hearing can be filed and the two-year statute of limitations for due process hearings (or other time limit imposed by State law) has not expired.” [34 C.F.R. Part 300, Analysis of Comments and Changes, Subpart B – State Eligibility, *Federal Register*, Vol.71, No. 156, p. 46607 (August 2006)]

This report is a confidential student record. Any disclosure must meet the requirements described in the regulations that implement the Family Educational Rights and Privacy Act at 34 C.F.R. §§ 99.30 through 99.39.

*For consultation and support, parents of children with disabilities can contact Raising Special Kids (RSK), a nonprofit agency in Arizona that partners with the Arizona Department of Education. RSK has family support specialists who are knowledgeable about special education and who are also the parents of a child with a disability, meaning they have sat on both sides of the table and can, therefore, provide a sounding board, information, and advocacy. They can be reached by phone at their toll-free number 800.237.3007. Their website is located at <https://raisingspecialkids.org>*



**Arizona Department of Education**  
Exceptional Student Services

**LETTER OF CORRECTIVE ACTION**

January 13, 2024

Annette Reichman, Superintendent  
AZ State School for the Deaf and Blind  
P. O. Box 88510  
Tucson, AZ 85754

**RE: AZ State School for the Deaf and Blind: Reference Number: 3546**

Dear Superintendent Reichman:

On November 14, 2024, our office received a formal state administrative complaint from [REDACTED] (Complainant), alleging that the AZ State School for the Deaf and Blind (PEA) is in noncompliance in special education matters relating to [REDACTED] (Student). This letter is to outline actions the Public Education Agency (PEA) must undertake to correct noncompliance identified during the investigation as explained in the Investigative Report sent to you on January 13, 2025. In accordance with the federal regulations that implement the Individuals with Disabilities Education Act (IDEA), when the State Educational Agency (SEA) identifies noncompliance on the part of a PEA, the SEA is responsible for ensuring that the noncompliance is corrected as soon as possible and in no case later than one year after the identification of noncompliance. [34 C.F.R. § 300.600(e)]

Following is the corrective action required and the associated due dates:

The SEA is responsible for ensuring that all public agencies within its jurisdiction meet the requirements of the Act and its implementing regulations. In light of the SEA's general supervisory authority and responsibility under sections 612(a)(11) and 616 of the Act, we believe the SEA should have broad flexibility to determine the appropriate remedy or corrective action necessary to resolve a complaint in which the SEA has found that the public agency has failed to provide appropriate services to children with disabilities...[34 C.F.R. Part 300, Analysis of Comments and Changes, Subpart D-Evaluation, Eligibility, IEP, Educational Placement, *Federal Register*, Vol.71, No. 156, p. 46685 (August 2006)]

The PEA must work collaboratively with an Arizona Department of Education/Exceptional Student Services assigned Special Monitor to complete the following designated corrective action items: 3, 4, 5, 6, 9, 10, 15, 17, 19, and 21.<sup>21</sup>

*Compensatory Occupational Therapy and Speech Language Services*

1. Using available data, which must include an updated evaluation in the areas of occupational therapy (OT) and speech language, the PEA must work collaboratively with the Special Monitor and in consultation with the Complainant to develop a compensatory occupational and speech services plan to address the occupational and speech language services not provided to the Student from November 14, 2023, through the end of the 2024 school year when the PEA determined in April 2024 that it was no longer the best placement for the Student, but did not include the correct home school district in this decision nor did the PEA ensure that the Student would receive a free appropriate public education

<sup>21</sup> State-level Special Monitors assist Public Education Agency (PEAs) in closing Corrective Action (CA); thereby assisting the PEA in implementing systems to effectively implement the requirements under the Individuals with Disabilities Act (IDEA) and provision of a Free and Appropriate Education (FAPE).

(FAPE) from the correct public education agency upon the PEA's initiated determination that the PEA was not the Student's LRE.<sup>22,23</sup>

2. If the PEA does not have appropriately credentialed staff to conduct an OT and speech language evaluation to obtain the Student's current OT and speech language levels for determining the compensatory OT and speech-language services owed to the Student, the PEA must contract with an outside evaluator(s) to conduct the evaluations.

#### *Compensatory counseling services*

3. Using available data, the compensatory plan must also include counseling compensatory services associated with the counseling services that were recommended by the Student's December 20, 2023, MET, and referenced or inquired about by staff but were not included as part of the December 20, 2023, amendment to the Student's May 8, 2023, IEP and, therefore, were not provided to the Student from December 20, 2023, until the end of the 2023-2024 school year when the PEA determined in April 2024 that it was no longer the best placement for the Student, but did not include the correct home school district in this decision nor did the PEA ensure that the Student would receive a free appropriate public education (FAPE) from the correct public education agency upon the PEA's initiated determination that the PEA was not the Student's LRE.

#### *Compensatory Specially Designed Instruction*

4. Using available data, the compensatory plan must also include all additional specially designed instruction that was not provided to the Student from April 2024 until the end of the 2023-2024 school year when the PEA determined in April 2024 that it was no longer the best placement for the Student, but did not include the correct home school district in this decision nor did the PEA ensure that the Student would receive a free appropriate public education (FAPE) from the correct public education agency upon the PEA's initiated determination that the PEA was not the Student's LRE.

#### *Compensatory Extended School Year Services*

5. Using available data, the compensatory plan must also include the extended school year services<sup>24</sup> listed in the Student's April 9, 2024, IEP which the PEA partially provided during the Student's 8 days of attendance (June 5, 2024, through June 19, 2024) in the PEA's ESY program which ran from June 3 through June 28, 2024, and July 8 through July 19, 2024, even though the Student was not currently enrolled in the PEA when the PEA determined in April 2024 that it was no longer the best placement for the Student, but did not include the correct home school district in this decision nor did the PEA ensure that the Student would receive a free appropriate public education (FAPE) from the correct public education agency upon the PEA's initiated determination that the PEA was not the Student's LRE.

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<sup>22</sup> In resolving an administrative complaint, the IDEA requires state educational agencies (SEA) that find a school has failed to provide appropriate services to a child with a disability to include corrective action "appropriate to address the needs of the child [involved in the complaint] (such as compensatory services) ... and [a]ppropriate future provision of services for all children with disabilities." [34 C.F.R. § 300.151(b)] Compensatory education services are not expressly defined in the IDEA; however, courts [under the authority granted them in 20 U.S.C. § 1415(i)(2)(C)(iii) and 34 C.F.R. § 300.516(c)(3)] have long awarded compensatory education services as an appropriate remedy under the IDEA when a student has been denied a FAPE in the past and can be awarded as appropriate equitable relief. [*Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1496-97 (9th Cir.1994)] "Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the [IDEA]" and "[t]here is no obligation to provide a day-for-day compensation for time missed." [*Id.*]

<sup>23</sup> The Arizona state schools for the deaf and the blind shall hold a placement meeting for a child who is enrolled in a campus-based model at least annually to review the child's placement status and shall invite a representative of the child's home school district. If a determination is made that the Arizona state schools for the deaf and the blind is no longer the least restrictive environment, the home school district shall enroll the child. [A.R.S. § 15-1342(D)]

<sup>24</sup> By April 2024, given 10 PowerPoint slides with pictures, [Student] will independently add a one word title with 8/10 or 80% accuracy as measured by a teacher made assessment to be assessed quarterly; Given passages at the first grade level and 20 multiple choice WH questions, [Student] will independently read and select the correct answer with 70% accuracy (14/20 questions) as measured by independently taken assessments to be assessed quarterly; Given 10 analog clock problems, [Student] will identify the time to match the analog clock with five minute, half hour, and hour increments with 80% accuracy as measured by teacher made assessment given at the end of each quarterly.

*Compensatory Plan Submission*

6. The PEA must submit to the DRCA inbox listed below the compensatory education plan developed collaboratively with the Special Monitor and in consultation with the Complainant. The compensatory education plan must include the following: (a) details about the types and amounts of specially designed instruction compensatory services, occupational compensatory services, speech language compensatory services, ESY compensatory services, and counseling compensatory services that will be made available to the Student; (b) the names and qualifications of the provider(s) who will provide the specially designed instruction, occupational, speech language, ESY, and counseling compensatory services; (c) the location of the specially designed instruction, occupational, speech language, ESY, and counseling compensatory services; (d) the estimated start date for the specially designed instruction, occupational, speech language, ESY, and counseling compensatory services; (e) an estimated date when the specially designed instruction, occupational, speech language, ESY, and counseling compensatory services will be completed in accordance with the plan; (f) an explanation of how the PEA, working collaboratively with the Special Monitor and in consultation with the Complainant developed the compensatory education plan, and; (g) provide the Complainant a prior written notice of the PEA's compensatory services proposals. The specially designed instruction, occupational, speech language, ESY, and counseling compensatory services plan, with all required components, and a copy of the PWN provided to the Complainant must be submitted to the DRCA email address listed below by the end of business day **April 30, 2025**.

*Completion of compensatory services*

7. No later than the end of business day **January 13, 2026**, the PEA must submit a letter to the DRCA email address listed below giving the PEA's assurance that all agreed-upon compensatory specially designed instruction, occupational, speech language, ESY, and counseling services were completed in accordance with the plan. A copy of this letter must be signed by the PEA's special education director.

If the PEA, working collaboratively with the Special Monitor and in consultation with the Complainant, is unable to reach an agreement on the amount of compensatory services owed to the Student, the PEA must contact the DRCA Compliance Coordinator at the email listed below.

*Systemic noncompliance*

8. Working collaboratively with the Special Monitor, the PEA must conduct a self-audit of the IEPs of all students eligible for occupational and speech and language services from November 14, 2023, through the filing of this complaint on November 14, 2024, to determine the occupational and speech and language service minutes that were not provided as a result of the absence of credentialed occupational therapists and speech language pathologists. The PEA must record the results of this review (spreadsheet, table, organized service logs, etc.) that includes: (a) student initials; (b) the service areas (pragmatic language, articulation, fine motor skills, etc.), and; (c) the number of minutes documented in the IEPs. A copy of this self-review, with all required components, must be submitted to the DRCA email address listed below by end of business day on **March 31, 2025**.
9. To make up for any missed services to each affected student the PEA, working collaboratively with the Special Monitor and in consultation with parent(s)/guardian(s) of each individual student, must develop a compensatory occupational and/or speech language services plan. The compensatory occupational and/or speech language services plan must include: (a) details about the types and amounts of compensatory occupational services, and/or compensatory speech language services that will be made available to each affected student; (b) the names and qualifications of the provider(s) who will provide the compensatory occupational services and/or compensatory speech language services; (c) the location of the compensatory occupational services, and/or compensatory speech language services; (d) the estimated start date for the compensatory occupational services, and/or compensatory speech language services, and; (e) an estimated date when the compensatory occupational services, and/or compensatory speech language services will be completed in accordance with the plan, and; (f) an explanation of how the PEA developed the compensatory occupational services, and/or compensatory speech language services in consultation with the parent(s)/guardian(s). The compensatory occupational services and/or compensatory speech

language services plan, with all required components, must be submitted to the DRCA email address listed below by the end of business day **April 15, 2025**.

If the PEA, working collaboratively with the Special Monitor and in consultation with the parents/guardians, is unable to reach an agreement regarding the amount of compensatory services owed to each individual student, the PEA must contact the DRCA Compliance Coordinator at the email listed below.

10. The PEA must send a letter to the parent(s)/guardian(s) of each affected student that includes the written offer of the compensatory occupational services and/or compensatory speech language services to be made available. A copy of the letters and a statement regarding who at the PEA is responsible for ensuring that the services are made available as required by the plans must be submitted to the DRCA email address listed below by the end of business day **April 30, 2025**.
11. If the parent(s)/guardian(s) of any affected student declines or has declined the offer of compensatory occupational services, and/or compensatory speech language services, in whole or in part, the PEA must send to the DRCA email address listed below documentation of the refusal of the offer by end of business day **May 28, 2025**.
12. If the parent(s)/guardian(s) of any affected student does not respond within **four weeks** after receiving the offer, the PEA must send to the email address below documenting the attempts to offer compensatory occupational services, and/or compensatory speech language services and a statement regarding the parent(s)/guardian(s)'s lack of response to the DRCA email address listed below by end of business day **May 28, 2025**.
13. No later than the end of business day **January 13, 2026**, the PEA must submit a letter to the DRCA email address listed below giving the PEA's assurance that all agreed-upon compensatory occupational services and/or compensatory speech language services were completed in accordance with the plans. A copy of this letter must be signed by the PEA's special education director.

The below-referenced required trainings may be completed either one at a time or simultaneously, based on scheduling needs.

#### *Identifying Home School District*

14. Working collaboratively with the Special Monitor, the PEA must develop an action plan for identifying students' correct home school district. The action plan must include the following: (a) the role(s) of the individual(s) responsible for identifying students' correct home school district; (b) the steps the individual(s) responsible for identifying students' home school district will take to ensure the identified home school district is correct; (c) the steps the individual(s) responsible for identifying students' correct home school district will take to ensure that students identified home school district is invited to/involved in decisions concerning students when required by Arizona Revised Statutes (A.R.S.);<sup>25</sup> (d) in the event that the PEA is unable to determine the correct home school district and/or needs confirmation that it has identified the correct home school district, the PEA will contact ADE/ESS's voucher unit for assistance, and; (e) a system to ensure that the action plan for identifying students' correct home school district is revisited on a yearly basis and the appropriate individual(s) are (re)trained.
15. The PEA must provide documentation in the form of an attendance/verification sheet that the individuals responsible for identifying students' correct home school district received training on the action plan to the DRCA email address listed below by the end of business day **December 15, 2025**.

The above-mentioned attendance/verification sheet must include: (1) the name(s) and role(s) of those in attendance; and (2) confirmation by those in attendance that they understand the responsibilities of ensuring that students' correct home school district is identified and that the correct home school district is invited to/involved in decisions when required.

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<sup>25</sup> *Id.*

### *FAPE Training*

16. Working collaboratively with the Special Monitor, the PEA must provide a training to all personnel responsible for providing students a free appropriate public education (FAPE).<sup>26</sup> Topics of the training must include, but may not be limited to the following: (a) FAPE is a legal right granted to students with disabilities under the Individuals with Disabilities Education Act (IDEA); (b) under the Individuals with Disabilities Education Act, public education agencies must make FAPE, or free appropriate public education, available to all eligible children ages 3 to 21; (c) public education agencies are responsible for providing a special education program that is reasonably calculated to enable a student to make progress appropriate in light of his circumstances, according to *Endrew F. v. Douglas County School District RE-1*, [69 IDELR 174](#) (U.S. 2017), and provides an educational benefit, per *Board of Education of Hendrick Hudson Central School District v. Rowley*, [553 IDELR 656](#) (U.S. 1982); (d) public education agencies are responsible for ensuring that individualized special education and related services are provided to all children without regard to the severity of their disability in the least restrictive environment; (e) FAPE, or *free* appropriate public education means that a public education agency cannot abdicate its affirmative duties under the IDEA by referring parents to an outside agency for services that the PEA are obligated to provide, such as requesting parents secure behavioral supports to work with a student within the PEA; (f) FAPE, or free appropriate public education may include extended school year services (ESY) which are defined as special education and related services that are provided to a child with a disability beyond the normal school year, are in accordance with a child's IEP, are provided at no cost to the parents, and are in alignment with the standards set by the state education agency (SEA);<sup>27</sup> (g) FAPE, or *free* appropriate public education means that a public education agency must thoughtfully consider a multidisciplinary evaluation team's recommendations when developing IEPs, and thoroughly document why an IEP team is or is not including said recommendations in a student's IEP, and; (h) a public education agency denies a student with a disability a FAPE when it deprives the student of an educational benefit, denies the parents an opportunity to meaningfully participate in the decision-making process, and/or materially fails to implement essential elements of a student's IEP.
17. The PEA must provide documentation in the form of an attendance/verification sheet that all personnel responsible for providing students a free appropriate public education (FAPE) participated in the required training to the DRCA email address listed below by the end of business day **December 15, 2025**.

The above-mentioned attendance/verification sheet must include: (1) the name(s) and role(s) of those in attendance; and (2) confirmation by those in attendance that they understand the responsibilities of making FAPE available to all eligible children.

### *Functional Behavioral Assessment and Behavior Intervention Plan training*

18. Working collaboratively with the Special Monitor, the PEA must provide training to all personnel responsible for attending manifestation determination meetings the Individuals with Disabilities Education Act's requirement that if the local education agency (LEA), the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and implement a behavioral intervention plan for the child. Or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.<sup>28</sup>

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<sup>26</sup> 34 C.F.R. § 300.17

<sup>27</sup> 34 C.F.R. § 300.106(b)

<sup>28</sup> 34 C.F.R. § 300.530

19. The PEA must provide documentation in the form of an attendance/verification sheet that all personnel responsible for attending manifestation determination meetings received the required training to the DRCA email address listed below by the end of business day **December 15, 2025**.

The above-mentioned attendance/verification sheet must include: (1) the name(s) and role(s) of those in attendance; and (2) confirmation by those in attendance that they understand the Individuals with Disabilities Education Act's requirements regarding functional behavioral assessments and behavior intervention plans resulting from a manifestation determination meeting when it is determined that the conduct was a manifestation of the child's disability.

#### *Placement Training*

20. Working collaboratively with the Special Monitor, the PEA must provide training to all personnel responsible for providing students a free appropriate public education regarding the Individuals with Disabilities Education Act's requirement that public education agencies ensure placement decisions are made by IEP teams, with all required members, and that the placement decisions are not based on factors such as the category of disability, configuration of the service delivery system, and the availability of staff and instead is based on the factors stated in §300.552.<sup>29</sup> The training must also include the components of A.R.S. 15-1342 taking special note of A.R.S. 15-1342(B)(2) and (G).<sup>30</sup>
21. The PEA must provide documentation in the form of an attendance/verification sheet that all personnel responsible for providing students free appropriate public education (FAPE) received the required training regarding placement decisions to the DRCA email address listed below by the end of business day **December 15, 2025**.

The above-mentioned attendance/verification sheet must include: (1) the name(s) and role(s) of those in attendance; and (2) confirmation by those in attendance that they understand the Individuals with Disabilities Education Act's requirement regarding placement decisions.

#### *Adherence to the Individuals with Disabilities Education Act*

22. The PEA must submit a letter giving the PEA's assurance that all requirements per the Individuals with Disabilities Education Act will be adhered to in the future. This letter must be signed by the PEA's special education director and submitted to the DRCA email address below by end of business **January 13, 2026**.

Please submit corrective action documentation to Ms. Christina Lane, Compliance Coordinator via email to [DRCA@azed.gov](mailto:DRCA@azed.gov).

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<sup>29</sup> § 300.552 Placements. Each public agency shall ensure that: (a) The educational placement of each child with a disability—(1) is determined at least annually; (2) is based on his or her IEP; and (3) is as close as possible to the child's home. (b) The various alternative placements included at § 300.551 are available to the extent necessary to implement the IEP for each child with a disability. (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs. (Authority: 20 U.S.C. 1412(5)(B)) NOTE: Section 300.552 includes some of the main factors that must be considered in determining the extent to which a child with a disability can be educated with children who are nondisabled. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to ensure that each child with a disability receives an education that is appropriate to his or her individual needs. The requirements of § 300.552, as well as the other requirements of §§ 300.550–300.556, apply to all preschool children with disabilities who are entitled to receive FAPE. Public agencies that provide preschool programs for nondisabled preschool children must ensure that the requirements of § 300.552(c) are met.

<sup>30</sup> A placement and evaluation team shall determine the appropriate educational placement for the child based on the development of an individualized education program. Placement and review of the individualized education program may be conducted at the same meeting. Each placement and evaluation team shall document that it has advised the child's parent or legal guardian of all placement options. The placement and evaluation team shall consist of at least the following persons: 2. A representative from the home school district in which the child resides who meets all of the following requirements: (a) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities. (b) Is knowledgeable about the general education curriculum. (c) Is knowledgeable about the availability of resources of the public agency. [A.R.S. 15-1342(B)(2)] If the chief administrator of the home school district and the superintendent of the schools determine that the schools cannot provide the appropriate educational programs and services needed by the child, they shall locate or establish a program to meet the child's needs in consultation with the department of education and any other appropriate state agency. [*Id.* at (G)]



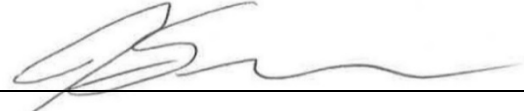
We appreciate the cooperation of you and your staff as you work to correct the identified noncompliance and thereby ensure that the District is in compliance with federal and state special education requirements.

Done this 13<sup>th</sup> day of January 2024.



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Christina Lane  
Compliance Coordinator



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Jeffrey Studer  
Director of Dispute Resolution

ec: [REDACTED], Complainant  
Amanda Glass, Attorney for the Complainant  
Sarah Sottile, Director of Special Education, PEA  
Debra Sterling, Attorney for the PEA  
Scott Dobkovsky, Director of Program Implementation, Program Support and Monitoring, ESS, ADE  
ADE File