




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

October 15, 2020




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

RE: 
Reference: #21-007

Dear Parties:

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

ALLEGATIONS:

On August 17, 2020, the MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of her son, the above referenced student. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The AACPS did not follow proper procedures from August 17, 2019¹ to December 19, 2019, to fulfill its Child Find obligation to ensure that the student was evaluated and, if appropriate, identified as a student with a disability under the IDEA, in accordance with 34 CFR §§300.8 and .111 and COMAR 13A.05.02.13.
2. The AACPS has not ensured that the evaluation of the student is sufficiently comprehensive to identify him as a student with Autism and to address the needs arising

¹ The allegation dates back to November 2017, however, the complainant was informed in writing, that this office has authority to investigate allegations of violations that occurred not more than (1) year from the date the complaint is received.

out of that disability, including his behavioral, written expression, pragmatic language skills, assistive technology, and occupational therapy needs, since February 4, 2020,² in accordance with 34 CFR §§300.111, .301-.311, .320 and 324.

3. The AACPS has not followed proper procedures to ensure that Home and Hospital Teaching (HHT) services were consistently provided and that a re-entry plan for the student to return to a school-based program was developed since February 4, 2020, in accordance with COMAR 13A.03.05.
4. The AACPS has not ensured placement in a program with highly specialized support by trained, experienced staff in an integrated therapeutic day program since February 4, 2020, in accordance with 34 CFR §§300.114 and .116.

BACKGROUND:

The student is nine (9) years old and on February 9, 2020 was identified as a student with Multiple Disabilities under the IDEA, including an Emotional Disability and an Other Health Impairment related to Attention Deficit Hyperactivity Disorder (ADHD).

Prior to February 9, 2020, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 due to his ADHD and had a 504 Accommodations Plan (504 Plan).

The student has had the following educational placements during the time period covered by this investigation:

- At the start of the 2019-2020 school year, the student attended [REDACTED]
- On November 4, 2019, the student began receiving Home and Hospital Teaching (HHT) services when he became unable to attend a school-based program due to an emotional crisis.
- Since March 2020, the student has been provided with virtual instruction as a result of the COVID-19 pandemic.
- The student is enrolled at [REDACTED] Elementary School for the 2020-2021 school year, and is scheduled to attend that school once school buildings reopen.

² This is the date that the IEP team determined the student eligible to receive special education and related services under the IDEA.

FINDINGS OF FACTS:

1. At the start of the 2019-2020 school year, the student had a 504 Plan that required the provision of instructional and testing accommodations to assist with refocusing, redirection, and completing lengthy assignments and testing.
2. On September 17, and 24, 2019, it was documented that the student displayed physical aggression towards other students. On September 26, 2019, the student's record indicated that he was disciplinarily removed from school for 1 day for kicking a student in the stomach. On October 11, 2019, the student was disciplinarily removed from school for 3 days for hitting a student resulting in the evacuation of the class. The principal recommended that the complainant take the student for a psychological evaluation at the local hospital because of atypical levels of anxiety, aggression, and statements of self-harm. The complainant took the student to the hospital where he was examined by a doctor and released to return home. The attendance report reflected that the student was absent from school for disciplinary reasons on October 14, 17, and 18, 2019.
3. On October 24, 2019, the school psychologist completed a verification of the student's inability to attend school due to an emotional crisis. The verification cited incidents of non-compliant and dangerous behaviors. Based on this information, the student was approved for 6 hours of HHT services per week.
4. On October 24, 2019, the 504 Team developed a plan to return the student to a school-based program that included consultation with the student's private physician, referral for an IDEA evaluation to consider eligibility for special education, use of a modified partial school day schedule, and the development of a behavioral contract.
5. There is no documentation that the 504 Team made a referral to the IEP team for an IDEA evaluation consistent with the October 24, 2019 determination.
6. On November 4, 2019, the complainant received an electronic mail (email) correspondence from the AACPS Office of HHT informing her that HHT services would begin that evening.
7. On December 4, 2019, the complainant emailed the teacher and requested an IEP team meeting due to her concerns about the student's behavior and academic functioning.
8. On December 19, 2019, the school psychologist provided re-verification of the student's emotional crisis.
9. On December 19, 2019, an IEP team convened and considered information from the HHT service provider that the student was distracted, cried, complained, needed frequent breaks, was defiant, became fixated on unrelated subjects and refused to complete tasks, but was receiving "As" in reading and math because he was only being graded on the

work that he was actually completing, which was minimal or completed by the service providers. There is no data reflecting pragmatic language, assistive technology (AT), fine motor skills, or sensory needs. Based on the data, the IEP team recommended cognitive, academic, social, emotional, behavioral assessments, Autism Spectrum Rating Scales and a Functional Behavior Assessment (FBA) to determine if he meets eligibility criteria for identification of Autism, Other Health Impairment (OHI), and/or an Emotional Disability (ED).

10. On February 4, 2020, the IEP team met to complete the IDEA evaluation. The IEP team considered information from the psychological assessment that the students' cognitive ability is in the "High Average" range, but that "the student experienced difficulty maintaining a level of activity, attention, and self-control that is expected from a student his age." The psychological report also stated that the student presents with some characteristics of Autism Spectrum Disorder, including behavioral rigidity and inappropriate social behaviors. However, because the student does not show evidence of restricted, repetitive, or stereotyped patterns of behavior such as atypical interests, motor movements, or unusual interests and responses to sensory aspects of his environment, he did not meet the criteria for an educational disability of Autism. The IEP team also considered the results of the educational assessment that reported the student's reading, writing, and math performance to be in the "average range." However, there is no documentation that the team considered the results of a FBA.
11. At the February 4, 2020 IEP team meeting, the IEP team found that the student meets the criteria for identification as a student with Multiple Disabilities under the IDEA, including an Other Health Impairment (OHI) and an Emotional Disability (ED) and decided to reconvene on another date to develop the IEP.
12. On February 18 and 25, 2020, the IEP team met and developed the IEP. The IEP team determined the student's present levels, developed goals for areas of weakness in present levels and required special education instruction, accommodations, and supplementary aids and supports to be provided in achieving the goals.
13. The IEP includes a learning/behavioral goal for the student to complete non-preferred tasks of reading and writing within a given period of time, with 4 out of 5 trials, when demonstrating frustration to task and is to be evaluated by the teacher using data sheets. The objectives reflect that the student will initiate non-preferred tasks of reading and writing that he perceives as new, unfamiliar, and too challenging by using coping strategies and with teacher cuing.
14. The IEP also includes a social/emotional goal for the student to use coping skills, with 2 or fewer prompts to increase his compliance with directions and routines in the classroom with 80% success during targeted trials and evaluated by the teacher using an observation record. The objectives reflect the student will identify and demonstrate 5 coping strategies, such as asking for help, taking a break, taking deep breaths, positive self-talk,

and thinking flexibly in counseling sessions and the classroom when given 2 or fewer verbal and nonverbal prompts from the staff.

15. The IEP requires 10 minutes daily in general education reading, math, writing, and social studies/science classes to address the goals/objectives of learning behaviors, totaling 3 hours and 20 minutes weekly.
16. The IEP also requires 1 hour of counseling services per month outside of general education classes to address the goals/objectives for social, emotional, and behavioral skills with the school psychologist for 2 - 30 minute sessions per month. However, there is no documentation that an FBA was conducted and a Behavior Intervention Plan (BIP) developed.
17. The IEP team determined the student is able to spend 80% of the school day inside general education classrooms except when receiving counseling services 1 hour per month within his home school. The IEP team documented the harmful effects of receiving counseling services for 15 minutes per week outside of the general education classroom because the student will receive the services without his general education peers.
18. On February 18, 2020, the school psychologist submitted a recertification of the student's emotional crisis recommending that "the student continues to be in need of Home Teaching services due to an emotional crisis." The psychologist reported that the student was not accessing the full amount of HHT services due to his interfering behaviors. HHT reports indicated the student was not able to access 6 hours of HHT instruction weekly due to the student refusing to complete tasks, crying, needing frequent breaks, and requiring significant prompting.
19. When developing the IEP, the team also considered re-verification of the student's need for HHT services provided by the school psychologist, and information that the student was unable to access the full amount of HHT services due to his interfering behaviors. The IEP team did not change the amount of HHT to be provided to reflect the number of hours the student was able to access. The team developed a plan to gradually return the student back into the school building to begin on March 2, 2020.
20. There is documentation that the school system staff attempted to provide the amount of HHT services required, but that the student was not always able to access instruction due to his interfering behavior.
21. Soon after the student's return to school on March 2, 2020, school buildings closed due to the COVID-19 pandemic and the school system began providing virtual instruction.
22. On August 19, 2020, the IEP team met because of a request from the complainant for the IEP team to review a private speech/language assessment completed through the [REDACTED] and to

consider providing the student with speech/language services. The assessment report summary reflected that the student did not meet the criteria for Autism but met the criteria for a social pragmatic communication disorder. The IEP team recommended additional assessments of the student's pragmatic, receptive and expressive language skills and again recommended a FBA to determine the functions of the student's behavior.

23. At the IEP team meeting held on August 19, 2020, the complainant expressed concerns that the current IEP was not sufficient to meet all of the student's needs, noting that the student had difficulty accessing virtual instruction. The complainant expressed concerns that she was unable to address his work refusal behaviors during virtual instruction and as a result he was not accessing the instruction. The complainant described how she was completing his work that was to be turned in for grades because the student was unable to work independently, often refusing to initiate and complete tasks, requiring her to type all of his written work. However, there is no documentation that the IEP team considered positive behavioral interventions to address the interfering behaviors pending the results of the FBA and consideration of a Behavior Intervention Plan (BIP).
24. At the August 19, 2020 team meeting, the complainant requested consideration of a regional program³ to meet the student's behavioral needs. She requested the student be placed in a program with highly specialized, trained, and experienced staff with integrated behavior therapy. The complainant stated that the student breaks down when writing is required, cries, and makes self-defeating statements, requiring a significant amount of support while on HHT and virtual instruction. The prior written notice reflected that the IEP team rejected the student's placement in a regional program because "based on the current approved IEP, the level of service does not warrant placement in a regional program, as the IEP can be implemented within the student's home school."
25. There is no documentation that the student has Assistive Technology, fine motor skills, or sensory needs.

CONCLUSIONS:

Allegation #1: Child Find

Based on the Findings of Facts #4, #5, #7, #9 - #17, the MSDE finds that there was a delay in referring the student for an IDEA evaluation, which resulted in a delay in identifying him as a student with a disability under the IDEA, in accordance with 34 CFR §§300.8 and .111 and COMAR 13A.05.02.13. Therefore, this office finds that a violation occurred with respect to this allegation.

³ AACPS regional programs provide self-contained, small group instruction with highly structured behavior management for students with unique needs who exhibit behaviors that significantly impact their ability to benefit from instruction (www.AACPS.org).

Allegation #2: Comprehensive Evaluation

In this case, the complainant alleges that the AACPS did not evaluate all of the areas of the suspected disability to meet the student's behavioral, pragmatic language, fine motor, sensory, and AT, needs, and needs arising out of Autism.

Fine Motor, Sensory, and Assistive Technology Needs

Based on the Findings of Facts #9 and #25, the MSDE finds that there is no documentation that the student has fine motor, sensory, or AT needs in accordance with 34 CFR §§300.304 - .311 and .324. Therefore, this office does not find a violation with respect to this aspect of the allegation.

Pragmatic Languages Needs

Based on the Finding of Fact #22, the MSDE finds that there was no data that the student may have pragmatic language needs until August 19, 2020, and the IEP team is taking appropriate steps to determine needs in this area, in accordance with 34 CFR §§300.304 - .311, and .324. Therefore, this office does not find a violation occurred with this aspect of the allegation.

Behavioral Needs

Based on the Findings of Facts #10 and #22, the MSDE finds that the data does not support the allegation that the student has Autism. However, based on the Findings of Facts #16, #18 and #22, the MSDE finds that the student has behavioral needs, and that while the IEP includes goals and services to address those needs, the AACPS did not ensure that a FBA was conducted to ensure that those needs have been addressed, consistent with the decision of the IEP team on December 19, 2019, in accordance with 34 CFR §§300.304 - .311, and .324.

Further, based on the Findings of Facts #22 and #23, the MSDE finds that the IEP team did not consider positive behavioral interventions to address the student's interfering behavior on August 19, 2020, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Allegation #3: Home and Hospital Procedures

In this case, the complainant alleges that AACPS failed to consistently provide HHT, with 3 different teachers, and missed days and hours of instruction. She also alleges that the AACPS did not develop a plan for the student to return to a school-based program.

Based on the Findings of Facts #3, #8, #18, and #19, the MSDE finds that the AACPS offered the required HHT hours, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find a violation with respect to this aspect of the allegation.

Further, based on the Findings of Facts #4, and #19, the MSDE finds that the documentation does not support the allegation that a plan was not developed for the student's return to a school-based program, in accordance with COMAR 13A.03.05. Therefore, this office does not find a violation occurred with this aspect of the allegation.

Allegation #4: Placement

Based on the Findings of Facts #23 and #24, the MSDE finds that the basis for the IEP team's rejection of the complainant's request for a change in educational placement was not consistent with the data, in accordance with 34 CFR §§300.114 -.116 and .324. Therefore, this office finds a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below⁴

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.⁵ Dr. Birenbaum can be reached at (410) 767-7770 nancy.birenbaum@maryland.gov.

Student-Specific

The MSDE requires the AACPS to provide documentation that the IEP team has completed the following:

- a. Reviewed and revised the IEP, as appropriate, consistent with the data based on results of the assessments recommended on August 19, 2020, and revised the IEP consistent with the data;

⁴ The OSEP states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

⁵ The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

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- b. Considered positive behavioral interventions to address the student's work refusal during the provision of virtual instruction;
- c. Determined the educational placement consistent with the data; and
- d. Determined the compensatory services or other remedy to redress the violations identified through this investigation.

School-Based

The MSDE requires the AACPS to provide documentation of the steps taken at [REDACTED] to ensure that the identified violations do not recur.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence.

The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

Sincerely,

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

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