




**Mohammed Choudhury**  
State Superintendent of Schools

July 23, 2021



Ms. Bobbi Pedrick  
Co-Director of Special Education  
Birth to Five; Special Services & Non-Public  
Anne Arundel County Public Schools  
1450 Furnace Avenue  
Glen Burnie, Maryland 21060


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

RE:   
Reference: #21-104

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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 May 24, 2021, the MSDE received a complaint from Mr. , hereafter, “the complainant,” on behalf of his 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 Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The AACPS has not ensured that the student’s Individualized Education Program (IEP) has addressed his identified needs since May 24, 2020, in accordance with 34 CFR §§300.320 and .324.

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2. The AACPS has not ensured that the IEP team has addressed the student lack of access to virtual learning since May 24, 2020, in accordance with §300.324.

### **BACKGROUND:**

The student is five (5) years old, is identified as a student with Autism under the IEDA, and has an IEP that requires the provision of special education instruction and related services.

He attended [REDACTED] until the March 2020 closure of school buildings and initiation of virtual learning due to the COVID-19 pandemic.

### **FINDINGS OF FACTS:**

1. The student's IEP reflects that he has identified needs in the areas of early learning language and literacy, math, and expressive and receptive language. The IEP includes specialized instruction, supports, related services, and annual goals to improve the student's skills in these areas.
2. The student's present level of performance in the area of literacy reflects that he needs to develop his comprehension skills with text, letter/sound correlations, and increase his sight word vocabulary. The student's annual literacy goal states that "in large and small groups, the student will improve reading skills and behavior as a developed reader, in 3 out of 4 trials."
3. The student's present level of performance in the area of math reflects that he needs to be able to count sets of objects to 20 and match sets correctly, as well as identifying ordinal numbers and their positions. The student's annual math goal states that "in large and small groups, the student will improve math skills and behaviors, in 3 out of 4 trials."
4. The student's present level of performance in the area of communication reflects that he needs to continue to use a combination of signs, gestures, and verbal language. The student's annual communication goal states that "during small group activities and given wait time, [student] will use simple phrases/sentences to make requests, describe, reject, comment or answer questions across a variety of tasks with 70% of opportunities in each of 3 consecutive sessions."
5. The student's IEP reflects that the student demonstrates increased success and independence when utilizing accommodations to support his fine, visual, and sensory motor functioning. The IEP includes accommodations such as, increased opportunities and time to practice fine motor activities, manipulatives and/or sensory activities to promote listening and focusing skills, sensory activities, tools, and opportunities, and occupational therapy consultation periodically between the occupational therapist, the student's teachers, and family. The IEP also requires occupational therapy services to address these needs.

6. There is no documentation reflecting that the student was provided with access to instruction, as required by the IEP, from May 24, 2020 to the end of the 2019 - 2020 school year.
7. The student's schedule for the 2020 - 2021 school year reflects that he was to be provided with virtual instruction while the school building remained closed.
8. The progress reported on the student's literacy and math goals, on November 13, 2020, reflects that the student was not making sufficient progress to achieve the goals within a year of being developed. The report states the following:

The student has been non-responsive during virtual learning. His mom sits with him during lessons and is doing hand-over-hand with him and verbally prompting him to respond during lessons. During small group instruction, the student has not responded to questions verbally or non-verbally. Often, the student is observed not looking at the screen and closing his eyes and drawing and writing requires significant assistance from his mom. Based on this, not enough data was collected to report progress at this time.
9. The progress reported on the student's literacy and math goals, on January 29, 2021, reflects that the student was not making sufficient progress to achieve the goals within a year of being developed. The report states that the "[student] has improved slightly with his participation during virtual learning this marking period, however, not enough to report progress."
10. There is no documentation indicating that the IEP team convened to address the student's lack of progress on his annual literacy and math IEP goals as reported in November 2020 and January 2021.
11. The progress reported on the student's communication goal on November 13, 2020 and February 9, 2021, states that the student was making sufficient progress to achieve the goal within a year of being developed.
12. On March 1, 2021, the student returned to in-person learning two (2) days each week and continued to be provided with virtual learning two (2) days each week.
13. On March 29, 2021, an IEP meeting was held to review data and to develop a reevaluation plan for the student. The complainant raised concern about the student's lack of access and progress during virtual instruction. While the team recommended updated assessments, the team did not consider positive behavior interventions and supports to be provided at that time.

14. The progress reported on the student's literacy, math, and communication goals, dated April 14, 2021, reflects that, while the team had not addressed the student's interfering behaviors, the student was, by that time, making sufficient progress to achieve the goals within one year.
15. On May 3, 2021, the IEP team convened for an annual review of the student's IEP. The team reviewed the student's progress reports, data sheets, classroom teacher report, informal assessments, work samples, and an independent evaluation of the student provided by the complainant, and determined that the student continued to be a student with a disability of Autism under the IDEA. The IEP team revised the IEP to include additional supports and services, and revised and developed new annual goals to address the student's identified needs in the areas of expressive and receptive language, reading, math, written expression, learning behaviors, fine, visual and sensor motor skills.
16. The progress reported on the student's annual goals, dated June 18, 2021, reflect that the student continues to make sufficient progress to achieve all IEP goals within one year of being developed.

### **CONCLUSIONS:**

#### **Allegation #1: An IEP that Addresses the Student's Identified Needs**

Based on the Findings of Facts #1 - #5, the MSDE finds that the AACPS ensured that the student's IEP addressed his identified needs since May 24, 2020, in accordance with 34 CFR §§300.320 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

#### **Allegation #2: Addressing the Student's Lack of Access to Virtual Instruction**

Based on the Findings of Facts #6 - #16, the MSDE finds that the AACPS did not ensure that the IEP team addressed the student's lack of expected progress towards achieving the IEP goals due to a lack of access to virtual learning, from May 24, 2020 to April 14, 2021, in accordance with §300.324. Therefore, this office finds that a violation occurred with respect to the allegation during this time period.

### **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 below.

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The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party 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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770 or by email at nancy.birenbaum@maryland.gov.

### **Student-Specific**

The MSDE requires the AACPS to provide documentation that the IEP team has determined the amount and nature of compensatory services to redress the violation identified in this Letter of Findings.

The MSDE also requires the AACPS to provide documentation that the IEP team has considered positive behavioral interventions and supports to assist the student with accessing virtual learning should it continue to be required for the student during the 2021 - 2022 school year.

### **School-Based**

The MSDE requires the AACPS to provide documentation of the steps taken to ensure that the violation does not recur at ██████████

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.

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency 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.

<sup>2</sup> The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF:ac

c: George Arlotto  
Alison Barmat  
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Dori Wilson  
Anita Mandis  
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