




September 28, 2021



Ms. Bobbi Pedrick  
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Ms. Diane McGowan  
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RE:   
Reference: #22-010

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 4, 2021, the MSDE received a State complaint from Mr.  hereafter, “the complainant,” on behalf of his daughter, the above-referenced student. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The AACPS has not ensured that the Individualized Education Program (IEP) for the student has addressed her identified social emotional/behavioral needs since September 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324.

2. The AACPS has not ensured the provision of reports of the student's progress toward achieving the annual IEP goals since September 2020, in accordance with 34 CFR §300.320.
3. The AACPS did not ensure that the team reviewed and revised, as appropriate, the student's IEP to address lack of expected progress toward achieving the IEP goals during the 2020-2021 school year, in accordance with 34 CFR §§300.101 and 324.

**BACKGROUND:**

The student is twelve (12) years old, attends the [REDACTED] and is identified as a student with an Emotional Disability, under the IDEA. She has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. The IEP in effect in September 2020 was developed on April 29, 2020. The IEP identified social emotional/behavioral needs related to the student's Emotional Disability. The student's social emotional/behavioral needs resulted in a lack of work completion and the presentation of interfering behaviors, including suicidal ideation, self-harm, low frustration tolerance, work avoidance and defiance. The IEP team determined that the student's interfering behaviors impacted her ability to access the general education curriculum without support.
2. The IEP included goals and objectives consistent with the needs identified in the present levels of performance in the area of social emotional/behavior and learning behaviors. The IEP included an annual goal that states, "Across school settings, [the student] will use learned coping strategies to manage feelings of anxiety/depression in order to remain in the classroom and participate in learning activities." The IEP also included an annual goal that states, "Given a minimum of two teacher prompts, [the student] will refrain from physical and verbal aggressive behaviors and follow adult directions."
3. The IEP required the provision of special education instruction and counseling services provided by the school psychologist, to assist the student in achieving the annual IEP goals. Further, the IEP required the provision of accommodations and supports, such as the use of daily positive reinforcers, a weekly home-school communication system, a daily "check-in/check-out" to review behavior and work completion, and consultation between the school psychologist and the student's teachers.
4. The IEP in effect at the start of the investigation also included a Behavior Intervention Plan (BIP). The BIP addressed interfering behaviors, including failure to follow staff directives and exhibiting verbally aggressive behaviors, in order to avoid a non-preferred activity and/or to gain attention. The BIP indicated that replacement behaviors should include utilizing learned coping strategies and using in-class supports. In order to prevent the interfering behaviors, the student was to be provided with the following supports:

- positive reinforcement;
  - preferential seating;
  - choice for academic engagement and expression, order of assignments;
  - modify assignments;
  - break down assignments into smaller chunks;
  - frequent opportunities for movement during instruction;
  - opportunities for breaks following completion of assignments;
  - frequent reminders of rules and routines;
  - checklist for work completion;
  - visual cues for nonverbal reminders of expected behaviors; and,
  - encouragement to use self-regulation strategies.
5. The reports of the student's progress towards achieving the annual IEP goals, dated November 13, 2020, reflect that the student was not making sufficient progress in the areas of social emotional regulation, math problem solving and learning behaviors. The student participated in only two (2) out of eight (8) virtual sessions related to her social emotional goals, and did not engage with the service provider during the two sessions for which she was present. The report indicates that the student did not participate in virtual instruction in math and only completed one (1) assignment, therefore, there was insufficient data to determine progress.
  6. The electronic mail (email), dated November 24, 2020, from school staff to the complainant reflects that the reports of the student's progress towards achieving the annual IEP goals for the first quarter of the school year 2020-2021 were provided to the complainant.
  7. On December 23, 2020, the IEP team convened to review the student's IEP due to lack of progress towards achieving her annual IEP goals. The written report of the IEP team meeting reflects that the complainant expressed concerns regarding the student's mental health. He explained that he had sought the support of several organizations outside of the school system and investigated residential treatment facilities to assist with the student's worsening mental health issues. The report states that the student would not participate in virtual learning and would threaten self-harm if the complainant attempted to persuade her to do so.
  8. Based on the parent's report and school team reports regarding the student's social emotional/behavioral needs, the IEP team decided to increase the student's counseling sessions from three (3) times per month to four (4) times per month.
  9. On January 19, 2021, the IEP team convened to conduct the annual IEP review. The team considered information that the student continued to struggle with virtual learning due to ongoing mental health issues related to her disability.

10. The IEP team updated the student's present levels of performance to reflect that, despite attempts by the special educator and school counselor to meet with the student, her "emotional state and crisis prevent her from engaging virtually." The IEP team determined that the student's BIP and IEP goals and objectives remained appropriate and would continue when the student was "available for learning."
11. The reports of the student's progress towards achieving the annual IEP goals dated January 29, 2021, in the areas of math, social emotional/behavior and learning behaviors reflect that the student was not making sufficient progress in those areas due to non-participation in virtual learning as a result of a mental health crisis.
12. The email from school staff to the complainant, dated February 9, 2021, reflects that the second quarter IEP progress report was provided to the complainant.
13. On March 19, 2021, the IEP team convened to determine the appropriate services and placement for the student, as a result of the lack of progress towards achieving the annual IEP goals. The team considered information provided by the parent and the school team that the student continued to be in crisis and was not available for learning. At that meeting, the IEP team determined that, due to the student's, "current emotional crisis" she met the criteria for Home Hospital Teaching (HHT) and the IEP was revised to reflect that decision.
14. On May 25, 2021, the IEP team convened to review the student's IEP due to lack of expected progress towards achieving the annual IEP goals. The IEP team considered information from the student's father that the student's mental health has continued to decline and that she was refusing HHT and psychological counseling from the school psychologist. The Prior Written Notice (PWN) reflects that the complainant was in communication with the Department of Social Services (DSS) and in the process of seeking private residential treatment for the student.
15. The complainant reports that the student was hospitalized at a mental health facility from May 31, 2021 to June 10, 2021.
16. There is no documentation that the reports of the student's progress towards achieving the annual IEP goals was provided to the complainant for the third or fourth quarter of the 2020-2021 school year.

**CONCLUSIONS:**

**ALLEGATION #1:**

**SOCIAL/EMOTIONAL BEHAVIORAL NEEDS  
ADDRESSED BY THE IEP**

Based on Findings of Facts #1 - #4, #7 - #10, and #13 - #14, the MSDE finds that the AACPS did ensure that the IEP for the student has addressed her identified social emotional/behavioral

needs since September 2020, in accordance with 34 CFR §§300.101, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ALLEGATION #2: PROVISION OF STUDENT PROGRESS REPORTS TOWARDS ANNUAL GOALS**

Based on Findings of Facts #6 and #16, the MSDE finds that, while the AACPS ensured that the reports of the student's progress towards achieving the annual goals were provided to the complainant during the first and second quarters of school year 2020-2021, the AACPS did not ensure that the reports of the student's progress toward achieving the annual IEP goals were provided to the complainant during the third and fourth quarters of school year 2020-2021, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred with respect to this allegation and those time periods.

Notwithstanding the violation, based on Findings of Facts #13 - #14, the MSDE finds that, while the student's parent was not provided with reports of the student's progress towards achieving the IEP goals for the third and fourth quarters of school year 2020-2021, the student's parent participated in IEP team meetings during those time periods, at which the student's progress was discussed. Therefore, no further student-specific corrective action is necessary.

**ALLEGATION #3: REVIEW AND REVISION OF THE IEP FOR LACK OF PROGRESS**

Based on Findings of Facts #5, #7, #11, and #13 - #14, the MSDE finds that the IEP team met in December 2020, March 2021 and May 2021 to review and revise the student's IEP to address the lack of expected progress toward achieving the annual IEP goals, in accordance with 34 CFR §§300.101 and 324. Therefore, this office does not find that 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 below.<sup>1</sup>

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

Ms. Bobbi Pedrick  
Ms. Diane McGowan  
September 28, 2021  
Page 6

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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770 or by email at nancy.birenbaum@maryland.gov.

### **School-Based**

The MSDE requires the AACPS to provide documentation of the steps taken at the [REDACTED] to ensure the provision of progress reports, as required by the IEP.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The school system and the complainant maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a 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:dee

c: George Arlotto                      Brian Morrison  
Alison Barmat                         Diane Eisenstadt  
[REDACTED]                             Nancy Birenbaum

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