




Mohammed Choudhury
State Superintendent of Schools

July 10, 2023




Diane McGowan
Co-Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: 
Reference: #23-222

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 March 30, 2023, MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The AACPS did not follow proper procedures when disciplinarily removing the pre- kindergarten student during the 2022- 2023 school year, in accordance with COMAR 13A.08.01.11C(1)(b).
2. The AACPS has not developed an Individualized Education Program (IEP) that addressed the student’s behavioral needs and addressed the parent’s concerns during the 2022- 2023 school year, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is five years old and is identified as a student with a Developmental Delay under IDEA. He attends  School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP, in effect at the start of the 2022-2023 school year, during which time the student was in prekindergarten, was developed on September 28, 2022. The IEP reflects identified needs in the area of learning behaviors and requires that he receive specialized instruction for one hour daily in the pre-k classroom inside the general education classroom. The IEP includes goals to address his behavioral needs, as well as supplemental aids, including adult support.
2. The student requires social skills instruction to directly teach appropriate social interactions that include visuals for behavioral expectations, structured play sessions with peers with social stories, and modeling of appropriate social interactions. He requires support to address his behavior and participation that includes clear concise classroom rules, direct teaching of calm down strategies, positive and concrete reinforcers, use of a first/then chart, proactive access to calming activities, movement breaks (as needed). The student requires adult support to monitor elopement from the classroom, school building, and playground area to keep him safe at school.
3. During the 2022-2023 school year, the student received discipline referrals on the following dates:
 - December 15, 2022, for "Unsafe Behaviors";
 - December 16, 2022, for "Attack Verbal Threats" and "Attack of a student";
 - December 19, 2022, for "Attack Verbal Threats" and "Confiscation of items";
 - January 27, 202,3 for "Unsafe Actions";
 - February 24, 2023, for "Attack on Student";
 - March 8, 2023, for "Attack on Staff";
 - March 9, 2023, for "Attack on Student";
 - March 10, 2023, for "Unsafe Actions";
 - March 13, 2023, "Unsafe Actions";
 - March 15, 2023, "Unsafe Actions";
 - March 22, 202, for "Attack on teacher/staff";
 - March 27, 2023, "Inappropriate language";
 - March 29, 2023, "Verbal Threat to Staff";
 - April 24, 2023, "Unsafe Actions" and "Attack on Staff";
 - May 9, 2023, "Attack on Staff"; and
 - May 10, 2023, "Attack on Staff".
4. On September 10, 2022, the student's teacher contacted the parent regarding the student's behavior and sought advice from the parent on strategies to assist with the student's behavior. The parent informed the teacher that the information she was requesting is "in the student's IEP". The parent also expressed concern that she has "constantly reached out for support with her son in previous years but has not received it."
5. On September 28, 2022, the IEP team met to review and revise the student's IEP, as appropriate. The school team reviewed the strengths and needs summary of the student and developed present levels of performance in the areas of behavior and learning behaviors, as indicated in the IEP. Supplementary aids and services were revised and added to reinforce positive behaviors. Goals and objectives in behavior and learning behaviors were revised to reflect the student's current needs. During the meeting, the parent shared that she wanted the student to "learn tools to better express his big emotions instead of temper tantrums or yelling/cursing and would like the student to have positive experiences in school instead of being "in trouble" so much."

6. On December 19, 2022, the student made threats to “harm others in school.” The student’s behavior log reflects that he received multiple referrals, as well as the completion of a “Threat Determination Student Interview” in response to the threats.
7. On January 6, 2023, the parent was notified by the school counselor that the student made “self-harming remarks,” and provided the parent with resources to help support the situation. The school counselor completed a “Suicide Attempt and Gesture Report Form” for the student, and the student was picked up from school early that day.
8. On January 24, 2023, the parent received an email from the classroom teacher regarding the student’s behavior and lack of compliance with adult direction, even with the assistance of adult support. The teacher shared the strategies used in the class including student choice of where to sit, implementation of a point sheet with positive behavior incentives, and the use of fidgets.
9. On February 9, 2023, the teacher emailed the parent about the student’s unsafe behaviors.
10. On February 13, 2023, the school counselor contacted the parent via email and sought permission to speak with the student’s outside counselor so they could collaborate with each other on the student’s behavior. The school counselor also provided the parent with a new strategy and proposed goal tailored to the student having a “safe body,” as well as having the student receive more frequent “check- ins” and documenting his success with an incentive using a chart every time a goal is met to help track his behavior. The parent requested additional support from the school counselor to help the student deal with all of his “big emotions.”
11. There is documentation of the school counselor and the special education teacher communicating about the student’s behavior and developing additional strategies to help support the student. There is further documentation that the school-based staff consulted with the student’s private mental health provider to discuss effective behavior management techniques for the student. There is not, however, documentation that the IEP team met to consider these strategies.
12. On February 24, 2023, the parent was informed via telephone that the student was aggressive towards another student. The school team recommended to the parent that a functional behavioral assessment (FBA) be conducted and a behavior intervention plan (BIP) be developed for the student. The parent agreed to move forward with the process.
13. On March 8, 2023, the parent informed the school that the student has been diagnosed with ADHD, ODD, and is awaiting the outside evaluation report. The school requested that the parent submit the evaluation to the school when completed.
14. On March 9, 2023, and March 15, 2023, the school counselor completed a “Suicide Attempt and Gesture Report Forms” for the student based on statements made by the student.
15. On March 10, 2023, the Principal completed a “Threat Determination Student Interview” with the student based on a statement made by the student.
16. On March 16, 2023, the IEP team met to review and revise the IEP, as appropriate, discuss the student’s behaviors, including the need for an FBA, extended school year (ESY) services, the

student's reevaluation plan, and to initiate consent to assess the student in the area of behavior. During the meeting, the IEP team discussed the requirements to attend ESY. The team stated the student did not qualify for ESY due to the nature and severity of the student's disability does not warrant ESY. The parent disagreed as the student behavior had declined over the break and he had regressed in his behaviors. The team agreed that the student required an FBA due to interfering behaviors with aggression and unsafe actions. The IEP team agreed to reconvene to allow for the participation of an occupational therapist (OT) and school psychologist.

17. There is documentation that the school staff completed a "Behavior Inventory Sheet" on March 21, 2023, from the student's outside therapist.
18. On March 27, 2023, and March 29, 2023, the Principal completed a "Threat Determination Student Interview" for the student based on a statement he made.
19. On March 29, 2023, the IEP team reconvened to review existing data and develop a reevaluation plan. The team discussed the student's "tardiness" and believed it would be beneficial for the student to start school on time with the routine of the class to help him manage his day. The school team proposed the FBA that would target aggression, non-compliance, and elopement. The team also determined the OT would conduct classroom observation to help determine if there were any sensory concerns.
20. On March 30, 2023, and March 31, 2023, the school psychologist completed a "Suicide Attempt and Gesture Report Form" for the student based on statements he made.
21. The reports on the student's progress in "behaviors" and "learning behaviors" contain data to support the conclusion that the student was making sufficient progress toward achievement of the goals in these areas, during the first and second quarters of the 2022-2023 school year; however, third quarter progress reports dated March 31, 2023, reflect that the student was not making sufficient progress toward achievement of the goals in these areas.
22. On April 19, 2023, the school psychologist completed a "Suicide Attempt and Gesture Report Form" for the student based on statements he made.
23. On April 24, 2023, the school psychologist completed a "Suicide Attempt and Gesture Report Form" for the student based on statements he made.
24. On May 3, 2023, the school team contacted the parent for a meeting to discuss strategies to support the student's behaviors.
25. On May 3, 2023, the student made self-harm remarks and was removed from the classroom by the counselor, psychologist, and an assistant to support him. The school psychologist completed a "Suicide Attempt and Gesture Report Form" for the student and called the parent for a meeting to discuss strategies to support the student's behavior.
26. On May 10, 2023, the student was suspended for one day following an "attack on staff." and "taking school property." The complainant was provided with the suspension letter along with written notice of the incidents through the "Pre-K to 2 Consultation Form". The report described the incident that occurred, including the principal engaging mental health professionals to determine if the student's

behaviors presented an imminent threat of serious harm to himself, staff, or other students that could not be mitigated through other means other than suspension. During the incident, the school team used multiple strategies to help calm the student such as Positive Behavior Intervention Supports, support from the school-based support team, and Crisis Prevention and Intervention by certified staff. The student also made remarks during the incident that required the school psychologist to also complete a "Suicide Attempt and Gesture Report Form".

27. On May 15, 2023, the parent informed the school team that the student was diagnosed with ADHD from his doctor at Kennedy Krieger Institute (KKI). The school team encouraged the parent to share the report with the school so that they could "work together to create a productive learning environment for the student." The school team also provided a release form for the school staff to speak with the student's doctor.
28. On May 22, 2023, the parents provided the school team with students "Diagnosis Letter from the doctor," along with recommended accommodations to help the student in the school environment.
29. On May 22, 2023, the student received a minor incident report for urinating in public.
30. There is documentation that the school staff completed an FBA for the student on May 24, 2023, due to his demonstration of behavior challenges that included physical aggression- throwing objects, kicking, hitting, and pushing; verbal aggression- cursing, threats; escape; and attention.
31. On June 7, 2023, the IEP team met to review and revise the IEP as appropriate, review the FBA and create a draft for the BIP, as well as review the transition to kindergarten. The results of the FBA were discussed, and the school team reviewed and revised the BIP. The BIP addressed behaviors exhibited in the classroom setting including physical aggression, verbal aggression, and noncompliance during transition times in the afternoon after recess or cultural arts.
32. During the meeting, the team updated the IEP to reflect the student's identified needs in the area of learning behaviors, behaviors and recommended that he receive 5 hours of specialized instruction per week inside the general education classroom and counseling services for 45 minutes a month outside of the general education setting. The IEP developed a behavior goal focused on a "reduction in aggressive physical and verbal behaviors" and initiating, attending to, and/or completing non-preferred activities, and remaining in the designated area." The IEP team also added adult support daily as a part of his social and behavioral supports.

DISCUSSION/CONCLUSIONS:

Allegation #1: Disciplinary Removal of the Student

With few exceptions, Maryland law prohibits the suspension or expulsion of a child enrolled in a public prekindergarten program or in kindergarten, first or second grade without first consulting with a school psychologist or other mental health professional, to determine that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports (COMAR 13A.08.01.11).

Based on the Finding of Facts #1 and #26, MSDE finds that the AACPS followed proper procedures when disciplinarily removing the pre-kindergarten student during the 2022- 2023 school year in accordance with COMAR 13A.08.01.11C(1)(b). Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #2: Identifying and Addressing the Student’s Needs

Based on the Finding of Facts #1 to #32 MSDE finds that although the student’s school staff were communicative with the student’s parents regarding the student’s behaviors and developed informal strategies to assist him, the AACPS did not ensure that the IEP team met to identify and address the student’s interfering behaviors during the 2022-2023 school year in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the 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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with 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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

MSDE requires the AACPS to provide documentation by September 30, 2023, that the IEP team has convened and determined whether the violation related to the delay in conducting an FBA, implementing the resulting BIP, and updating the IEP to reflect the supports needed had a negative impact on the student’s ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The AACPS must ensure that the parent is provided with written notice of the team’s decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team’s decisions.

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

² MSDE will notify the public agency’s Director of Special Education of any corrective action that has not been completed within the established timeframe.

[REDACTED]
Ms. Sonya McElroy

July 10, 2023

Page 7

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 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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DC/sj

c: Mark T. Bedell
Sonya McElroy
Diane McGowan
Jennifer Brown
[REDACTED]
Gerald Loiacono
Paige Bradford
Nicol Elliott
Diane Eisenstadt
Stephanie James