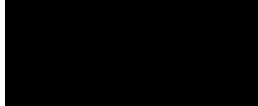




July 20, 2023



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

RE: [REDACTED]  
Reference: #23-245

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 25, 2023, MSDE received a complaint from Mr. [REDACTED] hereafter, “the complainant,” on behalf of his 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 ensure that the student’s Individualized Education Program (IEP) includes present levels of academic achievement and functional performance that properly identify and address all of the needs that arise from his disability, including the impact of the student’s behaviors, during the 2022-2023 school year, in accordance with 34 CFR §300.320.
2. The AACPS has not ensured that the student has been provided with accommodations and “weekly communication” between the school and the parent, as required by the IEP during the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323.
3. The AACPS did not provide the parent with a copy of the completed IEP document within five business days after the IEP team meeting on May 25, 2023, in accordance with COMAR 13A.05.01.07.
4. The AACPS did not provide prior written notice of the IEP team decisions from the IEP team meetings on May 25, 2023, in accordance with 34 CFR §300.503.

**BACKGROUND:**

The student is 14 years old and is identified as a student with Emotional Disabilities under the IDEA. He attends [REDACTED] School. He has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. The IEP in effect during the start of the 2022- 2023 school year, was developed on October 2, 2021. It requires support in the areas of Reading Comprehension, Written Expression, Math Problem Solving, and Social/Emotional. The student required two hours and forty- five minutes of specialized instruction a week inside of the general education classroom and one hour a month of counseling services to assist with emotional regulation skills in a one to one setting or small group. The student required one hour of math services per week inside the co-taught math classroom; one and half hours per week to address his reading and writing goals inside the co-taught language arts classroom; 15 minutes of services per week inside of the co-taught science classroom to address reading and writing goals; and 15 minutes of services per week inside of the co-taught social studies classroom to address reading and writing goals.
2. The student's IEP, developed on October 2, 2021, reflects that the student's emotional disability affects his overall involvement in the general education curriculum because it impacts his overall availability for learning across the school day. The student gets "stuck" when frustrated, which affects his ability to take in new information and problem solve. When the student views an assignment as difficult, he "shuts down" and makes negative comments that "everything is too hard for him" or that he "does not understand anything". His disability impacts his engagement in learning and his self-perceptions make it difficult for him to complete tasks in reading, math, and writing.
3. The IEP requires that the student be provided the following accommodations: allow use of manipulatives, check for understanding, provide assistance with organization, frequent and/or immediate feedback, allow use of anchor charts, home-school communication system, encourage student to ask for assistance when needed, encourage/reinforce appropriate behavior in academic and non- academic settings.
4. The present levels of performance in the area of Social/Emotional reflects the student's social/emotional functioning is "below same age peers" due to difficulties with emotional regulation which can lead to classwork avoidance. His areas of weakness were related to communication, academic and social skills, task initiation, and task completion. The student benefits from school-based counseling services and supplementary aides to reduce frustration.
5. There is no documentation that the IEP team convened to complete an annual review of the student's IEP prior to October 2, 2022.
6. During the 2022-2023 school year, the student was suspended on the following dates:
  - One day on October 20, 2022, for "Inappropriate language";
  - One day on November 11, 2022, for "Unsafe Actions"; and
  - Two days on May 4, 2023, for "Inciting School Disturbance."
7. During the 2022-2023 school year, the student received In-School Intervention during which he was removed from the classroom environment on the following dates:

- One day on December 1, 2022, for “not reporting to class and hiding in the staff bathroom;
  - One day on January 5, 2023, for “grabbing a student’s shirt”;
  - One day on February 14, 2023, for “touching another student inappropriately and using inappropriate language.”
8. The reports of the student’s progress for the first and second quarter of the 2022-2023 school year reflect that the student was not making sufficient progress to meet his annual IEP goals in the area of math, reading comprehension, written expression, and social emotional/behavioral.
  9. It is noted in the progress report for the first quarter, an IEP meeting will be scheduled to discuss the students “lack of progress” in all areas; however, there is no documentation of an IEP meeting being held.
  10. The first quarter progress report reflects “within the educational environment teachers report the student has on task behavior 25% of the time in the classroom setting, impulse control is low, he is having difficulty focusing on tasks for more than 5 minutes, has a high need for movement and redirection causes conflict with teachers in 3 out of 5 instances and the student would benefit from counseling in areas of focus/attention, attendance, and coursework/instruction participation in counseling sessions as well as coping with frustration.”
  11. The progress report furthermore reflects the student’s “attendance in class was inconsistent, and therefore, it was difficult for his classroom teachers to evaluate his progress related to this goal and objectives.” The student demonstrated interfering behaviors (noncompliance, aggression, defiance, refusal of support, lack of time in class as a result of skipping, being suspended, or severely late to class). When in class, the student was provided with “differentiated assignments with embedded scaffolding (such as picture supports, sentence starters, and fewer choices), verbal prompts, and grade-level texts have been read to him.” Additional interventions used were phone calls home, meetings, and one-on-one assistance.
  12. On February 7, 2023, the IEP team met to complete an annual review of the student’s IEP. The IEP team used formal and informal assessments, work samples, teacher observations, and parent input to revise present levels of performance in the areas of reading comprehension, written expression, math problem solving, social/emotional, and secondary transition. Members of the school team shared that the student participates in a small group and, at times, is not receptive to help given to him. The student “runs the halls” and does not “access the extra supports that are in place to support him.” The IEP team determined that the student continues to require the same hours and levels of support from his previous IEP. The IEP team determined that an updated Functional Behavior Assessment (FBA) would assist in improving non-compliance in the academic setting, including refusing to follow adult directives, leaving class without permission, refusing to complete academic tasks, and refusing to put phone away. The IEP team did not consider the use of additional/revised supplementary aids and supports to assist the student.
  13. The present levels of performance in the area of Social/Emotional reflects the students social/emotional functioning is “below grade level” and emotional regulation remains his primary area of need in this area. The student benefits from school-based counseling services and supplementary aides to include frequent feedback, chunking assignments to reduce frustration and a home-school communication/reinforcement system. The student uses learned emotional regulation strategies to manage his frustration level and return to task on average 25% of the time. It was noted the student has difficulties with remaining in his seat and ignoring peer distractions. He has difficulty following teacher and support staff redirection when class

avoidance occurs, especially when he is in the school hallway setting. The student leaves class or does not go to the assigned classroom often. He displays instances of oppositional behavior when redirected or reprimanded by authority figures, particularly administrators (e.g., being asked to go to class when he feels unwilling to attend, being asked to comply with unwanted tasks or course work). In these moments, he is non-compliant.

14. The updated IEP continues to reflect that the student's emotional disability affects his overall involvement in the general education curriculum because it impacts his overall availability for learning across the school day. The student can get "stuck" when he is frustrated which affects his ability to take in new information and problem solve.
15. The annual goals included in the IEP developed for the student on February 7, 2023, are identical to the annual goals on the student's previous IEP, with the exception of the criteria required for the student to master the goals. The IEP does not contain goals related to each of the areas of need identified by the IEP team. The IEP team did not provide a rationale for the decision to repeat the student's annual IEP goals.
16. On March 8, 2023, the IEP team met to review the results of the FBA and review and revise the student's Behavior Intervention Plan (BIP). The IEP team noted that "working with a productive peer" is helpful for the student to stay on task, that the student benefits from consistency, that oppositional thinking has decreased while mood and behavior have improved for the student. It was further noted that the primary function of the student's behavior, according to the FBA, is to escape academic and non-academic tasks, access to specific activities/items and to obtain attention from staff and peers.
17. On May 25, 2023, the IEP team met to review and revise the IEP, as appropriate, and address the parent's concerns. The school team agreed to add "clarification for this support on the importance of identifying and using high value rewards for the student" as a supplementary aid.
18. There is some documentation of the school staff communicating with the student's parents regarding the student's behaviors and failing grades throughout the school year; however, there is no documentation of the staff consistently participating in the "Home-school communication system" weekly as required by the IEP.
19. There is no documentation that the parent was provided with a copy of the completed IEP document within five business days after the IEP team meeting on May 25, 2023.
20. There is no documentation that the parent was provided with a prior written notice of the IEP team decisions from the IEP team meetings on May 25, 2023.
21. The reports of the student's progress dated June 3, 2023, reflect that the student was not making sufficient progress to meet his goals in the area of math, reading comprehension, written expression, and social emotional. Comments from the school staff indicate that the student displays "oppositional behaviors daily consistently in each course period". The student continues to struggle with being reprimanded or gets into power struggle scenarios with adults daily. The student is able to utilize "punch card behavior incentive plans and basketball time as incentives" to engage in courses he dislikes with support from the counselor but even with this support the student often skips class when he feels disengaged (i.e. it is too difficult or there is a teacher conflict). The student engaged in counseling sessions to de-escalate using timed breaks often. The student engaged in thought stopping techniques in counseling and responded well to interventions from

supports that offer calm tone, this/those responses and limited verbal engagement. The student sufficiently uses learned emotional regulation strategies (e.g., counting, taking deep breaths, positive self-talk, Stop/Think/Choose) to manage frustration and actively engage in daily instruction 25% of the time per teacher reports and clinical observations.

## **Conclusions**

### **ALLEGATION #1: IEP THAT CONTAINS APPROPRIATE PRESENT LEVELS**

Based on the Findings of Facts #1 to #4 and #12- #14, the MCPS finds the AACPS did ensure that the student's IEP includes present levels of academic achievement and functional performance that properly identify and address all of the needs that arise from his disability, including the impact of the student's behaviors, during the 2022-2023 school year, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation did not occur with respect to the allegation.

### **ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

#### **COMPLETING AN ANNUAL REVIEW OF THE STUDENT'S IEP**

In order to provide a student with a Free Appropriate Public Education (FAPE), a public agency must ensure that the IEP team reviews and revises, as appropriate, at least annually to determine whether the annual goals are being achieved (34 CFR §300.324).

Based on the Findings of Facts #5, MSDE finds that the IEP team did not convene to update the IEP prior to the projected annual review date of October 2, 2022. Therefore, this office finds that a violation occurred.

#### **ADDRESSING THE LACK OF EXPECTED PROGRESS**

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

Based on the Findings of Facts #8 to #11, and #23 MSDE finds the AACPS did not ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achieving the IEP goals during the 2022- 2023 school year, in accordance with 34 CFR §300.324.

### **ALLEGATION #2: PROVISION OF ACCOMMODATIONS**

Based on the Findings of Facts #3, #12, #19, MSDE finds the AACPS has not ensured that the student has been provided with accommodations and "weekly communication" between the school and the parent, as required by the IEP during the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATION #3: PROVISION OF COMPLETED IEP**

Based on the Findings of Facts #20, MSDE finds the AACPS did not provide the parent with a copy of the completed IEP document within five business days after the IEP team meeting on May 25, 2023, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATION #4: PROVISION OF PRIOR WRITTEN NOTICE OF THE IEP TEAMS DECISION**

The AACPS must ensure the provision of a prior written notice each time the school proposes to take (or refuses to take) certain actions with respect to a child with a disability (34 CFR 300.503).

Based on the Findings of Facts #21, MSDE finds the AACPS did not provide prior written notice of the IEP team decisions from the IEP team meetings on May 25, 2023, in accordance with 34 CFR §300.503. 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.<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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

**Student-Specific**

MSDE requires the AACPS to provide documentation by September 31,2023, that it has taken the following actions:

- a. That the IEP team has met to complete a review of the student's IEP. This review must include a discussion of the appropriateness of the student's goals, failing to implement supplementary aids and services, his progress towards existing goals and the appropriateness of the supplementary aids, supports and accommodations, the student's services and placement. The IEP team must consider the student's lack of progress over the past two years, the fact that the team failed to complete an annual review during the 2021-2022 school year, the fact that the student's progress on his goals has remained at 25% for two years

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<sup>1</sup> 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, 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> MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

in determining the appropriateness of his goals, services, and placement. The IEP team must also determine the compensatory services or other remedy necessary to address the violations of not completing a timely annual review, not convening when the student failed to make progress, and continuing goals and services that did not address the student's needs as the student failed to make progress, without explanation or prior written notice to the parent. The AACPS must develop a plan for the implementation of the services within one (1) year of the date of this Letter of Findings. The AACPS must ensure that the parents are 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.

- b. That it has provided the parent with the completed IEP and prior written notice from the IEP meeting held on May 25, 2023.

### **School-Based**

MSDE requires AACPS to provide [REDACTED] School staff with professional development including, but not limited to, the need to complete timely annual reviews, convene IEP team meetings when a student is not making progress, implementing supplementary aids and services as written, addressing IEP team decisions through providing parents with prior written notice. MSDE further requires AACPS to conduct monitoring activities at [REDACTED] School and provide quarterly reporting by November 31, 2023, January 31, 2024, March 30, 2024, and June 15, 2024, that includes the following:

- a. Each reporting must include 20 randomly selected students reflecting the date of the last annual review and the current annual review IEP team meetings;
- b. Documentation of the implementation of all the supplementary aids and services on the 20 randomly selected students IEPs;
- c. A review of the 20 randomly selected student's progress and documentation of IEP team meetings convened if the students are not making progress; and
- d. Documentation that prior written notice has been provided to the parents that documents the decisions of the IEP team following the meetings.

Substantial compliance with each of the requirements is required.

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,

[REDACTED]  
Ms. Diane McGowan

July 20, 2023

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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  
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Jennifer Brown  
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Deann M. Collins  
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