



October 16, 2023

REVISED NOVEMBER 15, 2023

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Non-attorney Education Advocate  
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Ms. Diane McGowan  
Co-Director Special Education  
Anne Arundel County Public Schools  
2644 Riva Road  
Annapolis, Maryland 21401

RE: [REDACTED]  
Reference: #24-023

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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, 2023, the MSDE received a complaint from Ms. Beth Ann Hancock, hereafter, “the complainant,” on behalf of 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.

MSDE investigated the following allegations:

1. AACPS has not provided access to documents in the education record in response to a request made by the complainant during the 2022-2023 school year, in accordance with 34 CFR §300.613.
2. AACPS did not follow proper procedures when disciplinarily removing the student since August 2022, in accordance with 34 CFR §§300.530 – 300.536, COMAR 13A.08.03 and the Maryland Student Records System Manual.
3. ACCPS did not provide Prior Written Notice of the IEP team's decisions from the IEP team meetings held on May 1, 2023, in accordance with 34 CFR §300.503.
4. AACPS has not ensured that the student has been provided with the compensatory services determined on June 20, 2023, in accordance with 34 CFR §300.101.

**BACKGROUND:**

The student is fourteen years old and is enrolled at [REDACTED] a separate public special education school for middle school. Prior to November 2022, he was enrolled in [REDACTED] School, a comprehensive school in the AACPS. He is identified as a student with Other Health Impairment (OHI) under the IDEA and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. During the 2022-2023 school year, the student received discipline referrals on:
  - September 1, 2022, for disrespect/insubordination/disruption - improper physical contact - student remained in school and processed with staff;
  - October 11, 2022, for classroom disruption resulted in one day out of school suspension;
  - October 25, 2022, for disrespect/insubordination/disruption - disruption to classroom/school and three elopements from the school building resulted in five days out of school suspension;
  - March 10, 2023, for an attack on student and threat of student resulted in two days out of school suspension;
  - March 21, 2023, for an attack on student resulted in five days out of school suspension;
  - April 20, 2023, for unsafe actions due to three elopements from school building, student remain in school and processed with staff; and
  - June 7, 2023, for disrespect/insubordination/disruption - disruption to classroom/school resulted in two days out of school suspension.
2. On September 13, 2022, the IEP team met and recommended that a Functional Behavior Assessment (FBA) be conducted for the student to determine if a Behavior Intervention Plan (BIP) was needed.
3. On September 27, 2022, a BIP was developed for the student. There is no documentation that the BIP was reviewed by the IEP team.
4. On September 28, 2022, the IEP team met and reviewed the results of the FBA. The FBA reflects the student requires support with “emotional regulation,” and task avoidance. The IEP team determined the student “meets the criteria for Home Hospital Teaching (HHT).” Although the student had not yet been approved for HHT services, the IEP team determined the student would receive one hour of HHT service weekly to address science, written expression goal, and learning behavior goal during HHT.
5. **On October 4, 2022**, staff at the student’s school sent correspondence to AACPS central office staff informing them that the student required a “more appropriate placement”. The correspondence also indicated that the school-based team was recommending “emergency home hospital instruction” as a “bandaid to the situation.”
6. On October 10, 2022, staff at the student’s school completed the “emotional crisis home and hospital teaching form”. The form requires that the team meets on both the 30th calendar day and the 50th calendar day after initiation of HHT service to ensure an individual structured plan is in place for the student’s full return to school by the 60th school day. The form reflects the student will be provided with one hour classroom instruction and counseling consultation. There is no

documentation that the student received services pursuant to HHT. The cover letter signed by an AACPS school psychologist noted the student's need for 1:1 supervision, elopement, and unsafe behaviors in the classroom. It further stated that "in consideration of these escalating and unsafe behaviors, the school team at BPMS is requesting partial-day Home and Hospital Teaching services". The reason for the referral was an emotional condition. The documentation reflects the student will receive one hour of instruction per week and a consultation with the school social worker. There is no documentation that the IEP team discussed services to ensure an individual structured plan was in place for the student's full return to school by the 60th school day.

7. On October 11, 2022, the student was suspended for making threats, throwing objects, and refusing to comply with staff redirection, for one day.
8. On October 25, 2022, the student was suspended for disruption to classroom/school for five days.
9. On November 4, 2022, the IEP team determined that the student required increased specialized instruction for the purpose of accessing "special education placement in a public separate day school." The PWN reflects that the student's services were increased from six hours within the general education setting weekly, to thirty one hours and thirty minutes outside of the general education setting weekly. The IEP team determined that the student's needs could not be met in a comprehensive school setting. The PWN also reflects from October 10, 2022, through November 4, 2022, [student] was on partial HHT as he was not able to maintain his safety within the school building for the entire school day."
10. On November 29, 2023, the student enrolled at [REDACTED]. The student's first day of attendance at [REDACTED] was January 10, 2023.
11. On March 10, 2023, the student was suspended for two days for threatening and assaulting a student.
12. On March 22, 2023, the student was suspended for five days for assaulting a student.
13. On May 1, 2023, the IEP team met to conduct manifestation determination of the student's conduct on March 21, 2023. The IEP team determined the behavior on March 21, 2023, was a manifestation of the student's disability. The student's removals during the 2022-2023 school year, accumulated to more than ten school days "resulting in a change of placement." The team proposed and agreed to three sessions of compensatory services. At the request of the parent, the team agreed that compensatory services will be provided in a one-to-one setting during the student's advisory block.
14. On May 9, 2023, the parent was provided with the PWN and a request for consent for an FBA, following an IEP team meeting on May 1, 2023. Consent to conduct an FBA was given on May 9, 2023.
15. On June 7, 2023, the student was suspended for two days for making threatening comments and refusal to comply with staff directions.
16. On June 13, 2023, the IEP team met for the purpose of reviewing the FBA and revising the BIP. The team reviewed the results of the FBA, and proposed changes to the FBA. The team agreed the student's FBA should reflect "the hypothesized function of problem behavior" is "sensory attention."

The team also agreed to revise the student's BIP and included "additional preventative and reactive measures." The team proposed and agreed to reconvene for the purpose of reviewing the BIP.

17. On June 20, 2023, a manifestation determination meeting took place regarding an incident that occurred on June 7, 2023. The IEP team determined that the behavior was a manifestation of the student's disability. The team proposed and agreed to "providing compensatory service virtually for three hours." The team proposed the following dates and times for compensatory education:
  - 1.5 hours of services from 11am to 12:30pm on June 21, 2023, and
  - 1.5 hours of services from 11am to 12:30pm on June 23, 2023.
18. On July 10, 2023, the AACPS provided the parent with a copy of the student's Behavior Intervention Plan (BIP) and the PWN for the IEP team meeting that occurred on that day. The AACPS also informed the parent that manifestation meetings do not take place during ESY. The BIP identifies the following problem behaviors: physical aggression, disruptive behaviors, and eloping. The BIP also identifies a summary of the functional behavior assessment, behavior goals, expected behaviors, replacement behaviors, preventive measures, teaching strategies, reactive measures, and progress monitoring.
19. On August 1, 2023, the AACPS emailed the parent proposing to provide the student with compensatory services agreed on during an IEP team meeting on June 20, 2023. The team proposed and agreed to providing compensatory services, in the virtual setting. The AACPS proposed to meet over six - thirty minute sessions or three - one hour sessions, and requested the parent share availability for when the services could occur. There is documentation that the AACPS attempted to schedule and deliver the compensatory services to the student during August 2023, but that they were not successful in doing so. There is documentation that the AACPS and the parent have agreed to an alternative method of delivering the services during the 2022-2023 school year.
20. On August 2, 2023, the complainant requested suspension documentation for the 2022-2023 school year and the meeting notes from the manifestation meeting held on May 1, 2023.
21. On August 8, 2023, the AACPS provided copies of the requested records for suspensions on March 10, 2023, March 21, 2023, and June 7, 2023, to the complainant.
22. On August 8, 2023, the complainant confirmed receipt of the sent documents. The complainant requested suspension documents from [REDACTED] school for the suspension in March, suspension during ESY, and PWN from the IEP meeting on May 1, 2023.
23. There is no documentation that the student was disciplinary removed during ESY 2023.
24. There is no documentation that AACPS has provided the complainant with the documents requested on August 8, 2023.
25. In their response to allegations #1 and #2, the AACPS acknowledges that the parent was not provided with access to the complete student record, and the manifestation determination meeting did not occur within ten school days of the removal on March 21, 2023. The AACPS agrees with the parent's proposed resolution to clarify procedures and manifestation determination requirements for suspensions. The AACPS Office of Compliance and Legal Issues will provide professional development to all staff members at [REDACTED] on discipline procedures for students with disabilities. This professional development will occur no later than December 1, 2023. Additionally,

the AACPS proposed an additional student-specific corrective action of holding an IEP meeting for the purpose of reviewing the student's IEP and determining if additional supports are required to address his behaviors. The team will also consider any parent's concerns at this meeting. AACPS also agrees with creating a clear and consistent discipline process at the [REDACTED] to include documenting all suspensions, documenting the provision of required documentation to parents/guardians, tracking total suspension days, and transferring discipline records. This plan, as well as a tracking sheet of suspension data occurring between August 28, 2023, and December 1, 2023, will be provided to MSDE by January 1, 2024.

## **DISCUSSION/CONCLUSION**

### **Allegation #1: Access to student records**

Based on Findings of Facts #20 through #24, MSDE finds that AACPS has not provided the complainant with access to the suspension records from [REDACTED] school and the meeting notes from the IEP team meeting on May 1, 2023, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

### **Allegation #2: Manifestation procedures**

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the IEP team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents. 34 CFR §300.530 and COMAR 13A.08.03.08.

Based on Findings of Facts #12 and #13, MSDE finds that AACPS did not meet within 10 days of the student's removal on March 21, 2023, in accordance with 34 CFR §§300.530 – 300.536, COMAR 13A.08.03 and Maryland Student Records System Manual. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on Findings of Facts #18, #22, and #24, MSDE finds that the AACPS did not conduct manifestation determination following the student's removal on July 3, 2023, on the basis that the AACPS had a policy that manifestation meetings were not required to be conducted during the summer. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

### **Allegation #3: Provision of prior written notice of the IEP decisions**

Based on Findings of Fact #14, MSDE finds that ACCPS provided the parent with the Prior Written Notice of the IEP team's decisions from the IEP team meetings held on May 1, 2023, in accordance with 34 CFR§300.503. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

### **Allegation #4: Provision of compensatory services**

Based on Findings of Facts #17 and #19, MSDE finds that AACPS recognized that the student was owed compensatory services related to the provision of FAPE and attempted to provide the student with the services determined on June 20, 2023, in accordance with 34 CFR §300.101. Therefore, this office finds that a violation did not occur with respect to this allegation.

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

If a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team must review and revise the student's IEP and determine the instructional services to be provided to the student as long as the medical restrictions apply and develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10(C)(5)). When the period of treatment or convalescence ends, the IEP team must review and revise the IEP and determine the appropriate placement in the LRE (COMAR 13A.05.01.10(C)(5)).

Educational placement in the home for a student with an emotional condition may not exceed sixty (60) consecutive school days (COMAR 13A.05.01.10(C)(5)). A student's home may not be used as an instructional setting for a student with a disability waiting for placement in a nonpublic special school or a change of placement and must include an explanation of why the student's condition makes it such that they cannot attend school. (COMAR 13A.05.01.10(C)(5)).

A student may not be placed on HHT based on the fact that the LEA is unable to provide FAPE in the current setting to address the student's disability related behaviors. Based on the Findings of Facts #4 through #9, MSDE finds that the AACPS failed to follow appropriate procedures and inappropriately determined that the student would participate in HHT services due to the student requiring a more restrictive placement, in October 2023, in accordance with COMAR 13A.05.01.10. Therefore, this office finds that a violation occurred.

### **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

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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, 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.

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 Based:**

MSDE requires the AACPS to provide documentation by December 1, 2023, that the AACPS has taken the following actions:

- a. Provided the complainant with access to the student record; and
- b. The IEP team has convened and determined the compensatory services, or other remedy to redress the delay of a manifestation determination meeting following the student's suspension on March 21, 2023, and the placement of the student in the home in **October 2022**, and inappropriate placement on Home and Hospital Teaching.

**School and System Based:**

In their response to allegations #1 and #2, the AACPS acknowledged that violations occurred and proposed the AACPS acknowledges that the parent was not provided with access to the complete student record, and the manifestation determination meeting did not occur within ten school days of the removal on March 21, 2023. The AACPS agrees to the following and MSDE concurs with this proposal and appreciates the AACPS addressing the matter:

- a. Clarify procedures and manifestation determination requirements for suspensions;
- b. AACPS also agrees with creating a clear and consistent discipline process at the [REDACTED] to include documenting all suspensions, documenting the provision of required documentation to parents/guardians, tracking total suspension days, and transferring discipline records; and
- c. AACPS Office of Compliance and Legal Issues will provide professional development to all staff members at [REDACTED] on discipline procedures for students with disabilities. This professional development will occur no later than December 1, 2023.

MSDE requires the AACPS to provide documentation by December 1, 2023, that the AACPS has taken the following actions:

- a. Create a clear and consistent discipline process at [REDACTED] School, to include documenting all suspensions, documenting the provision of required documentation to parents/guardians, tracking total suspension days, and transferring discipline records;
- b. Provide professional development to all staff members at [REDACTED] School on discipline procedures for students with disabilities;

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<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.

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- c. Provide professional development to all staff members at [REDACTED] School on Home and Hospital procedures, including the basis for placement, the correct process, and the determination of services; and
- d. Develop guidance related to the need for manifestation determinations following disciplinary removals that occur during Extended School Year services.

MSDE further requires the following monitoring actions:

- a. Quarterly monitoring of suspensions of students with IEPs who have had over 10 days of disciplinary removal (in school and out of school suspensions) at both [REDACTED] and Brooklyn Park to ensure proper procedures were followed. Reporting to MSDE will take place November 31, 2023; January 31, 2024, March 31, 2024, and June 30, 2024; and
- b. Conduct a review of students with IEPs placed on HHT by AACPS school psychologists to determine whether there are similarly situated students approved for HHT while awaiting placement. If there are, AACPS must report the names to MSDE, convene IEP team meetings for the students and determine appropriate compensatory services for the time the students were inappropriately receiving services in their homes.

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

Sincerely,

Dr. Deann Collins

Deputy Superintendent

Division of Early Intervention/Special Education Services

DMC:ra

c: Mark Bedell  
Soyna McElroy  
[REDACTED]  
Paige Bradford

Alison Barmat  
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