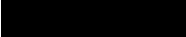


December 1, 2023




Ms. Diane McGowan  
Co-Director of Special Education  
Anne Arundel County Public Schools  
1450 Furnace Avenue  
Glen Burnie, Maryland 21060

RE:   
Reference: #24-043

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 October 3, 2023, MSDE received a complaint from Ms. , hereafter, “the complainant,” on behalf of her daughter. 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. The AACPS has not ensured that the student’s Individualized Education Program (IEP) addresses her social/emotional, behavioral, and communication needs since December 2022, in accordance with 34 CFR §300.324.
2. The AACPS has not ensured that the IEP team met to address the lack of expected progress toward achieving the IEP goals since December 2022, in accordance with 34 CFR §300.324.
3. The AACPS did not ensure that a reevaluation of the student was completed during the 2022-2023 school year to ensure that it has occurred at least every three years, in accordance with 34 CFR §300.303.
4. The AACPS has not ensured that the student was provided with the special education instruction and supports required by her IEP, since October 2022, in accordance with 34 CFR §300.323.

**BACKGROUND:**

The student is 14 years old and is identified as a student with Multiple Disabilities including Specific Learning Disability, Other Health Impairment, and Autism under the IDEA. She attends  School. The student has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

**ALLEGATIONS #1, #2, and #3: IEP THAT ADDRESSES THE STUDENT’S NEEDS, MEETING TO ADDRESS THE LACK OF EXPECTED PROGRESS, and COMPLETING A REEVALUATION IN THE REQUIRED TIMELINE**

**March 2022 IEP and January 2023 Proposed Meeting**

1. The student’s IEP in effect in December 2022 was developed on March 28, 2022. The IEP identified areas of need for the student in pragmatic language, decoding, reading comprehension, writing mechanics, written expression, math calculation, math problem solving, and learning behaviors. The March 2022 IEP included goals in the following areas: pragmatic language, decoding, reading comprehension, writing mechanics, written expression, math calculation, math problem solving, and learning behaviors.
2. The student’s communication needs identified in the March 2022 IEP were addressed through a pragmatic language goal and targeted her inability to consistently make relevant, appropriate comments, and maintain appropriate body language when conversing with peers and adults in the academic setting.
3. The student’s learning behavior needs identified in March 2022 were task completion, organization, and asking for and receiving help. The IEP related to her need to be prompted one or more times to start classwork assignments, asking for help by raising her hand, and independently checking her work for accuracy.
4. The March 2022 IEP indicated that at that time, the student was performing below age level in pragmatic language and learning behaviors; at a fifth-grade level in decoding, sentence writing, written expression, and writing mechanics (spelling skills); and at a fourth-grade level in reading comprehension and math calculation.
5. The March 2022 IEP required that the student be provided with accommodations, supplementary aids, and supports including text-to-speech for mathematics, science, and government; assistive technology and speech-to-text in English language arts, mathematics, science, and Government; a calculation device and mathematics tools; and an external word prediction device. The IEP further required that the student be provided with “Social Behavior Supports” including modeling and visual or verbal feedback to ensure the student recognized personal space and encouraging and reinforcing appropriate social skills in academic and non-academic settings; and communication supports (e.g., periodic assistive technology consultation and periodic speech/language pathologist consultation).
6. The March 2022 IEP reflects that “[the student received] all her services within the general education setting” including three hours of specially designed instruction provided weekly in a co-taught language arts class to address reading, writing, math, and learning behavior goals; two hours of specially designed instruction provided weekly in a co-taught math class to address math and learning behavior goals; 1.5 hours of specially designed instruction provided weekly in a co-taught science class to address writing, reading, and learning behavior goals; and 1.5 hours of specially designed instruction provided weekly in a co-taught social studies class to address writing, reading, and learning behavior goals. The student was also to receive two direct thirty-minute sessions monthly of speech/language therapy provided inside the general education setting.
7. The prior written notice from the March 17, 2022, IEP meeting reflects that while the student previously required a consultation with a psychologist, it was no longer necessary because the primary purpose of those services was to assist with virtual learning.

8. Following a referral from the student's teacher in late November 2022 related to the student's mental health, including concerns of suicidal ideation, the mental health providers at the student's school referred her to outside providers. After contacting the complainant, the school staff met with the student and confirmed that she was "having depressive thoughts and [feeling] sad." The school staff recommended to the complainant that the student receive counseling outside of school.
9. On January 9, 2023, the complainant emailed the IEP facilitator at the school stating that she was concerned about how the student was being treated at school. The complainant also raised concerns related to the student's class schedule, as the student had been removed from the co-taught classroom and placed in a classroom without special education support in response to a bullying issue. The complainant requested an IEP meeting to discuss the impact of the new classes on the student's IEP and her ability to progress.
10. There is documentation of an IEP team meeting notice generated on January 13, 2023, for a meeting to be held on January 18, 2023, to address the complainant's concerns regarding the student's reading level, not feeling safe at school, and the changes made to her schedule. On January 17, 2023, the parent emailed the school staff to cancel the meeting scheduled for January 18, 2023. She also requested to delay any further meetings until she had an opportunity to speak with a legal advisor about her concerns.
11. The student ended the second marking period in January 2023 with an "A" in reading, chorus, and physical education, a "B" in science and English language arts, a "C" in mathematics, and a "D" in social studies. According to the January 24, 2023, IEP progress report the student was also making sufficient progress in all of her IEP goals, with the exception of learning behaviors where it was noted that in social studies "...she required multiple prompts to stay on task...and became frustrated but did not ask for help on two documented occasions this quarter." Thus, she was not making sufficient progress toward the achievement of the goal.
12. On January 25, 2023, the student's counselor emailed the complainant stating that the student's "...team of teachers met and discussed what they felt was best for [the student] and the outcome was that [the counselor had been asked] to move [the student] back to her original class schedule." The counselor's email also stated that she was going to meet with the student to go over her new schedule and would be available to the student if she needed to talk.
13. On January 27, 2023, the student's counselor emailed the complainant again, stating that she had met with the principal and IEP facilitator and "...it has been decided to leave [the student] with the new schedule."

#### **March 9, 2023, IEP Team Meeting**

14. On January 30, 2023, the school staff contacted the complainant and proposed that an IEP team meeting be held on February 23, 2023. On February 19, 2023, the complainant requested that the IEP team meeting be delayed to allow for time to complete a thorough review of the student's documents. Following other discussions, the IEP team agreed to meet on March 9, 2023.
15. The IEP team met on March 9, 2023, to conduct the student's annual review. The prior written notice from this meeting reflects that the complainant shared concerns regarding the student's reading level and expressed that the student's mental health had been affected by the bullying that she had experienced at school due to the stigma of having an IEP. The complainant stated that she did not report the bullying to the principal, although the school's solution to the problem was to move the student to a different class where she received less support.

16. During the meeting, the team revised the student's present levels of performance in the areas of pragmatic language, reading comprehension, written expression, math calculation, learning behaviors, math problem solving, writing mechanics, and reading decoding. The prior written notice reflects that the team had questions regarding the student's current level of performance without accommodations and modifications and her strengths and weaknesses in the areas of expressive/receptive language, pragmatic language, reading, and written expression.
17. The student's supplemental aids and services were revised to add "Encourage [the] student to ask for assistance when needed; Monitor use of agenda book and/or progress report; Reinforce positive behavior through non-verbal/verbal communication; and Check in/Check out." Allowing the use of manipulatives was removed. It was stated that the student had achieved her IEP goals in the areas of reading, pragmatic language, writing, and math calculation. The IEP team did not address the student's lack of expected progress in learning behaviors.
18. The team determined that the student required goals and objectives in pragmatic language, reading decoding, reading comprehension, written expression, math calculation, learning behaviors, writing mechanics, and math problem-solving. The prior written notice reflects that the student had a schedule change "...based on the school team's concerns for her mental health at the beginning of January, she was given additional supports through check-in/out twice a week along with Instructional Assistant as a provider besides the Special Educator." The IEP team did not revise the IEP to reflect this change in services.
19. The IEP team determined that the student required assessments in the areas of Psychological, Academic, and Communication "...because of concerns regarding [her] mental health, specifically social/emotional testing." The student was last evaluated in January 2022 when the IEP team determined that the student continued to be eligible based on existing data.
20. At the end of the third marking period in March 2023, the student had received an "A" in reading, chorus, physical education, and English language arts, a "C" in science and social studies, and a "D" in mathematics. According to the March 9, 2023, IEP progress report the student had achieved her IEP goals in pragmatic language, reading decoding, reading comprehension, math calculation, and writing mechanics. She was making sufficient progress in her writing expression goal but was still not making sufficient progress in the area of learning behaviors and was also not making sufficient progress in math problem-solving.

#### **May 12, 2023, IEP Team Meeting**

21. The IEP team reconvened on May 12, 2023, to complete the evaluation of the student and determine the student's continued eligibility. In addition to determining that she continued to be eligible for special education services under Multiple Disabilities, the team determined that the student requires specialized instruction in reading, writing, math, learning behaviors, pragmatic language, and "social/emotional." The IEP team reviewed the following assessments:
  - A communication assessment was completed for the student on May 4, 2023, by the AACPS. The assessment included expressive, receptive, and pragmatic language information related to the student. The assessment indicated the student presented average overall language abilities.
  - An academic assessment was completed for the student on May 5, 2023, by the AACPS. It was determined that the student's academic skills in reading, word reading, and reading comprehension fell into the low average range. Pseudoword Decoding and reading Fluency scores fell into the very low range, and the student's written language, spelling, punctuation,

contextual conventions, and story composition scores fell into the below-average range. Her vocabulary, logical sentences, and sentence combining scores fell in the average range.

- Psychological testing was completed by a private provider and the AACPS dated April 5, 2023, and May 1, 2023, respectively. These reports agreed that the student exhibited difficulty with emotional regulation and required supports in task completion.

Results from the private assessment demonstrated that the student showed strengths in fluid reasoning, but "...testing [indicated] that her reading, spelling, and mathematics [were] significantly below her age and grade expectancies and her overall ability, especially in math. [The student's] testing [also indicated] long-standing Dyslexia...despite average long-term memory...[The student's] writing is slow and reflects co-existing Dysgraphia."

The report stated that socially and emotionally, the student continued to manifest overlapping mood and attentional difficulties which impacted her task completion. The student also exhibited "executive functioning concerns...with her ability to resist impulses, be aware of her functioning in social settings, adjust well to changes in environment, people, plans, or demands, react to events appropriately, sustain working memory, plan and organize her approach to problem-solving appropriately, be appropriately cautious in her approach to tasks and check for mistakes and keep materials and her belongings reasonably well organized."

The private report recommended a "specialized school setting with average to above average cognitive peers that provides opportunities for expression, specialized related services and intensive academic remediation." The report also recommended that the student receive small group instruction throughout the day and that her learning "would be further compromised in a large comprehensive school."

The AACPS report recommended that the student would benefit from classroom supports including instruction on self-monitoring, organization, self-advocacy, and memory strategies and techniques. This assessment noted the continued impact of the student's "previously noted executive functioning and attention difficulties as well as her previously diagnosed learning disabilities." In terms of emotional regulation specifically related to depression and withdrawal, the AACPS report stated that it appeared to be influenced by the student's ability to navigate social situations and stressors more than a true emotional disability.

### **June 9, 2023, IEP Team Meeting**

22. The IEP team met again on June 9, 2023, to review the student's IEP. The IEP team updated and developed present levels of performance in the areas of cognitive/intellectual, attention/executive functioning, social-emotional, and expressive/receptive language. Goals in the areas of social/emotional, pragmatic language, and learning behaviors were revised.
23. The IEP team determined that the student's supplementary aids, accommodations, and services remained appropriate. The IEP team further decided that the student's speech/language services would be provided inside the general education classroom and that the student would receive counseling services outside of the general education classroom.
24. The complainant expressed her disagreement with the services proposed by the school-based team and stated that she felt the student required a non-public setting. The complainant also shared that she disagreed with the change for speech services from outside of general education to inside general

education. There is no documentation that the IEP team addressed the parent's proposal that the student required a "non-public setting" or the recommendation from the private assessment that the student would not be successful in a "comprehensive school."

25. The student's specialized instruction services were updated to reflect the following:

- Outside general education, 2 x 25 minutes per month for counseling services;
- Inside general education, speech-language services 2 x 30 minutes per month;
- Inside general education, 8 hours;
- 2 hours per week in language arts to address reading, writing, and learning behaviors;
- 2 hours per week in math to address math and learning behaviors;
- 2 hours per week in science to address reading, writing, and learning behaviors; and
- 2 hours per week in social studies to address reading, writing, and learning behaviors.

### **CONCLUSIONS:**

In developing each child's IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. In the case of a child whose behavior impedes the child's learning or that of others, the team should consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (34 CFR §300.324)

#### **Allegation #1: IEP THAT ADDRESSES THE STUDENT'S NEEDS**

The first allegation was that the AACPS has not ensured that the student's Individualized Education Program (IEP) addresses her social/emotional, behavioral, and communication needs since December 2022, in accordance with 34 CFR §300.324. The student's IEP, in effect at the start of the 2022-2023 school year addressed issues concerning learning behaviors and communication. In November 2022, in response to concerns related to the student's mental health needs, the school team recommended that the IEP team meet to address the parents' concerns and address any emerging needs of the student. The parent declined to meet as a team at that time.

When the IEP team met in March 2023, they recommended assessments intended to address the student's social/emotional, behavioral, and academic needs. Additionally, the complainant sought a private assessment of the student's social/emotional needs. After reviewing those assessments, the IEP team updated the student's IEP with the information obtained. However, the IEP team did not consider the recommendations and proposals made by the parent and their private provider that the student required a different setting for instruction.

Based on the Findings of Facts # 21 and #24, MSDE finds the AACPS has not ensured that the student's Individualized Education Program (IEP) addresses her social/emotional, behavioral, and communication needs since December 2022, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

#### **Allegation #2: MEETING TO ADDRESS THE LACK OF PROGRESS**

The second allegation was that the AACPS has not ensured that the IEP team met to address the lack of expected progress toward achieving the IEP goals since December 2022, in accordance with 34 CFR §300.324. When the IEP team convened on March 9, 2023, May 12, 2023, and June 9, 2023, they did not explicitly address the progress reports created for the student that indicated she was not making progress on her "learning behavior" and math problem-solving annual IEP goals.

Based on the Findings of Facts #11, #15 to #17, and #20 to #22, MSDE finds that the AACPS has not ensured that the IEP team met to address the lack of expected progress toward achieving the IEP goals since December 2022, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

**Allegation # 3: COMPLETING A REEVALUATION IN THE REQUIRED TIMELINE**

The third allegation is that the AACPS did not ensure that a reevaluation of the student was completed during the 2022-2023 school year to ensure that it has occurred at least every three years, in accordance with 34 CFR §300.303. A public agency must ensure that a reevaluation of each child with a disability is conducted at least once every 3 years unless the parent and the public agency agree that a reevaluation is unnecessary. (34 CFR §300.303).

In this case, the student was most recently evaluated by the IEP team in January 2022, using existing data. In March 2023, the IEP team determined that another evaluation of the student was necessary, and the IEP team recommended assessments to be completed for the student. These assessments were reviewed by the IEP team in May 2023 and the IEP team determined again that the student continued to be eligible as a student with a disability under the IDEA.

Based on the Finding of Fact #19, MSDE finds the AACPS did ensure that a reevaluation of the student was completed during the 2022-2023 school year to ensure that it has occurred at least every three years, in accordance with 34 CFR §300.303. Therefore, this office finds that a violation did not occur with respect to the allegation.

**ALLEGATION #4: PROVISION OF SPECIAL EDUCATION INSTRUCTION, SUPPORTS, AND RELATED SERVICES**

**FINDINGS OF FACTS:**

26. The student's IEP dated March 28, 2022, required that the student receive classroom instruction inside the general education classroom weekly in a "co-taught" setting, with the support of a special educator and general educator, and two thirty-minute sessions of speech/language therapy in the general education setting per month from April 7, 2022, through March 27, 2023, from a speech-language therapist.
27. In an email dated January 9, 2023, the complainant expressed concern that the student had been moved into different courses without her consent. Specifically, the student was moved from all co-taught classes for math, English language arts, social studies, and science, where she had the support of a special educator, to only having math and social studies in a co-taught setting and having English language arts and science in a general education classroom with only instructional assistant support.
28. In an email dated January 25, 2023, the student's counselor shared with the complainant that the "[the student's] team of teachers met and discussed what they felt was best for her and the outcome was that [the counselor] had been asked to move [the student] back to her original class schedule."
29. In an email dated January 27, 2023, the student's counselor shared with the complainant that she had met with the principal and IEP chair and "...it has been decided to leave her with her new schedule."
30. The documentation provided demonstrates that the student received instructional services in a co-taught setting from September 2022 through January 2023.

31. The prior written notice from the IEP meeting held on March 9, 2023, states “When [the student] had a schedule change based on the school team’s concerns for her mental health at the beginning of January, she was given additional supports through check-in/out twice a week along with instructional assistant as a provider besides the special educator.”
32. Documentation provided demonstrates that the student received services in a co-taught setting in math and social studies, and instructional assistant support in a general education classroom for English language arts and science from January 2023 through June 2023.
33. The student’s IEP dated March 9, 2023, states that the student should receive eight hours and thirty minutes of instruction inside the general education classroom weekly as provided by the special education teacher, general education teacher, and instructional assistant in addition to two thirty minute sessions of speech/language therapy in the general education setting per month from March 23, 2023, through March 7, 2024.
34. The student’s IEP dated June 7, 2023, states that the student should receive eight hours of instruction inside the general education classroom weekly as provided by the special education teacher, general education teacher, and instructional assistant, two thirty-minute sessions of speech/language therapy in the general education setting per month, and two twenty-five minute counseling sessions per month from August 29, 2023, through March 7, 2024.
35. There is no documentation reflecting that the student received the speech-language services required by her IEP since the start of the 2022-2023 school year.
36. There is documentation reflecting that the student has received counseling services required by her IEP during the 2023-2024 school year.

**CONCLUSION:**

The fourth allegation is that the AACPS has not ensured that the student was provided with the special education instruction and supports required by her IEP, since October 2022, in accordance with 34 CFR §300.323 because there is no documentation reflecting that the student received the speech-language services required by her IEP since the start of the 2022-2023 school year and the student did not receive specialized instruction from a special educator in English and science after January 2023. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP that is consistent with State policy and agreed to by the agency and the child's parents. Each public agency must ensure that as soon as possible following the development of the IEP, special education, and related services are made available to the child in accordance with the child's IEP. (34 CFR §300.323)

Based on the Findings of Facts #26 to #33, and #35, MSDE finds that the AACPS had not ensured that the student was provided with the special education instruction and supports required by her IEP, since October 2022, in accordance with 34 CFR §300.323. Without review by the IEP team, the record shows the student had been moved into different classes from all co-taught classes for math, English language arts, social studies, and science, where she had the support of a special educator, to only having math and social studies in a co-taught setting and having English language arts and science in a general education classroom with only instructional assistant support. Moreover, there was no documentation that speech-language services were provided. Therefore, this office finds that a violation of 34 CFR §300.323 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 MSDE Special Education State Complaint Resolution Procedures.

If the AACPS 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 that the AACPS provide documentation by January 15, 2023, that the student is receiving the special education and related services required by her IEP and that the IEP team has convened and addressed the student's lack of expected progress and the proposals of the parent. The IEP team must also determine the amount and nature of compensatory services, or other remedy, to address the violations identified in this letter of findings.

**School-Based:**

MSDE requires that AACPS conduct monitoring activities at [REDACTED] School to ensure that students receive the speech and language services on their IEPs. AACPS must review the IEPs of students attending [REDACTED] School who receive speech and language services to determine that they have been receiving all the services required by their IEPs. The report must be submitted by March 1, 2024. If there are students who are not receiving the required services, the [REDACTED] School IEP team must meet prior to April 1, 2024, to determine appropriate compensatory services to address the lapse in services. All compensatory services plans must be implemented prior to the start of the 2024-2025 school year unless there is mutual agreement with the family.

**Similarly Situated Students:**

MSDE further requires that AACPS determine whether there are other students at [REDACTED] School that have had their schedules administratively changed, and the services on their IEP have been impacted by those changes. If there are other similarly situated students, the [REDACTED] School IEP

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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, 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.

team must meet prior to April 1, 2024, to determine appropriate compensatory services to address the lapse in services. All compensatory services plans must be implemented prior to the start of the 2024-2025 school year unless there is mutual agreement with the family.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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,

Antoine Hickman, Ed.D.  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services

AH/ebh

c: Mark T. Bedell  
Sonya McElroy  
Diane McGowan  
April Pierman  
Jennifer Brown  
Alison Barmat  
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Nicole Elliott  
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Diane Eisenstadt  
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