

January 12, 2024

[REDACTED]

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

RE: [REDACTED]  
Reference: #24-074

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 November 15, 2023, MSDE received a complaint from Ms. [REDACTED], 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 allegation:

1. The AACPS did not follow proper procedures when disciplinarily removing the student from school since November 2023, in accordance with 34 CFR §§300.530, COMAR 13A.08.03, and COMAR 13A.05.01.10.
2. The AACPS has not ensured that the student has been consistently provided with the psychological services required by the Individualized Education Program (IEP) since November 2023, in accordance with 34 CFR §§300.101 and .323.

**BACKGROUND:**

The student is thirteen years old and is identified as a student with an emotional disability under the IDEA. He currently attends the [REDACTED], an alternative school. The student previously attended [REDACTED], a comprehensive middle school, and has an IEP that requires the provision of specialized instruction and related services.

## **FINDINGS OF FACTS: ALLEGATION #1 PROPER DISCIPLINARY PROCEDURES**

1. On November 6, 2023, there was an incident involving an altercation with another student at MacArthur Middle School. The student was out of class and was alleged to have failed to respond to adult direction and threatened to “kill” the other student. The student was alleged to have “made physical contact and injured two staff members.”
2. As a result of the November 6, 2023, incident the student received ten (10) days of disciplinary removal from school.
3. The student had already been suspended for fifteen (15) days during the 2023 - 2024 school year. The student had not received any educational services during his disciplinary removals. The prior removals during the 2023-2024 school year were for harassment/intimidation, attack on adult, and fighting.
4. The Individualized Education Program (IEP) team met on November 10, 2023, for the purpose of conducting a Manifestation IEP team meeting following the November 6, 2023, removal.
5. The following individuals were present at the Manifestation meeting: [redacted] (designee); [redacted] (special educator); [redacted] (parent); [redacted] (student); [redacted] (school psychologist); [redacted] (compliance specialist); [redacted] (special education teacher); [redacted] (assistant principal); [redacted] (principal); [redacted] (behavior support).
6. Documentation from the meeting reflects that the team reviewed the relevant information about the student, such as recent assessments, the student’s IEP, past disciplinary removals, and the student’s Functional Behavior Assessment (FBA).
7. The student’s IEPs in effect during the 2023-2024 school year have goals addressing physical and verbal aggression, using appropriate coping strategies, managing conflicts, and managing emotions. The student’s FBA addresses elopement from class, and verbal and physical aggression. His most recent psychological assessment (May 2023) identifies the need for support in emotional regulation, flexible thinking, managing impulses, and self monitoring.
8. The IEP team considered the first question of the manifestation process – whether “the behavior was caused by, or had a direct and substantial relationship to the child’s disability.” Based on the information reviewed, the instructional members of the team and the complainant felt that the answer was yes, the school administrators felt the answer was no. The student’s special education teacher noted that, “as part of [the student’s] disability, he does not have the ability to make the choice, self regulate appropriately, or accept redirection.” Based on the administrators’ decision, the team responded “no” to this question.
9. The IEP team considered the second question of the manifestation process, whether “the behavior was a direct result of the school's failure to implement the IEP.” In response to this question, the team considered the student’s extensive history of disciplinary removals, the fact

that he had no manifestation meetings and no services when they were required, and ultimately responded "yes" to that question.

10. Prior to the team completing the manifestation determination process, the administrators attempted to end the meeting and left. After approximately ten (10) minutes, the principal returned with the Regional Area Superintendent, and reiterated his directive to end the meeting; however, the team had already reached their decision that the behavior was a manifestation of the student's disability.
11. There is IEP team documentation that the student was informed he would return to school on Monday, November 13, 2024, that compensatory services would begin for the excess days of disciplinary removal without services, and that his IEP would be reviewed on December 6, 2023.
12. There is documentation from the school principal to the complainant dated November 10, 2023, after the manifestation determination, that the student continues to be suspended from school, and that he should not ride the bus or return to school on November 13, 2023.
13. There is documentation that the student was not in school on November 13, 2023.
14. When the student returned to [REDACTED] on November 14, 2023, he was placed in In School Intervention, and did not return to his regular schedule. There is documentation that he did receive counseling services on November 14 and 15, 2023.

### **CONCLUSION:**

Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the IEP team is required to review all relevant information in the student's file including the IEP, any teacher observations, and any relevant information provided by the parents. Based upon this review, the IEP team must determine if the conduct in question was caused by or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the school's failure to implement the IEP (34 CFR § 300.530).

If the IEP team determines that the conduct was a manifestation of the student's disability, the IEP team must return the student to the placement from which the student was removed, unless the parent and the school agree to a change of placement as part of a modification of the student's behavioral intervention plan (34 CFR §300.530). The IEP team must also conduct a functional behavioral assessment, if one has not already been conducted, and develop a behavioral intervention to prevent recurrence of the student's behavior (34 CFR §300.530). If the student's IEP already contains a behavioral intervention plan, the IEP team must review it and revise it, if necessary (34 CFR §300.530).

In this case, the student was disciplinarily removed from the school setting for fifteen (15) days prior to the current removal without a manifestation determination and without services. Additionally, when the IEP team did meet to determine whether the behavior the student exhibited on November 6, 2023, was a manifestation of his disability, their response to the first question, whether the behavior was substantially related to his disability was "no". This determination is not supported by any of the data

reviewed by the team. The student's assessments, his IEP, his disciplinary history and his FBA all reflect that this behavior is, in fact, part and parcel of his emotional disability. As his teacher stated, he does not yet have the ability to regulate. It appears that rather than attempting to reach consensus in making a decision supported by data, as required, school administration had a different goal, as was evidenced by their leaving the meeting, attempting to end the meeting prior to a conclusion, and the principal's email to the complainant following the manifestation meeting illegally extending the disciplinary removal.

Based upon the Findings of Facts #1 to #14, MSDE finds that the ACPS did not follow proper procedures when disciplinarily removing the student since the start of the 2023-2024 school year, in accordance with 34 CFR §§300.530, COMAR 13A.08.03, and COMAR 13A.05.01.10. Therefore, this office finds that a violation occurred with respect to the allegation.

#### **FINDINGS OF FACT: ALLEGATION #2 PROVISION OF COUNSELING SERVICES**

15. The student's IEP dated November 7, 2023, requires that he receive three 30-minute counseling sessions monthly from the school psychologist or social worker.
16. There is documentation that the student received the required services on: November 14, 15, 2023, and December 2, December 6, December 13, December 20, 2023 and January 6, 2024. The student did not receive counseling services on November 7th or November 13, 2023. because he was out of school due to disciplinary removals.

#### **CONCLUSION:**

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101).

In this case, there is no documentation that the student has received all the counseling services required by his IEP since November 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation with respect to the allegation.

#### **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 non-compliance is corrected in a timely manner. 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. 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 March 15, 2024, that the school system has provided the student with the required compensatory services or other remedy to redress the violation of the excessive days of disciplinary removal from school without receiving services, as identified in this Letter of Findings. In addition to the plan that was made regarding the 5 days of compensatory services, the AACPS must provide additional compensatory services in the same manner as determined appropriate for the other excess days of removal, for November 13, 2023, when the administrator at prohibited the student from returning to school.

### **School-Based**

MSDE requires the AACPS to provide documentation by March 15, 2024, of the steps it has taken to ensure that the staff, including administrative staff, properly implements the requirements for the disciplinary removal of a student receiving special education services under the IDEA and COMAR. These steps must include staff development, as well as tools developed to monitor compliance. Monitoring must include a review of at least 10 randomly selected student records to review who have had disciplinary removals during the 2023-2024 school year. The monitoring report must be submitted to MSDE on or before May 1, 2024.

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. Antoine L. Hickman  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services

ALH/ab

c: Dr. Mark Bedel, Superintendent, AACPS  
Ms. Diane McGowan, Director of Special Education, AACPS

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Ms. Keyona Sanders  
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Ms. Jennifer Brown, Manager Special Education Compliance, AACPS  
[REDACTED], Principal, AACPS  
Ms. Alison Barmat, Branch Chief, MSDE  
Ms. Diane Eisenstadt, Compliance Specialist, MSDE  
Ms. Nicole Elliott, Section Chief, MSDE  
Dr. Paige Bradford, Section Chief, MSDE