

January 19, 2024

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #24-078

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 her son. 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 followed proper procedures when determining the student’s educational placement since November 2022, in accordance with 34 CFR §§300.114 - .116.
2. The AACPS has not ensured that the student has been consistently provided with the special education instruction and related services required by the Individualized Education Program (IEP) since November 2022, in accordance with 34 CFR §§300.101 and .323.
3. The AACPS has not ensured that the IEP team reviewed and revised, as appropriate, the student’s IEP to address his academic and social/emotional/behavioral needs, and the lack of expected progress toward achieving his IEP goals, since November 2022, in accordance with 34 CFR §§300.101 and .324.

BACKGROUND:

The student is fourteen years old and is identified as a student with Multiple Disabilities, including Emotional Disability, Specific Learning Disability, and Other Health Impairment under the IDEA. During the 2022-2023 school year, when the student was in the eighth grade, he was transferred to [REDACTED] in December of 2022. That same month, the student was transferred back to [REDACTED] School. In

April 2023 the student was transferred to [REDACTED] In June of 2023, the student was enrolled in [REDACTED] and repeated the eighth grade. In September of 2023, the student was placed on Home Hospital Teaching Services. The student returned to [REDACTED] in November 2023. The student has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

ALLEGATIONS #1, 2, and 3: PROPER PROCEDURES WHEN DETERMINING EDUCATIONAL PLACEMENT; PROVISION OF SPECIAL EDUCATION INSTRUCTION, SUPPORTS AND RELATED SERVICES; and REVIEWING AND REVISING THE IEP TO ADDRESS THE STUDENT'S IDENTIFIED NEEDS and THE LACK OF PROGRESS TOWARD IEP GOALS

1. The IEP team at [REDACTED] School met on October 12, 2022, to conduct a review of the student's IEP, develop and review the student's Behavior Intervention Plan (BIP), review comprehensive evaluation data, and consider other positive behavioral supports to address the behaviors that the student was exhibiting at that time. The prior written notice (PWN) from that meeting states that the team reviewed the results of the Functional Behavior Assessment (FBA) that had been developed for the student on June 15, 2022. Based on the FBA data, the Behavior Intervention Plan (BIP) for the student, dated October 12, 2022, focused on non-compliance, with a hypothesized function of escape; and class avoidance, with a hypothesized function of escape and tangible. Specifically, it was hypothesized that the student was noncompliant when in the hallway or whenever his behavior was addressed, "...especially by a non-preferred adult or one he has not established a relationship with and/or when a staff member uses a raised voice or makes a request or redirection to [the student] to do something that he does not want to do to escape non-preferred tasks." Preventative measures in the student's BIP called for using a "calm and quiet voice" when redirecting the student; providing the student with specific, clear, and concise directions; offering choices to increase the chances of compliance; avoiding power struggles with the student; taking time to build a rapport with the student; and allowing the student to speak with a trusted adult if he appears upset or bothered by something, among other strategies. The comprehensive evaluation review reflected that at the time of the meeting, the student had garnered a "D" in math, and an "E" in social studies, science, Spanish, English Language Arts, physical education, and tech systems. It was also noted that the student was often late to or skipped class. Additionally, the student had received three disciplinary referrals and two out-of-school suspensions. There was no classroom performance information available in the areas of reading, math, or written language because results reflected that "the student does not complete assignments/tests/quizzes." It was noted that the student was not meeting grade-level standards in the areas of written expression, basic reading skills, reading fluency skills, and math problem-solving. Based on the data presented, the team determined that the student exhibited a Specific Learning Disability and characteristics of dysgraphia and dyscalculia. The "Record of Observation - Social/Emotional/Behavioral" stated that on the date of the observation the student "showed characteristics of work avoidance [and] did not complete any of his work [or] engage in the lesson." The team also reviewed an outside assessment from [REDACTED] dated August 31, 2021, that provided the student with diagnoses of Intellectual Disability, Attention Deficit Hyperactivity Disorder, Combined Presentation, and Disruptive Mood Dysregulation Disorder (DMDD). The PWN reflects that "at the time of the report [the student] had [an] existing diagnoses of ADHD and ODD and was referred for an evaluation by his therapist at [REDACTED] to clarify [the] diagnoses and determine [the] appropriate treatment and accommodations." The team determined that the student met the criteria for DMDD "due to having difficulty regulating his mood and [reducing his] impulse control. It was also shared that at home the student was displaying "dysregulated behavior, noncompliance, anger outbursts, and

defiance.” The AACPS conducted a psychological assessment of the student in August of 2022, and “it was documented that evidence of an emotional condition existed and it had been present over a long time; however, at that time, the condition was not present to a marked degree.” The team noted that according to the outside psychological evaluation the student “displayed considerable difficulty with inattention, hyperactivity, and impulsivity which had been present for several years prior to the assessment. The results of the evaluation indicated that due to the previous information, he also met the criteria for Attention Deficit Hyperactivity Disorder, Combined Presentation.” The team determined that as a part of the student’s triennial reevaluation, a student evaluation plan would be developed and more assessments would be conducted in the areas of intellectual/cognitive functioning, academic, communication, motor, adapted physical education, and social/emotional/behavioral development.

2. The IEP developed for the student from this meeting, in place in November 2022, listed the student’s disability as Multiple Disabilities: Emotional Disability, Other Health Impairment, and Specific Learning Disability. The areas affected by this disability were reading comprehension, written expression, math problem solving, social/emotional, and learning behaviors. The student’s instructional grade level performance in the areas of reading comprehension and written expression was listed as “mid-5th (grade).” The student’s instructional grade level performance in math problem solving was listed as “6th (grade).” The student’s instructional grade level performance in the area of social/emotional was listed as “below expected grade level,” and in the area of learning behaviors it was listed as “below same-age peers.” It was also stated that the student had difficulties in the areas of “verbal comprehension, visual-spatial skills, fluid reasoning, working memory, visual-motor integration, phonological awareness, phonological memory, planning, and attention.” It was further documented that the student struggled to perform tasks that required brief attentional demands and/or rote recall abilities “...as information [became] more lengthy/complex, as executive functioning demands increase, and/or as more distractors [became] present... [additionally the student presented with] significant and pervasive memory deficits.” According to the IEP, these weaknesses impacted the student’s ability to “encode, retrieve, and effectively attend to, organize, and manipulate information for learning purposes across reading, math, and writing tasks.” The progress reports for the IEP activity transition dated June 24, 2022, stated “not completed.” The special considerations and accommodations provided by the IEP stated that the student did not have special communication needs, and required an AT device but did not require AT services. The student was to have general administration directions clarified, read aloud, and repeated as needed, a calculation device and mathematics tool, and extended time (1.5x). The special considerations the student was to receive included the daily use of organizational aids, a word bank, anchor charts, and preferential seating, as well as frequent/immediate feedback, checking for understanding, encouraging the student to ask for assistance when needed, and reinforcement of positive behaviors through non-verbal/verbal communication. Periodically the student was to be allowed the use of manipulatives, having the student repeat/paraphrase information, and be provided with organization assistance. The student was provided with IEP goals in the areas of reading comprehension, written expression, math problem solving, social-emotional, behaviors, and learning behaviors. The student’s services included five hours weekly inside general education: 1.5 hours per week of special education services for language arts and math; and one hour per week of special education services in science “to address goals and objectives in the areas of reading and writing” and one hour per week in social studies “to address goals and objectives in the areas of reading and writing.” The student was also to receive three thirty-minute sessions of counseling services monthly outside of general education. The student’s placement data reflected that the student was “currently demonstrating many more concerns than are typical compared to same-age male peers in both school and home/community settings” – most notably social anxiety, social problems, and academic difficulties. His placement was inside general education for 80% or more of the day, with thirty-one hours and thirty-eight minutes per week inside general education, and twenty-two minutes per week outside of general education.

3. The student's progress report dated November 4, 2022, reflected that the student was making sufficient progress to meet his goals in the areas of reading comprehension, math problem-solving, social-emotional, and learning behaviors. He was not making sufficient progress in the areas of written expression and behaviors.
4. The counseling services log for this student reflects that in November 2022 the student began to experience attendance issues, which included the student being driven to school and refusing to exit the vehicle or enter the building. During that time the complainant shared with AACPS counseling staff that she had been on the waiting list with [REDACTED] for over a year without an appointment for an assessment. She also shared that she had reached out to Sheppard Pratt but had been unsuccessful in speaking with someone. The complainant stated that the student was once hospitalized after posting suicidal threats on social media but because he said that he was joking he was returned home. The complainant stated that she felt the student should attend [REDACTED] an alternative school, for at least a semester, and had called Child Protective Services on herself to ensure that she was not violating any laws. The complainant and the counselor developed a plan to help assist with encouraging the student to attend school, but it was unsuccessful. Counseling service notes from December 7, 2022, reflect that "[the student] only attended [school] one day when his mother dropped him off and left. He was fine throughout the day, followed his schedule, and complied with all rules."
5. On December 5, 2022, the student transferred to [REDACTED] and on December 19, 2022, he was withdrawn and re-enrolled at [REDACTED] School on December 21, 2022.
6. According to the student's IEP progress report dated January 24, 2023, the student was making sufficient progress to meet his goals in the areas of reading comprehension and math problem-solving. He was not making sufficient progress in the areas of written expression, social-emotional, behaviors, and learning behaviors.
7. Discipline records reflect that on February 2, 2023, the student was present when marijuana was being smoked in the bathroom. The student received two days of out-of-school suspension and was removed from school on February 3, 2023, returning on February 7, 2023. Documentation shows that at the time of the manifestation determination meeting on February 9, 2023, the student had already been suspended from school for ten days of the 2022-2023 school year. Of those ten days, he was provided services for eight days and was not provided services for two days. Manifestation determination documentation reflects that the team determined that updated assessments were not needed, and the behavior was deemed to be a manifestation of the student's disability due to his emotional dysregulation and anxiety, and not a direct result of the school's failure to implement the student's IEP. The student was returned to school and his BIP dated October 12, 2022, would continue to be implemented. At this meeting, the complainant stated that she did not think [REDACTED] School could meet the student's needs.
8. Discipline records reflect that on February 13, 2023, the student was found to be "wandering" in the sixth-grade hall. When he was asked where he belonged and told to go to class the student cursed at the faculty member who was addressing him and refused to go to class. The student received two days of out-of-school suspension and was removed from school on February 14, 2023, returning on February 16, 2023. Documentation shows that at the time of the manifestation determination meeting on February 17, 2023, the student had already been suspended from school for twelve days. Of those days, the student was provided services for ten days and was not provided services for two days. After reviewing the student's goals, services, progress, accommodations, and BIP, the team decided to add

adult support and a “flash pass” to the student’s supplementary aids. Documentation reflects that it was determined that an IEP meeting would be held to review the student’s IEP and BIP; and that the student’s parents did not agree that a suspension was warranted in this instance because the student’s BIP was not followed. It was determined that the behavior was a manifestation of the student’s disability due to his emotional dysregulation and anxiety, and not a direct result of the school’s failure to implement the student’s IEP. It was decided that the team would continue to implement the student’s BIP dated October 12, 2022, and that adult support and a “Flash pass” would be added to his supplementary aids and services.

9. Discipline records from another manifestation determination meeting held on February 28, 2023, reflect that on February 22, 2023, the student was serving In-School-Intervention (ISI) as an alternative to suspension, and refused to return to ISI after lunch. After being prompted two or more times by two separate adults to return to ISI, the student caused a school disruption and unsafe situation by “walking around the building and moving in and out of bathrooms.” The documentation states that the student was “calmly given options to report to three preferred areas and speak with preferred adults.” The student refused all attempts and used inappropriate language. He was informed that he was being suspended, refused to report to his parent, and left the building. Documentation reflects that at this time the student had received out-of-school suspension for fifteen days during the school year and had been provided services for twelve of those fifteen days. During the meeting, the complainant shared that “adults need to be made aware that they can not follow [the student] around because it just makes it worse.” She also shared that the student was now involved with the juvenile system, and she hoped that things would start to change. It was determined that the behavior was a manifestation of the student’s disability, not a direct result of the school’s failure to implement his IEP, and he was to return to school. It was determined that no changes would be made to the student’s IEP and his BIP dated October 12, 2022, would continue to be implemented.

10. Discipline records from the manifestation determination meeting held on March 15, 2023, reflect that on March 8, 2023, the student was seen on camera kicking students in the back of the legs in the hallway. The student was removed from school on March 9, 2023, and returned on March 10, 2023. The documentation reflects that at that time the student had been suspended for sixteen days during the school year, with services having been provided for fifteen days and not being provided for three. The documentation also reflects that the school social worker reported that she was not able to provide the student with counseling services when he was “high”, and she was not comfortable with providing those services when the student was high. The assistant principal stated that he had never witnessed the student act in a physical manner prior to this incident, but teachers were still struggling with the student coming to class and completing work when he was “high”. It was expressed that when the student worked with the behavior specialist he was engaged and compliant. The family advocate asked if there were any adults in the hallway at the time of the incident and wanted to know why nothing had been changed in his BIP since the student’s three previous manifestation meetings. Meeting notes reflect that “[The team] response should be, we change the way we are working with him... We have tried multiple different settings[,] and we still can’t get him available for learning.” The educational advocate stated that if the behavior intervention plan was not working then the school should look at what can be put in place. The educational advocate also stated that it was clear that the school team “...does not have the resources to meet [the student’s] needs.” The complainant stated that the student knew that what he had done was wrong, and he was very dysregulated and could change within minutes. It was determined that the behavior was caused by the student’s disability and not a direct result of the school’s failure to implement the IEP. The basis for this determination was that the student was dysregulated. The team determined that the student’s IEP and BIP would be revised to address the services determined by the IEP team during removal.

11. Discipline records from the manifestation determination meeting held on March 28, 2023, reflect that on March 22, 2023, the administration was notified that the student “smelled like marijuana.” Upon investigation, it was stated that the student admitted to smoking marijuana before entering the building. It was determined that the student was removed from school on March 22, 2023, and was slated to return on March 24, 2023. Documentation reflects that the student had been suspended for nineteen days by the date of this occurrence, having received services for sixteen days and not having received services for three days. Meeting notes reflect that the complainant stated that she was in the process of having an updated private assessment completed, and the team would consider the information from the private report and determine if additional assessments are needed at that time. The school social worker stated that the student had not been in school to implement the newly revised BIP, and another staff member was to have been collaborating with the student regarding his behaviors for check-ins and ensuring that he was using his pass appropriately. It was shared that the student was not asked if he was high upon the initial interaction, but instead, there was a conversation with the student about his flash passes. When it was noticed that the student smelled like marijuana, the student admitted that he had smoked it on his way to school before entering the building. The complainant stated that the student should never have been suspended. In response, the compliance specialist stated that the code of conduct was not a topic of discussion for the IEP team and could be addressed with the administration at a later date. The compliance specialist stated that she would be contacting someone at [REDACTED] [REDACTED] which was the student’s proposed placement, to determine when the student could begin attending there. The educational advocate shared that [REDACTED] School was not the proper placement to work with the student. The complainant asked that the suspension not be a part of the student’s record, but the compliance specialist stated that that request could only be addressed by the administration, and not the IEP team. The complainant shared that the student was using substances to help him “regulate/medicate” himself and believes it is a manifestation of his disability. The educational advocate stated that prior suspensions should be investigated, and asked if the student could utilize in-school suspension in the future instead of out-of-school suspension so that he could access in-school supports prior to suspension. The educational advocate also asked if another referral could be made to [REDACTED]. It was shared that the student met with the person [REDACTED] in February or March and was discharged because he refused to participate. The educational advocate asked if AACPS could try to initiate working with [REDACTED] again, or if there were any other creative planning options. AACPS staff shared that they would reach out to [REDACTED] again, and the educational advocate requested to have someone from that program invited to the next meeting on April 25, 2023. It was determined that the student’s behavior was caused by or had a direct and substantial relationship to his disability and was also a direct result of the school’s failure to implement his IEP. It was also determined that the IEP would be revised to address the services determined by the IEP team and to address FAPE during removal, and the educational advocate shared that the team needed to concentrate on counseling and proposed to add an additional counseling session while the student was attending [REDACTED] School, to which the team agreed. Staff was scheduled to meet with the student the next day to work with him to provide 11-day services. It was also documented that the BIP was reviewed and revised the previous week and was finalized on the day of the meeting, to be implemented immediately. The student’s annual review was scheduled for April 25, 2023, and was to include a staff member from [REDACTED]. [REDACTED] It was further documented that the student would receive bus transportation upon transferring to [REDACTED].
12. The student’s BIP was updated on March 23, 2023. The behaviors and their hypothesized functions remained the same. The replacement behaviors also remained the same. Additions to the preventative measures included providing a crisis pass for the student to use in times of dysregulation, which would still require adult supervision at a distance and limit adult interactions with questioning; and check-ins

would occur three times during the school day with a trusted adult. Behavior Data from December 21, 2022, to March 16, 2023, reflected that the student only complied with adult requests on December 21, 2022; and only remained in one class on December 22, 2022. The other nine times data were taken the student did not comply with adult requests, and the other nineteen times attendance data were taken the student either did not attend class, did not comply with adult direction, did not remain in class, and on one occasion he eloped from the building with another student.

13. The student's IEP progress report dated March 31, 2023, reflects that the student was only making sufficient progress to meet his goal in the area of reading comprehension. He was not making sufficient progress in written expression, math problem-solving, social-emotional, behaviors, and learning behaviors.
14. On April 11, 2023, the student began attending the [REDACTED]
15. The IEP team convened on April 25, 2023, to conduct the student's annual review. According to the PWN from this meeting, the team reviewed the student's participation in statewide assessments, and present levels of performance were revised. The student's areas of cognitive difficulty were identified, and the team discussed the student's struggle to perform tasks that require attention, rote recall, executive functioning, and working memory concerns. The students' communication and assistive technology needs were considered, and it was stated that instructional and assessment accessibility features would remain the same. Small group for testing was added to the student's testing accommodations; however, the supplementary aids and services remained the same. The team also added the use of pictures to support the student in determining the meaning of words with multiple meanings or idioms, a crisis pass to allow him the opportunity to walk for a brief time with minimal check-in, as well as check-in with an adult if he needs more time out of class with his crisis pass. The student's least restrictive environment was changed to inside general education less than 40% of the school day. During this meeting, the complainant shared that the student had not attended school since his placement was changed to [REDACTED]. She also stated that a police officer had come to the home to pick the student up for school and he still refused to attend. Since the student was failing his classes and had not mastered any standards for the eighth grade, the complainant wanted to discuss having the student retained in the eighth grade. The educational advocate asked for the percentage of time the student was out of class and the number of days that he was suspended to be added to his present levels, as well as having the student screened for a reading intervention. The complainant shared that despite the efforts of the team at [REDACTED] School, they have been unable to implement the student's IEP. In her opinion, the school administration had failed the student by "refusing to find ways to address the behaviors he [exhibited] as a part of his disability leading to multiple manifestation meetings." The complainant stated that she felt the student needed to be in an environment with clinical professionals and peers who would be able to address his needs and give him access to his educational plan. The complainant shared that she did not feel that [REDACTED] was the right environment for her son, and she did not believe that AACPS could meet his needs. She expressed that administrators at [REDACTED] told her that the student needed to go on home and hospital teaching, but his medical team believed that that would be to his detriment. The complainant stated that the team needed to quickly find another educational environment for the student.
16. The IEP team met again on May 9, 2023, to conduct the student's annual review. At this meeting, the team determined that the student's supplementary aids and services would remain the same. In addition to previous supports provided to the student, the team determined that when the student is given a directive that may require him to comply with something that he does not want to do the desired

response should be modeled for him because when the student felt that someone was “coming at him” he would often shut down and not comply, thereby leading to more frustration and longer periods of “shutting down.” The complainant shared that she felt the student also needed services for substance abuse and a way to get the student to attend school. The educational advocate requested that the information psychologist report be included in the student’s IEP. The team added psychological/social worker consult-clinician support for staff to support the student, in addition to consulting psychiatrist consultative support to the staff, parent, and other outside service providers. It was determined that the student met the criteria for Extended School Year (ESY) services, but the educational advocate stated that the student would most likely not attend. The team revised the student’s academic, social-emotional/behavioral skills, and transportation to include four thirty-minute sessions of counseling services per month, outside general education, to address goals and objectives in the area of emotional and executive functioning; thirty-one hours and thirty minutes weekly of classroom instruction outside general education; and transportation to and from [REDACTED] from May 19, 2023, to April 23, 2024. The student’s placement remained inside general education for less than 40% of the school day. During the meeting, the educational advocate stated that the student needs to receive support at school for his substance abuse. The complainant stated that she did not feel that the [REDACTED] was going to work for the student and that [REDACTED] School did not provide him with the support that he needed; however, the complainant felt that the team needed to find a way to educate her son. The complainant’s main concern was that the student needed to be in an educational setting, and although he was involved with juvenile services, he still refused to go. The complainant again stated that she felt the student needed a residential treatment program to help him with his emotional, social, academic, and educational needs. She further expressed that the student had been in treatment for the previous two to three weeks and had refused to go and had been discharged from [REDACTED] because he also refused to go there. The complainant stated that she felt the student was on the wrong medication and had to go to the hospital because he cut his wrists but was not able to be helped because he was on marijuana. The complainant again shared that she did not agree with moving the student into the ninth grade and wanted him held back. The complainant and educational advocate agreed with the IEP that was presented due to the lack of data because the student refused to go to school.

17. According to the student’s attendance records, between April 10, 2023, and June 13, 2023, the student was absent from one or all classes for forty-one days.
18. The psychological evaluation conducted for this student by [REDACTED] from January 2023 to April 2023 revealed that based on the WISC-V his overall intellectual ability fell within the low average range. His verbal comprehension, fluid reasoning, working memory, and progressing speed abilities ranged from low average to average, while his visual-spatial abilities were in the very low range. The report stated that the student continued to meet the criteria for a diagnosis of Attention Deficit Hyperactivity Disorder, Combined Presentation and the student displayed considerable difficulty with inattention, hyperactivity, and impulsivity. The report also stated that the student met the criteria for a diagnosis of Disruptive Mood Dysregulation Disorder (DMDD), as well as generalized anxiety disorder. The results of the evaluation stated that “[the student] would benefit from a specialized school that can incorporate modifications for students who present [as he does]... [H]e needs a highly individualized and responsive educational environment.” The evaluation also reflected that “special consideration should be taken when determining [the student’s] placement and educational needs due to the consistent patterns of defiance and history of aggressive behavior.” It was recommended that the student’s educational environment provide support around his substance use issues as these issues are unlikely to alter without treatment [and] without these supports the student will continue to withdraw and refuse to attend/engage in his educational environment. [Moreover] the student presents with “significant and

persistent anxiety symptoms that need to be accounted for in his treatment planning and educational support planning, [as well as] intense sensory sensitivities, increased worry, and irritability, especially around the increased unpredictability of an environment or situation.”

19. On June 5, 2023, the IEP team met again to consider the Brighter Hope report and to review the student's IEP and Behavior Intervention Plan. The prior written notice states that the team reviewed the psychological evaluation and agreed with “supporting [a diagnosis] of attention deficit hyperactivity disorder, combined presentation, disruptive mood dysregulation disorder, generalized anxiety disorder, and some symptoms of depression” as well as “recommendations for a structured program and specialized school that can incorporate modification for students who present [as he does].” The team determined that the student was currently experiencing significant school avoidance and avoidance of daily tasks and social activities, and current data supported the need for smaller classes, a behavior management program, and psychological consultation to include teaming. It was stated that these supports were included in the student's current IEP dated May 25, 2023. The team also determined that current data supported the need for supports for his persistent anxiety symptoms and relayed that the current IEP goals and supports addressed these needs. The PWN reflects that the team discussed a more restrictive placement to implement the recommendations, but the school team did not agree with the [redacted] recommendation that the student's educational environment should provide the student with support around his substance use issues. The school team also disagreed with adding drug counseling to the student's IEP, as “illegal use of drugs or alcohol cannot be a considering factor determining eligibility for special education [services].” The special education compliance specialist stated that the team would consider any underlying emotional trauma related to the student's emotional disability that led to his self-medicating with drugs. The team's final determination was that adding drug counseling to the student's IEP was not appropriate. The school team proposed placement at The [redacted] a public separate day school, as an appropriate more restrictive environment. It was stated that this placement had a small building with smaller class sizes and would be able to provide the student with a higher level of supervision than what was provided at [redacted]. It was also stated that [redacted] had a “high level of support staff, psychologist, social worker, etc, as well as a low amount of unstructured time.” The team at [redacted] shared concerns surrounding their ability to keep the student safe at the school due to his consistent elopement from class. It was stated that “on the one day [the student] attended [redacted] he eloped from school staff into another part of the building.” The team determined that implementing the student's IEP at [redacted] was inappropriate because it [was] located within a comprehensive high school, is a larger setting, and has less opportunity for a high level of supervision.” The student's educational advocate shared that she did not feel that [redacted] was a more appropriate placement for the student than [redacted]. The educational advocate asked the student's peer support staff how he could assist the family, and it was shared that “once he takes the family to court [for truancy] then the judge can work on mandating certain things. That is something he would look at in the future if [the student] were to not attend school.” The educational advocate shared that she felt charges needed to be filed ahead of the complainant's meeting with DSS so that there was something in writing from the school system. It was stated that charges would be filed against the parent immediately, but not the student. The complainant requested that the student be retained, and it was shared that that was an administrative decision and not an IEP team decision, but there was no data to support that a social promotion would be helpful to the student. Notes from the counseling activity log reflect that on this date the student had been absent from school for the past thirty days and was refusing to attend “per parent.”

20. The student's IEP progress report dated July 27, 2023, reflects that the student was not making sufficient progress in the areas of reading comprehension, learning behaviors, behaviors, and social-emotional as the student did not participate in ESY and there was insufficient data to determine progress on these goals. There was no progress provided for his math problem-solving and written expression goals.
21. On August 28, 2023, the IEP team met to consider the need for Home and Hospital Services for the student. According to the prior written notice, the student was experiencing an emotional crisis that prevented him from attending school in person. During the meeting, it was determined that the student met the criteria for Home Hospital Teaching (HHT) services. The team decided that the student would receive six hours of weekly instruction in Reading, Math, Science, and Social Studies to be broken down into one and one-half hours for each subject. It was also documented that the team received a letter from the student's psychologist about his emotional crisis. The student began Home Hospital Teaching services on September 5, 2023.
22. The student's contact log reflects that on September 15, 2023, the school clinician spoke with the complainant regarding the student's lack of participation in Home Hospital Teaching services. It is documented that the complainant expressed that she was unable to get the student to comply and was concerned that he needed residential treatment. At that time the clinician shared treatment resources with the complainant. On October 26, 2023, it was documented that the clinician provided the complainant with a communication schedule for staff to reach out to the student to build rapport. Documentation reflects that from September 18, 2023, to October 31, 2023, the student averaged 43% in math, 67% in science, 62% in language arts, and 70% in social studies.
23. According to the student's IEP progress report dated October 31, 2023, the student was not making sufficient progress in every goal except behavior.
24. On November 11, 2023, the IEP team met to review existing data and develop a reevaluation plan for the student. The prior written notice from this meeting reflects that the team proposed to provide the student with one thirty-minute counseling service per week for the remainder of HHT services, and once those services ended if the student refused to enter the school building his counseling services would continue virtually. The team proposed an instruction and gradual re-entry plan for the student that included continued attempts for the student to come to school on "B-day" through the end of the second marking period and to join class virtually on "A-day." According to the PWN, the school team started a gradual re-entry plan that had been discussed on October 26, 2023, by attempting to establish a rapport with the student. "Per documentation, 27 phone contacts were attempted from 10/26 until 11/15. [The student] answered the phone and interacted with the callers 21 times (78%) for 3 to up to 25 minutes, discussing various topics, including which classes he enjoyed more... in order to determine which class he could start attending in person. However, when the modified schedule was to begin, [the student] refused to attend." The team proposed allowing more time for the reentry plan. It was determined that the team would continue to monitor the student's progress and an IEP meeting would be scheduled for February 2024. The complainant again requested that the student be placed in a residential program because he was repeating the eighth grade and is still refusing to attend school. The complainant's educational advocate shared that the virtual environment was not working for the student, and the complainant stated that the student has been assigned two Home Hospital teachers since September due to a lack of virtual participation. The student continued to remain at [REDACTED] as his placement. The school team stated that it did not have data to support a change in placement at that time. It was stated that the student did not ever physically attend [REDACTED] and reviewed the plan that it had attempted to implement to assist the student with returning to school. This plan spanned from October 26, 2023, to November 6, 2023, when the student was to attend school on "B days". The

complainant stated that the student had not been cooperating with the plan that the team had been implementing. The complainant and her advocate again stated that the student was not accessing his education and shared that the student requires a residential placement with therapeutic services. The educational advocate stated that AACPS was not addressing the student's disability, and conversations had begun with a lawyer because the school team was suggesting solutions that would not work. The complainant asked if the team had reached out to the Center for Anxiety and Behavioral Change for consultation on how to work with the student's refusal. It was stated that the team had attempted to contact the doctor but had not received a response.

25. There is documentation of the provision of services, or the attempted provision of services, during HHT.
26. There is documentation of the provision of counseling services from November 7, 2022, to December 7, 2023.
27. Attendance records show that from December 1, 2023, to January 19, 2024, the student has been absent from one or all classes on twenty-two days of school.

CONCLUSIONS:

ALLEGATION #1: Proper Procedures When Determining Educational Placement

Each public agency must ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Each public agency must also ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs. (34 CFR §§300.114 - .116)

During the 2022-2023 and 2023-2024 school years, the AACPS attempted three different academic placements for the student including [REDACTED] School, [REDACTED] and [REDACTED]. The complainant also had the student placed at [REDACTED] Alternative School and Home Hospital Teaching. The student did not consistently attend or access his education in any of those settings. Additionally, when the student was attending [REDACTED] School, he received several suspensions and failing grades. Although the psychological evaluation conducted by [REDACTED] recommended that the student be placed in a structured program and specialized school that can incorporate modifications for students who present as he does, the team disagreed with considering the student's need for drug counseling but would consider any underlying emotional trauma related to the student's emotional disability that led to his self-medicating with drugs. However, the student's diagnosis of Emotional Disability, Specific Learning Disability, and Attention Deficit Hyperactivity Disorder, Combined Presentation caused the student to struggle to access the general education curriculum and have considerable difficulty with inattention, hyperactivity, and impulsivity. This circumstance, combined with the need to self-medicate and a refusal to attend school, created an environment where the student was not receiving any assistance with any of his disabilities or emotional issues. Thus, his IEP is unable to be implemented in his current placement.

Based on the Findings of Facts #3 to #10, #12 to #13, #16 to 20, #22 to #24, and #27, MSDE finds the AACPS has not followed proper procedures when determining the student's educational placement since November 2022, in accordance with 34 CFR §§300.114 - .116. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION, SUPPORTS, AND RELATED SERVICES

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. 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 §§300.101 and .323).

Although the AACPS has made earnest efforts to support the student and provide him with the special education instruction, supports, and related services provided by his IEP, his increased refusal to attend school since November 2022 has prevented many of his services from being provided in a meaningful and impactful way.

Based on the Finding of Facts # 3, #14 to #16, and #24 to #27, MSDE finds that the AACPS has ensured that the student has been consistently provided with the special education instruction and related services required by the IEP since November 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #3: REVIEWING AND REVISING THE IEP TO ADDRESS THE STUDENT'S IDENTIFIED NEEDS AND THE LACK OF PROGRESS TOWARD IEP GOALS

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, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. Each public agency must ensure the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals; the results of any reevaluation conducted; information about the child provided to, or by, the parents; or the child's anticipated needs. (34 CFR §§300.101 and .324)

In November 2022, the student began to experience attendance issues such that he would refuse to attend school, and if he was brought to the building, he would refuse to go in. The complainant shared her concerns about her son's behavior with members of AACPS staff and even requested that the student be sent to an alternative school to help him turn his behavior around. Then, from February 2023 to March 2023, the student was suspended five times, in addition to the ten days of suspension that he had already received. Thus, by the end of March 2023, the student had received nineteen days of out-of-school suspension, three of which he had not received his IEP services. However, the team did not make any changes to his Behavior Intervention Plan until March 23, 2023; and when the changes were made there was no consideration given to the new behaviors that the student was exhibiting, namely using drugs on campus or on the way to school, and elopement. While the team did increase counseling services, since the student had a severe attendance and engagement issue, these additional services were not able to be fully utilized. Moreover, while the team

continued to have meetings to review the student's IEP, no consideration was given to the fact that the student was not making progress on his IEP goals.

Based on the Findings of Facts #3 to #12, #15 to 19, #22, and #24 MSDE finds that the AACPS has not ensured that the IEP team reviewed and revised, as appropriate, the student's IEP to address his academic and social/emotional/behavioral needs, and the lack of expected progress toward achieving his IEP goals, since November 2022, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include 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. Accordingly, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

MSDE requires that no later than April 1, 2024, the AACPS convene an IEP team meeting to reconsider placement for this student, as well as determine the amount of compensatory services or other remedy to address the lack of services provided during the three days of suspension that the student did not receive his IEP services due to disciplinary removal. MSDE also requires that no later than April 1, 2024, the IEP team reconvenes to consider the student's needs in totality to determine an appropriate placement and services.

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

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

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

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

ALH/ebh

c: Mr. Mark T. Bedel, Superintendent, AACPS
Ms. Diane McGowan, Director, Specially Designed Instruction and Compliance, AACPS
Ms. Jennifer Brown, Program Manager of Compliance and Legal Issues, AACPS
[REDACTED]
Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Ms. Diane Eisenstadt, Compliance Specialist, MSDE
Dr. Paige Bradford, Chief, Programmatic Support and Technical Assistance, MSDE
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Ms. Elizabeth B. Hendricks, Complaint Investigator, MSDE