

February 2, 2024

Redacted¹

Ms. Diane McGowan
Director, Specially Designed Instruction
and Compliance
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: [REDACTED]
Reference: #24-089

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On November 3, 2023, MSDE received a complaint from the complainant, on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The AACPS has not ensured that the student's progress towards obtaining annual Individualized Education Program (IEP) goals was measured in the manner required by their IEP, since July 2023, in accordance with 34 CFR §§300.320 and .323.
2. The AACPS has not ensured that the student was provided with the behavioral supports required by their IEP, since July 2023, in accordance with 34 CFR §§300.101 and .323.
3. The AACPS has not ensured that the student was provided with the special education instruction and supports designed to allow the student to advance toward attaining annual goals in their IEP, since July 2023, in accordance with 34 CFR §§300.320 and .323.

¹ At the complainant's request, their name and contact information will not be shared with the local education agency.

4. The AACPS has not ensured that the IEP developed for the student addresses their academic and behavioral needs, since July 2023, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is 11 years old and is identified as a student with Autism under the IDEA. He was placed by AACPS at [REDACTED], a nonpublic special education program and has an IEP that requires the provision of special education services and related services.

FINDINGS OF FACTS:

1. The student's IEP, in effect in July 2023, was developed on June 7, 2023. The IEP identifies the student's needs in various areas, including math calculation, math problem-solving, reading comprehension, reading phonics, expressive/receptive language, speech and language pragmatics, written language content, behavioral learning behaviors, and behavioral self-management. The IEP includes goals specifically designed to target and address these identified needs within the same areas. Notably, the student is working towards obtaining a Maryland High School Diploma.
2. The June 7, 2023 IEP requires the student to be provided with 29 hours weekly of specialized instruction outside of the general education classroom at a private separate day school and one hour per week of speech and language services outside of the general education classroom as a related service. The IEP further requires the student to have a low teacher to student ratio to reduce distractions, small group instruction, and social skills instruction.
3. The June 7, 2023, IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) reflects the student requires social and behavior support on a daily basis. The PLAAFP further reflects that the student requires advanced preparation for schedule changes, staff encouragement to "ask for help" or assistance when needed, and staff to redirect him to tasks, as needed. The student requires frequent reminders of rules and routines during both academic and non-academic settings. He requires additional adult support throughout his day, specifically to transition between locations in the school building, supervised recess to assist with modeling appropriate peer interactions, and during all academic settings. The student benefits from a picture schedule, positive reinforcement, changes in activities for movement opportunities in all settings. He benefits from the use of a timer with a bell and setting it for two minutes when using the bathroom to eliminate work avoidance behaviors. The student requires preferential seating in close proximity to an adult in order to be supported on academic tasks and to stay on task on non preferred tasks, to check for understanding, and to repeat directions when necessary.

There is documentation that the student received the behavior support required by the IEP.

4. A Functional Behavior Assessment (FBA) was completed in December 2021. A Behavior Intervention Plan (BIP) was updated on December 22, 2022, to address the following areas: inappropriate vocalization, non-compliance, and physical aggression. The student's BIP was revised on June 7, 2023, to continue addressing the same behaviors.

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5. The report of the student's progress dated October 12, 2023, reflected that all IEP goals were a "newly introduced skill and progress was not measurable at that time." The student started at the current school on September 25, 2023. It was reported that "progress on the goals would be reported at the end of marking period two."
6. The report of the student's progress dated January 2024, for the student's annual goals reflected that the student made "sufficient progress to meet all of his IEP goals"; however, the student's progress was not reported using the evaluation method required by the IEP – specifically in the areas of speech and language pragmatics and self management.
7. The June 7, 2023, IEP's PLAAFP reflects in the area of academics, that the student has "difficulty with encoding which impacts his ability with spelling and writing tasks. The PLAAFP further reflects that the student has difficulty with reading math word problems which impacts his ability in math problem solving. The student has difficulty with attending to, initiating and completing academic tasks and finishing tasks independently in all areas. His disability affects his communication skills in both expressive, receptive, and pragmatic language. The student's disability impacts his communication with peers and teachers in academic and social settings. The student's disability affects his ability to process sensory input around him, which impacts his learning behaviors."
8. The June 7, 2023, IEP's PLAAFP reflects in the area of reading decoding, the student's instructional grade level of performance is on the "kindergarten level." The PLAAFP further reflects that when the student is given multi-sensory instruction, explicit instruction, modeling and visual supports, the student is able to read one syllable, decodable words with CVC patterns that include real and nonsense words, digraphs, bonus letters, and welded sounds.
9. The June 7, 2023, IEP includes the student's reading decoding goal. The goal states: "Given word lists and/or a grade level or instructional level text, and using a tapping strategy, [the student] will know and apply grade level phonics and word analysis skills to decode words to read with sufficient accuracy to support comprehension with 80% accuracy in 4 out of 5 targeted trials."
10. The June 7, 2023, IEP reflects in the area of reading comprehension, the student's instructional grade level of performance is on the "kindergarten to first grade level." Without visuals, the student struggles to attend to the task, to read words, and create meaning from the text.
11. The June 7, 2023, IEP includes the student's reading comprehension goal as follows: "When in a small group setting, with either a instructional level text to read or a grade level text read by the teacher, when two visual choices and/or picture supports are given along with two answer choices for each question, [the student] will be able to answer who, what, where, and why questions to demonstrate understanding of a text with 80% accuracy in 4 out of 5 targeted trials." However, this goal is not aligned with grade-level Maryland College and Career Ready Standards.
12. The June 7, 2023, IEP's PLAAFP reflects in the area of math calculation, the student's instructional grade level of performance is on the "kindergarten level." Math calculation is an area of strength for the student. He is able to add and subtract one digit numbers independently using mental math strategies. The student is able to add and subtract with regrouping using a calculator. He is able to multiply 2-digit by 1-digit numbers. The student struggles with timed tasks as he requires frequent reminders to continue working.

13. The June 7, 2023, IEP includes the student's math calculation goal. The goal states: "In a small group setting, when given an anchor chart, a teacher provided example, and a calculator, the student will be able to fluently add and subtract within 1000 with 80% accuracy in 4 out of 5 targeted trials." However, this goal is not aligned with grade-level Maryland College and Career Ready Standards.
14. The June 7, 2023, IEP's PLAAFP reflects in the area of math problem solving, the student's instructional grade level of performance is on the "first grade level." The student is able to solve one step word problems for addition, subtraction and multiplication. He is able to solve two step word problems for addition and subtraction. The student can accurately identify fractions including the numerator and denominator. He is able to add and subtract fractions with the same denominator; however, when asked to complete math problems in a word problem format, the classroom data showed, he struggled to identify necessary information and focus on the content needed to solve the problem.
15. The June 7, 2023, IEP includes the student's math problem solving goal. The goal states: "In a small group setting, when given an anchor chart, a teacher provided an example, a number line and/or a hundred chart, and a calculator [the student] will be able to solve both multiplication and division word problems within 100 with 80% accuracy in 4 out of 5 targeted trials."
16. The June 7, 2023, IEP's PLAAFP reflects in the area of written expression, the student's instructional grade level of performance is "below grade level." The student is able to write high frequency words, CVC words, and words with suffix -s independently. He is able to compose a simple sentence with prompting and sentence starters. The student is able to write multiple sentences when provided with a thinking map, an organizer, transition words, a word bank, and sentence starters for both informational and narrative writing tasks. The PLAAFP reflects the student benefits from copying his dictated sentence from a near point whiteboard. He requires repeated prompting from the teacher to initiate and complete most writing tasks.
17. The June 7, 2023, IEP includes the student's written expression goal. The goal states: "When in a small group setting, with explicit instruction, anchor charts, teacher modeling, examples, a word wall, thinking maps, a graphic organizer, and with sentence starters, [the student] will be able to provide ideas for narrative or informational writing, organize his topic to include an introductory sentence, provide 3 key details, and provide a closing sentence with 75% accuracy in 3 out of 4 targeted trials."
18. The June 7, 2023, IEP includes the student's writing mechanics goal. The goal states: "In a small group setting, when working on the editing process on a narrative or informational writing task, while working one on one with the classroom teacher, using anchor charts, a proofreading checklist, and a word processor (Google Docs), [the student] will be able to correct capitalization, punctuation, and spelling errors with 75% accuracy in 3 out of 4 targeted trials."
19. The June 7, 2023, IEP's PLAAFP reflects in the area of learning behaviors, the student's instructional grade level of performance is below grade level. The student has difficulty with transitions, loud noises, and unstructured time, which results in behaviors such as task avoidance. The student demonstrates work avoidance behaviors (i.e. yelling, screaming, pounding on desks, stomping on the floor, throwing chairs, laying on the floor/hallway, or rolling on the floor) to avoid the non-preferred task and requires more prompting.

20. The June 7, 2023, IEP includes the student's learning behaviors goal (goal one). The goal states: "Given additional adult support, the use of a timer with either 2, 3, 5, or 10 minute increments, and with no more than 6 prompts and/or re-directs, [the student] will follow single step directions in order to initiate and complete preferred and non-preferred academic tasks in the self-contained classroom with an increase in on task behaviors in 5 out of 10 trials (50%)."
21. The June 7, 2023 IEP includes the student's learning behaviors goal (goal two). The goal states: "Given additional adult support, the use of a timer with either 2, 3, 5, or 10 minute increments, and with no more than 6 prompts and/or re-directs, [the student] will follow single step directions in order to initiate and complete preferred and non-preferred tasks in the general education classroom setting including cultural arts." However, as the student is presently attending a segregated school, this goal is no longer applicable.
22. There is documentation indicating that the IEP was amended on January 26, 2024, to modify the learning behavior goal to align with the student's current placement. The revised learning behavior goal now states: "Given additional adult support, the use of a timer with either 2, 3, 5, or 10-minute increments, and with no more than 6 prompts and/or re-directs, [the student] will follow single-step directions to initiate and complete preferred and non-preferred academic tasks in the self-contained classroom."
23. There is documentation that the student was provided special education instruction and supports to provide him access to the general education curriculum.

DISCUSSION/CONCLUSIONS:

ALLEGATION #1

REPORTING OF PROGRESS

The AACPS must ensure the provision of written information about the student's progress toward their IEP goals and that the written information is based on the data collection method required by the IEP (34 CFR §§300.101, .320, and .323).

Based on Findings of Fact#5 and #6 MSDE finds that the AACPS has not ensured that the student's progress towards obtaining his annual IEP goals was measured in the manner required by their IEP, since January 2024, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds that a violation did occur with respect to this allegation.

ALLEGATION #2

PROVISION OF BEHAVIOR SUPPORTS

Based on Findings of Facts #3, MSDE finds the AACPS has ensured that the student was provided with the behavioral supports required by their IEP, since July 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur with respect to this allegation.

ALLEGATION #3

PROVISION OF SPECIAL EDUCATION INSTRUCTION AND SUPPORTS

Based on Findings of Facts #1, #3, #7, #23, MSDE finds the AACPS has ensured that the student was provided with the special education instruction and supports designed to allow the student to advance toward

attaining annual goals in their IEP, since July 2023, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds that a violation has not occurred with respect to this allegation.

ALLEGATION #4

IEP THAT ADDRESSES THE STUDENT'S NEEDS

If a student is performing significantly below grade level, the IEP team should determine annual goals that are ambitious but achievable for that student. While annual goals need not necessarily result in the student attaining grade level proficiency within the year covered by the IEP, the goals should be sufficiently ambitious to help close or reduce the achievement gap. The IEP team must also, when appropriate, consider goals that target critical age/grade appropriate skills essential to facilitate student independence and enable them to access and participate in grade level instructional and social activities, and make progress toward achieving grade-level standards.

The IEP goal(s) should be aligned to academic content standards of grade level enrollment, and/or academic content standards from earlier in the learning progressions, and/or align to age/grade appropriate functional skills impacted by the disability and interfere with, prevent, or affect communication and interpersonal interactions, participation in school and learning activities, and independence in school and potential post-school settings. Priority is given to skills that support the achievement of multiple standards and/or the student's access to grade level content in multiple areas.

The student should receive instruction, including supports according to his or her IEP, on all grade level standards, but the IEP goals should reflect skills that the IEP team identifies as essential and require specially designed instruction to learn. The IEP goals focus instruction and progress monitoring on the critical skills that will enable the student to meet grade level standards. The standards themselves are not the IEP goal. MSDE Technical Assistance Bulletin- Improving Outcomes for Students with Disabilities Curriculum, Instruction, and Assessment.

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. (34 CFR §300.324). Based on Findings of Facts #1, #2 #3, #7-22, MSDE finds the AACPS has not ensured that the IEP developed for the student addresses their academic and behavioral needs, since July 2023, in accordance with 34 CFR §300.324. Specifically, based on Findings of Facts #11 and #13, the reading comprehension and math calculation goals do not align with grade-level Maryland College and Career Ready Standards. Therefore, this office finds that a violation has occurred with respect to this 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.² This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Sarah Denney, Complaint Investigator, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Denney can be reached at (410) 767-7770 or by email at sarah.denney@maryland.gov.

Student-Specific

MSDE requires the AACPS to provide documentation by March 14, 2024, that the IEP team has taken the following actions:

- a. The student's progress that is not reported as required by the goals is revisited and progress reports are revised, as is possible.
- b. The student's goals are aligned with the grade level standards or essential elements for the grade level standards for the student's grade level.

The AACPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

MSDE requires the AACPS to provide documentation by April 1, 2024, of the steps taken to ensure that the violation does not recur at [REDACTED].

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.

² The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

³ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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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/sj

c: Mark T. Bedel, Superintendent, AACPS
Sonya McElroy, Co-Director, Birth-5 Programs, Special Services and
Nonpublic Placement, AACPS
Jennifer Brown, Program Manager, Compliance and Legal Issues, AACPS
[REDACTED], Principal, [REDACTED]
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Alison Barmat, Branch Chief, Family Dispute Resolution, MSDE
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