

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: #24-090

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, the 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's 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.

3. The AACPS has not ensured that the student was provided with the support of a dedicated adult assistant and other behavioral supports, as required by their IEP, since July 2023, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is 11 years old and is identified as a student with Autism under the IDEA. He was placed by ACCPS 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 May 01, 2023. The IEP reflects identified needs in the areas of communication, math problem calculation, reading comprehension, reading vocabulary, written language expression, learning behaviors, and self- management. The IEP requires goals aimed at addressing learning behaviors, reading comprehension, functional communication, written language expression, and math calculation. In addition, the IEP reflects that the student participates in alternate state assessments and follows alternate academic achievement standards. Furthermore, it reflects that he will receive a Maryland High School Certificate of Program Completion.
2. The May 01, 2023, IEP requires the student to be provided with 29 hours and 15 minutes weekly of specialized instruction outside of the general education classroom at a private separate day school and three hours monthly of speech and language services outside of the general education classroom as a related service. The student was deemed to require 2:1 adult support on a daily basis, and there is documented evidence of him receiving this level of support since July 2023.
3. The May 01, 2023, IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) outlines the student's challenges due to Autism, including weaknesses in working memory, verbal comprehension, and processing speed. As the student is nonverbal, assistive technology is essential during instruction and testing. Multi-modal communication support is required for expressive/receptive language development and accessing the curriculum and communicating needs. The PLAAFP further reflects that these challenges affect the student's language, listening, and focus, impacting the ability to follow directions, recall concepts, and comprehend information in various subjects. Reading, math, writing, and learning behaviors are all affected, with difficulties in higher-level questions, math problem-solving, and writing due to working memory limitations. Sustaining attention, on-task behaviors, and organizational skills are hindered, necessitating a high level of adult support. Direct support for learning behaviors, behavior/safety, and instructional modifications are needed for active participation in the educational environment. Expressive and receptive language deficits further impact social and academic engagement.
4. On August 29, 2023, the IEP team met to review and revise the IEP as appropriate, specifically examining assessments previously ordered to determine eligibility. The team initiated and reviewed

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- a Functional Behavior Assessment (FBA) conducted on August 22, 2023, by AACPS, alongside a parent provided external FBA and Behavior Intervention Plan (BIP) completed by Kennedy Krieger.
5. The data derived from the FBA indicated a reduction in the student's disruption, elopement, and aggression behaviors. However, it was observed that the student continued to exhibit self-injurious behavior.
 6. The IEP team determined that the student continues to meet criteria as a student with a disability under IDEA and requires specialized instruction. The IEP team revised the present levels in the area of self-management and developed a new IEP goal. The IEP team revised the BIP and removed the use of restraint.
 7. The August 29, 2023, IEP's PLAAFP in the area of reading comprehension, reflects the student performing at an instructional level equivalent to "pre-kindergarten to kindergarten." The student understands simple verbal directions from staff.
 8. The report of the student's progress dated October 2023 for the student's annual reading comprehension goal reflects that the student "achieved" the goal. The progress report reflects that the goal was not measured in the manner required by the IEP.
 9. The August 29, 2023, IEP's PLAAFP in the area of math calculation, reflects the student is currently performing at an instructional level equivalent to "pre-kindergarten to kindergarten." The data reflects, due to the student's difficulty or inability to write numbers, he was unable to complete subsections of the assessment, preventing a thorough evaluation of his abilities in the area of math.
 10. The report of the student's progress dated October 2023, reflects that he was "not making sufficient progress to meet" his math calculation goal. The student's progress is not reported as required by the goal.
 11. The August 29, 2023, IEP's PLAAFP in the area of written language expression, reflects the student is currently at an instructional level equivalent to "pre-kindergarten to kindergarten."
 12. The report of the student's progress dated October 2023, reflects he was "not making sufficient progress to meet" his written language expression goal. The student's progress is not reported as required by the goal.
 13. The August 29, 2023, IEP's PLAAFP in the area of learning behaviors reflects the student performing "below the same aged peers." Based on classroom teacher reports and progress reports his performance depends upon his mood, engagement level and willingness to participate and interact with staff on a daily basis and ability to learn. His prompt level varies, and he requires support from staff to complete tasks and stay focused and motivated. At times, the student will not respond to staff. He struggles with completing work without staff support and requires an adult within close proximity to maintain safety.

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14. The reports of the student's progress dated October 2023, reflect the student "making sufficient progress" to meet his learning behavior goal. The student's progress is reported as required by the goal.
15. The August 29, 2023, IEP's PLAAFP in the area of self- management reflects the student performing "below the same aged peers." The student received an informal Functional Analysis (FA) that reflects the demonstrated physical disruptions (specifically throwing items) during the demand and control condition. The student demonstrated aggressive behavior that is in the form of pushing stuff away when they are in his way from moving around to the retrieve items he wanted (paper). The student has a habit of ripping up papers.
16. The reports of the student's progress dated October 2023, reflect the student was making "sufficient progress" to meet his self- management goal. The student's progress is reported as required by the goal.
17. The August 29, 2023, IEP reflects the student requires the following supplementary aids and supports to assist with his behavior daily: de-escalation area that is always available to him to maintain his safety, as well as the safety of others, instructional space with mats for safety on walls and without direct access to peers, crisis intervention to maintain safety for himself and others in times of behavioral outburst, requires adults to maintain close proximity at all times, requires positive/concrete reinforcers such as edible reinforcement with a token board. He should receive verbal and non-verbal reinforcement for on-task behavior, needs strategies to regulate his level of alertness throughout the day: movement breaks, use of technology devices, compression vest as needed, requires frequent positive restatement of expectations, requires movement breaks to maintain his attention during instruction, additional adult support is required within the immediate vicinity. There is documentation that the above requirements were provided to the student.
18. On December 18, 2023, the IEP team met to conduct an annual review. The IEP team updated the present levels in the areas of communication, math calculation, reading comprehension, reading vocabulary, written language expression, learning behaviors, self-management and social interaction skills. The IEP developed at this meeting reflects that his present level of performance was updated based on his quarterly progress reports, informal assessments, teacher reports and classroom based performance. Additionally, the IEP team revised the IEP goals, noting those that were "achieved" and identifying areas where the student "did not make progress."
19. The December 18, 2023, IEP team, determined since the student's start date in May of 2023, that the IEP needed to be focused on the student "following school routines, building instructional control, and adapting to the new school. Additionally, the student has been actively working on "understanding his token board and following classroom routines." The student's reinforcement choices vary and include options such as "taking a walk, using the swing, having a snack, or simply taking a break in the classroom."
20. The December 18, 2023, IEP team, determined the student needs the following supplementary aids, services, program modifications and supports on a daily basis for success during reading: "check for understanding, frequent and/or immediate feedback, provide alternative ways for student to

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 25, 2024, that the IEP team has taken action to review the student's progress that is not reported as required by the goals is revisited and progress reports are revised, as is possible.

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

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, 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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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/sj

- c: Mark T. Bedel, Superintendent, AACPS
- Sonya McElroy, Director, Birth-5 Programs, Special Services and Nonpublic Placement, AACPS
- Jennifer Brown, Program Manager of Compliance and Legal Issues, AACPS
- [REDACTED], Principal, [REDACTED]
- [REDACTED], Principal, [REDACTED]
- Alison Barmat, Branch Chief, Family Dispute Resolution, MSDE
- Sarah Denney, Complaint Investigator, MSDE
- Paige Bradford, Chief, Programmatic Support and Technical Assistance, MSDE
- Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
- Stephanie James, Complaint Investigator, MSDE