

March 1, 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

Ms. Diane McGowan  
Director of Specially Designed Instruction and Compliance  
Anne Arundel County Public Schools  
2601 Riva Road  
Annapolis, Maryland 21401

RE: [REDACTED]  
Reference: #24-116

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 January 3, 2024, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The AACPS has not ensured that the student has been provided with the accommodations and supplementary aids and services on his Individualized Education Program (IEP) since January 2023, in accordance with 34 CFR §300.101.
2. The AACPS has not ensured that the student has received an evidence-based reading intervention, as required by his IEP, since January 2023, in accordance with 34 CFR §300.101.
3. The AACPS has not ensured that the student has received small group instruction, as required by his IEP, since January 2023, in accordance with 34 CFR §300.101.
4. The AACPS did not conduct a reevaluation process for the student in accordance with 34 CFR §§300.303-.306 since January 2023.
5. The AACPS did not determine or implement compensatory services for the lapse in implementation of the student’s IEP when the special education teacher was unavailable, since January 2023.

**BACKGROUND:**

The student is nine years old and is identified as a student with autism under the IDEA. The student attends [REDACTED] School ([REDACTED]), a comprehensive elementary school located in Anne Arundel County.

**FINDING OF FACTS:**

**ALLEGATIONS #1, #2, and #3:**

**IMPLEMENTATION OF THE STUDENT'S SUPPLEMENTARY AIDS AND SERVICES, PROVISION OF AN EVIDENCE BASED READING INTERVENTION, IMPLEMENTATION OF SMALL GROUP INSTRUCTION**

1. The student's IEP dated December 14, 2022, was in effect during January 2023. The areas affected by the student's disability are identified as expressive and receptive language, reading comprehension, math problem solving, learning behaviors, and pragmatic language. The student is eligible to participate in the general Maryland Comprehensive Assessment Program for English Language Arts /Literacy (ELAL), Mathematics, and Social Studies. The student is pursuing a Maryland High School Diploma and was in the third grade at the time the December 14, 2022, IEP was developed.
2. The December 14, 2022, IEP includes present levels of Academic Achievement and Functional Performance reflecting the following grade level performance: Expressive/Receptive Language-Below age expectations; Reading Comprehension-Below age expectations; Math Problem-Solving-Below age expectations; Learning Behaviors-Below age expectations; Pragmatic Language- below age expectations. There are no grade levels provided in other academic areas. All of these areas are identified as impacting the student's academic achievement and/or functional performance.
3. The student's December 14, 2022, IEP indicates that he does not require assistive technology devices or services, however, his IEP includes both high and low tech assistive technology supports (use of sentence frames and text to speech software).
4. The student's December 14, 2022, IEP indicates that he is an English Learner, with an Access Score of 1.7. At the time the IEP was drafted, he was assessed at a Level 1 for Listening (understanding brief messages and short commands), Speaking (communicate using familiar words, gestures, or body language), Reading (identify meaning or messages in drawings, symbols, or other visual representations), and Writing (communicate messages using drawings, symbols, or other visual representations).
5. The December 14, 2022, IEP includes the following Instructional and Assessment Accessibility Features: text to speech for the mathematics, science, and government assessments; reduce distractions to self; and reduce distractions to others. It also includes extended time as a timing accommodation for students with disabilities.
6. The student's December 14, 2022, IEP requires the implementation of the following supplementary aids services, program modifications and supports on a daily basis: allow use of manipulatives; monitor independent work; repetition of directions paired with visual supports; check for understanding; paraphrase questions and instruction; have student repeat and/or paraphrase information; break down assignments into smaller units; strategies to initiate and sustain attention; adult support; and

preferential seating. The following supplementary aids services, program modifications and supports are required on a periodic basis: pre-teaching and re-teaching of key concepts; answer choice and sentence frames to support response to questions; and speech/language pathologist consult.

7. The IEP team deferred the Extended School Year (ESY) decision for the student.
8. The student's December 14, 2022, IEP has goals in the following areas: Expressive/Receptive Language; Expressive Language; Reading Comprehension; Math Problem Solving; Learning Behaviors; and Pragmatic Language. The student was required to receive 2.5 hours of specially designed instruction inside of the general education classroom for reading weekly, 2.5 hours for math inside of the general education classroom weekly, and .5 hours weekly inside of the general education classroom for a total of 5 hours of specially designed instruction inside of the general education setting weekly. He was also required to receive specially designed instruction for 1 hour weekly outside of the general education setting for reading and 1 hour weekly outside of the general education classroom weekly for math, for a total of 2 hours per week. All specially designed instruction was to be provided by the special education teacher, the general education teacher, or an instructional assistant. The student was also required to receive 30 minutes of speech/language from a speech/language pathologist each week.
9. There is no documentation that the student was provided the supplementary aids services, program modifications and supports on a daily or periodic basis, as required by his December 14, 2022, IEP, with the exception of speech/language consultation, from December 14, 2022, until October 31, 2023.
10. There is no documentation that the student's December 14, 2022, IEP requires that a reading intervention be implemented.
11. The December 14, 2022, IEP does not include small group instruction as a supplementary aid, service, program modification and support, however, it does require a total of 2 hours of specially designed instruction to be provided outside of the general education classroom each week. There is some documentation that these services were provided, but not consistently since January 2023, as required by the student's IEP.
12. The student's December 14, 2022, IEP was amended on March 13, 2023, to determine ESY services. The student received 5 hours and 30 minutes of classroom instruction and 30 minutes of speech language therapy weekly from July 3, 2023, through July 28, 2023.
13. The student's next IEP annual review meeting was held on January 2, 2024. The areas affected by the student's disability are identified as expressive/receptive language, expressive language, pragmatic language, reading comprehension, math problem solving, and learning behaviors.
14. The January 2, 2024, IEP includes present levels of Academic Achievement and Functional Performance reflecting the following grade level performance: Expressive/Receptive Language-Below age expectations; Expressive Language-Below age expectations; Reading Comprehension-First grade level; Math Problem-Solving-Kindergarten Level; Learning Behaviors-Below age expectations; Pragmatic Language-Below age expectations. All of these areas are identified as impacting the student's academic achievement and/or functional performance. The student was in the fourth grade at the time this IEP was developed.

15. The student's January 2, 2024, IEP reflects that he requires Assistive Technology (AT) devices but does not require AT services.
16. The student's January 2, 2024, IEP reports that his Winter 2023 Access score is a 1.9. His speaking and listening levels continue at level 1. His reading and writing levels have increased to a level 2, where he can now "understand written language and can communicate in writing in English" relating to familiar topics.
17. The student's January 2, 2024, IEP includes the following Instructional and Assessment Accessibility Features: text to speech for the mathematics, science, and government assessments; reduce distractions to self; small group; and reduce distractions to others. It also includes ELA Literacy Selected Response Speech to Text, Mathematics, Science, Government Response Speech to Text, ELA/L, Constructed Response Speech to Text, and extended time as a timing accommodation for students with disabilities.
18. The student's January 2, 2024, IEP requires the implementation of the following supplementary aids services, program modifications and supports on a daily basis: allow use of manipulatives; monitor independent work; repetition of directions paired with visual supports; check for understanding; paraphrase questions and instruction; have student repeat and/or paraphrase information; answer choice and sentence frames to support response to questions; picture schedule; pre-teaching and re-teaching of key concepts; provide assistance with organization; allow use of organizational aids; limit amount to be copied from board; provide student with copy of student/teacher notes; task analysis, evidence-based reading intervention; break down assignments into smaller units; chunking of texts; strategies to sustain attention; adult support; and preferential seating. The following supplementary aids services, program modifications and supports on a periodic basis: home school communication system and speech/language pathologist consult.
19. The January 2, 2024, IEP provides 6 hours of specially designed instruction inside of the general education setting weekly by a special education teacher, a general education teacher, or an instructional assistant. The student will receive 3 hours of specially designed instruction for reading and 3 hours for math, with instruction for learning behaviors embedded. The student will also receive 2 hours of specially designed instruction outside of the general education setting from a special education teacher, a general education teacher, or an instructional assistant, 1 hour for math and one hour for reading each week. The speech language pathologist will provide 30 minutes of therapy weekly.
20. The IEP team found the student eligible for ESY services. He will receive 6 hours of classroom instruction and 30 minutes of speech weekly from July 8 through August 1, 2024.
21. There is documentation that the student has been provided with adult support since January 2024.
22. There is documentation that the student has been provided with supplementary aids, services, program modification and supports, as required by his January 2, 2024, IEP.

**CONCLUSION:**

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

**ALLEGATION #1: Implementation of Accommodations and Supplementary Aids and Services**

Based on the Finding of Fact #1 through #12, MSDE finds the AACPS did not follow proper procedures in implementing the student's IEP and ensuring that the student has been provided with the accommodations and supplementary aids and services (including the provision of an additional adult) on his Individualized Education Program (IEP) since January 2023, in accordance with 34 CFR §300.101. Therefore, this office finds that a violation did occur with respect to the allegation.

**ALLEGATION #2: Implementation of an Evidence-based Reading Intervention**

Based on Finding of Fact #10 and #18, the student's IEP did not require the implementation of an evidence based reading intervention until January 2, 2024. Based on Finding of Fact #20, there is documentation that the student has been provided with an evidence-based reading intervention since his IEP has required it, in accordance with 34 CFR §300.101. Therefore, this office finds that a violation did not occur with respect to this allegation.

**ALLEGATION #3: Provision of Small Group Instruction**

Based on Finding of Fact #6 and #17, the student's supplementary aids and services did not require small group instruction until his January 2, 2024, IEP. He did, however, require services outside of the general education setting in a smaller setting. Based on Finding of Fact #11, the student was not consistently provided with small group instruction as required by his IEP, since January 2023, in accordance with 34 CFR §300.101. Therefore, this office finds that a violation did occur with respect to this allegation.

**FINDING OF FACTS**

**ALLEGATION #4: REEVALUATION PROCESS**

23. The student's triennial reevaluation was due on December 1, 2023.
24. The IEP team began the referral process on November 17, 2023. The team recommended assessment in expressive, receptive, and pragmatic language; academic performance in reading, math, and written expression; and learning behaviors.
25. The reevaluation process was not completed until January 2024.
26. The AACPS acknowledges that there is a violation with respect to proper procedures being followed in adhering to the reevaluation process. MSDE concurs with and appreciates that acknowledgement.

**CONCLUSION**

Based on Finding of Fact #23 through #26, MSDE finds that the AACPS did not conduct a reevaluation process for the student in accordance with 34 CFR §§300.303-.306, since January 2023. Therefore, this office finds that a violation did occur with respect to this allegation.

Notwithstanding this violation, AACPS has proactively conducted professional development. No school-based correction is required.

## **FINDING OF FACTS**

### **ALLEGATION #4: COMPENSATORY SERVICES**

27. The AACPS acknowledges there was a period of time during the 2022-2023 school year within the window of this investigation, that the student was without a special education teacher, as well as extra adult support, as required by his IEP. MSDE appreciates that acknowledgement.
28. The IEP team convened on June 13, 2023, to discuss compensatory and recovery services for the student as a result of the lapse in services.
29. The complainant shared concern about missed service hours during the first semester when the student's special education teacher left and when new one started, that they had not received all their quarterly progress reports, and they were not aware that there was no special education teacher for some time.
30. The IEP team determined that there was a two-week gap, stated that compensatory services were not generally provided for "teacher absences, sick days, or IEP team meetings," and that after a review of the student's quarterly progress notes from the second, third, and fourth quarters, no compensatory services were warranted.
31. There is no documentation of the specific data the team relied on to make that determination, what the student's progress was with or without the services, whether the complainant agreed with the decision, other factors that were relevant (i.e. complainant not receiving the quarterly progress, the lack of the additional adult), or other options considered.

## **CONCLUSION**

Based on Finding of Fact #27 through #31, MSDE finds that the student was not provided with the special education instruction by a special education teacher, as required by his IEP. The IEP team misstated that compensatory services were not owed due to teacher absences but provided no basis for that position. Therefore, MSDE finds a violation with respect to this allegation.

## **ADDITIONAL VIOLATION FOUND IN THE COURSE OF THE INVESTIGATION**

Each student's IEP must be reviewed at least annually. In this case, the student's annual IEP review date was December 14, 2023; however, the IEP team did not hold the annual review until January 2, 2024, over one year later. Therefore, AACPS failed to follow proper procedures with respect to convening a timely annual review meeting, in accordance with 34 CFR §300.324. Accordingly, MSDE finds a violation with respect to this requirement.

## **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.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required actions consistent with MSDE Special Education State Complaint Resolution Procedures.

If the 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Barmat can be reached at (410) 767-7770 or by email at [alison.barmat@maryland.gov](mailto:alison.barmat@maryland.gov).

### **Student-Specific**

MSDE requires the AACPS to provide documentation by May 1, 2024, that the IEP team has convened and determined whether the violation related to the delay in completing the annual review on a timely basis, consistently implementing the student's IEP since January 2023, and properly determining compensatory services had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

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

### **School-Based**

MSDE appreciates the steps that AACPS has taken to proactively provide professional development on the re-evaluation process to the staff at the student's school. In addition, by May 1, 2024, AACPS must provide additional professional development on the timely completion of annual review meetings, consistent implementation of IEP services, accommodations, supplementary aids and services, the determination of compensatory services, and proper documentation of decisions. AACPS must also provide one monitoring report by June 1, 2024, for 10 randomly selected students at [REDACTED] School reflecting annual reviews and reevaluation dates, and documentation of the implementation of the student's services, accommodations, and supplementary aids and services, in compliance with their IEPs.

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.

---

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

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

Ms. Diane McGowan

March 1, 2024

Page 8

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

ALH/ab

c: Dr. Mark Bedell, Superintendent, AACPS  
[REDACTED], Principal, [REDACTED] School, AACPS  
Jennifer Brown, Manager, Compliance and Legal Issues, AACPS  
Ruth Avizad, Compliance Specialist, AACPS  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE