

May 7, 2024

Ms. Alyssa Fieo, Esquire
Maryland Office of the Public Defender
217 E. Redwood Street
Suite 1000
Baltimore, Maryland 21202

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

RE: [REDACTED]
Reference: 24-164

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and 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 March 11, 2024, MSDE received a complaint from Ms. Alyssa Fieo, Esquire 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 did not ensure that its administrative procedures were followed to respond to the student’s truancy, grades, and other behaviors, in order for the school staff to suspect that the student is a student with a disability under the IDEA from March 2023, until a request was made on September 26, 2023, in accordance with 34 CFR §300.111.
2. The AACPS did not follow proper procedures when disciplinarily removing the student from school since March 2023, in accordance with 34 CFR §§300.530 - 536, COMAR 13A.08.03 and COMAR 13A.05.01.10.

BACKGROUND:

The student is 18 years old and attends ██████████. He is identified as a student with an Intellectual Disability (ID) under the IDEA and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

ALLEGATION #1

CHILD FIND

SUMMARY OF FINDINGS AND CONCLUSIONS:

In its written response, the AACPS acknowledges that a violation occurred with respect to Allegation #1. Specifically, the AACPS acknowledges that they did not follow their "administrative procedures when responding to the student's truancy, grades, and other behaviors, in order for the school staff to suspect that the student is a student with a disability under the IDEA from March 2023, until a request was made on September 26, 2023".

MSDE concurs and appreciates the AACPS' acknowledgment that a violation occurred with respect to the allegation.

ALLEGATION #2

DISCIPLINARILY REMOVING

FINDINGS OF FACT:

1. In March 2023, the student was not identified as a student who required special education instruction or services.

March 2023 - August 2023

2. The student was suspended on:
 - March 21, 2023, for violating the student code of conduct of unsafe actions¹ for three days,
 - April 25, 2023, for violating the student code of conduct of unsafe actions for two days,
 - May 15, 2023, for violating the student code of conduct of unsafe actions for three days,
 - May 31, 2023, for violating the student code of conduct of unsafe actions the student was suspended for six days.

¹ The AACPS Student handbook defines unsafe action as "any action that has the potential to cause danger or physical harm to self or others includes reckless vehicle use, pranks, horseplay, tripping jump challenge, TikTok challenges, joking, poking a person, acts of bias behavior and language that incite or cause a school or class disruption, unauthorized opening entrances and exits, hate crimes, inappropriate touching, improper physical contact, moving another person's belongings without authorization, senior pranks, sharing medicine, energy drinks, alcohol or controlled dangerous substance, and weapons on school property or on a school vehicle."

2023-2024 school year

3. The student was suspended on:
 - September 26, 2023, for violating the student code of conduct of unsafe actions for five days;
 - December 20, 2023, for violating the student code of conduct regarding disrespect of others, for two days; and
 - January 3, 2024, for violating the student code of conduct regarding disrespect of others, for two days.

4. While there is no documentation that the parent requested an evaluation to determine if special education services were required or that the teachers expressed concern that the student requires special education services; based upon the AACPS' acknowledgement they should have known the student had a suspected disability.

DISCUSSION AND CONCLUSION:

The IDEA provides specific protections to students with disabilities who are disciplinarily removed from school in excess of ten (10) days during the school year (34 CFR §§300.530-.536). A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert the protections provided to students with disabilities if the public agency had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

In this case, the AACPS acknowledges that procedures were not followed that would have correctly identified the student as a student with a disability since March 2023. The student was not identified on a timely basis, therefore, proper procedures were not followed when the student was disciplinarily removed from the school setting.

Based on the Finding of Facts #1 through #4, MSDE finds that the AACPS did not follow proper procedures when disciplinarily removing the student from school since March 2023, in accordance with 34 CFR §§300.530 - 536, COMAR 13A.08.03 and COMAR 13A.05.01.10. Therefore, this office finds that a violation has not occurred concerning 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. MSDE has established reasonable time frames below to ensure that non-compliance 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 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 Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student-Specific

MSDE requires the AACPS to provide documentation by May 31, 2024, that the IEP team has convened to determine if the violations identified in this Letter of Finding had a negative impact on the student's ability to benefit from the education program. If the IEP 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 one 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 requires the AACPS to provide documentation by May 31, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for Child Find under the IDEA. These steps must include staff development, as well as tools developed to monitor compliance.

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, 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.

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/ra

c: Dr. Mark T Bedell, Superintendent, AACPS
Diane McGowan, Director, Specially Designed Instruction and Compliance, AACPS
Jennifer Brown, Program Manager of Compliance and Legal Issues, AACPS
[REDACTED], Principal, [REDACTED]
Alison Barnat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Tracy Givens, Section Chief, Dispute Resolution MSDE
Rabiatu Akinlolu, Complaint Investigator, MSDE