

May 24, 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

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

RE: [REDACTED]  
Reference: #24-181

Dear Parties:

The Division of Early Intervention and Special Education Services, Maryland State Department of Education (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 March 27, 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 developed and implemented an Individualized Education Program (IEP) that addresses the student’s identified occupational therapy (OT) and speech-language needs since September 2023, in accordance with 34 CFR §§300.323. and .324.
2. The AACPS has not followed proper procedures when responding to a request to amend the student’s education record since January 2024, in accordance with 34 CFR §300.618.

**BACKGROUND:**

The student is four years old and is identified as a student with Developmental Delay (DD) under the IDEA. She receives services through [REDACTED] and has an Individualized Education Program (EP) that requires the provision of special education instruction and related services.

**ALLEGATION #1                      DEVELOPMENT AND IMPLEMENTATION OF THE IEP**

**FINDINGS OF FACT:**

1. On September 1, 2023, the IEP team convened to develop an initial IEP for the student, to determine appropriate services, and to determine if the student qualified for Extended School Year (ESY)

services. The Prior Written Notice (PWN) developed after the meeting reflects that the school-based team used “data collected, observation, parent and teacher input” to develop present levels of performance for the student in the areas of early learning language, literacy, and mathematics, as well as learning behaviors, expressive/receptive language, fine/visual motor skills, sensorimotor, and adaptive skills.

The PWN reflects that the complainant “disagreed with the summary of assessment findings in the area of early learning mathematics”, the wording of the summary in the expressive/receptive language, and she also did not agree that the student could “consistently use an appropriate functional grasp pattern, draw lines, a square and write an X.”

The IEP team agreed to reconvene to continue the development of the student's IEP. The PWN reflects that until the development of the IEP was completed the student’s extended Individualized Family Service Plan (IFSP) would remain in effect.

2. On September 8, 2023, the IEP team reconvened to transition from the student’s extended IFSP and continue the development of the student’s IEP. The PWN generated after the meeting reflects that during the September 1, 2023, IEP meeting the team developed the student's present levels of academic achievement and functional performance (PLAAFP), which includes parent input.

The IEP determined that the student has special communication needs but does not require assistive technology or assistive technology services. The complainant requested an assistive technology consultation, and the PWN reflects that the assistive technology (AT) specialist completed an observation of the student. The team determined that instructional and assessment accessibility features were not required for the student, and because the student was “not of testing age” no further accommodations were required at that time “outside of typical classroom routine and instruction.”

The IEP team reviewed “data collected, observation, parent and teacher input” and determined the following supplementary aids and services were added to the IEP:

- Instructional supports;
- Social/Behavioral supports;
- Physical/Environmental supports;
- School personnel/parental supports; and
- Speech-language pathologist consult, periodically.

The complainant requested the use of noise-canceling headphones to be added as a supplementary aid. The AACPS staff shared that data was needed to add headphones as a supplementary aid and that the student’s “providers [had not] observed any reactions to loud noises in their sessions to warrant headphones.” The complainant requested preferential seating and a personalized picture schedule. The school-based team shared that the concerns would be revisited when the student's kindergarten IEP was developed.

The complainant requested the IEP require a supplementary aid for the student’s oral sensory needs. The occupational therapist shared that the student is free to use an oral motor tool provided by the complainant during her sessions, however, the student had not been observed to “mouth any item during her [OT] sessions that warrant an oral motor tool.” The complainant shared that she “[had] been regularly preparing [the student] for her sessions and [questioned whether the student should not be prepared] for her sessions so that [those behaviors could be observed by the school team].”

The complainant also requested the use of manipulatives and repeating directions be added as a supplementary aid. The school team shared that the use of manipulatives is included in specific goals and the use of manipulatives and repetition of directions is a standard practice for pre-kindergarten students; they were not needed as a supplementary aid.

The school team determined that there was insufficient data to determine if Extended School Year (ESY) services were required, but the consideration of ESY would be revisited in March.

The IEP team agreed to develop goals in the areas of early language-mathematics, early language-language and literacy, learning behaviors, and expressive language. The complainant shared that she disagreed with the number of objectives, the determination of criteria for mastery, and the statement “in a group of peers” in the expressive language goals.

The IEP team agreed to dismiss the student from OT services. The complainant disagreed because she did not feel the student had met her OT goals. The complainant also shared that the student had not mastered her fine/visual motor, sensorimotor, and adaptive skills and continued to need support in those areas. The school-based team shared that some of the prewriting strokes mentioned in the PLAAFP were above expectations for the student’s age.

The IEP team determined the special education and related service hours. The complainant disagreed with the location and frequency of the speech-language services and requested they be delivered separately from the special education services. The IEP team further determined that the student would continue to receive services through community-based services at a location agreed upon by the providers and the parents.

3. The IEP developed on September 8, 2023, and amended on November 9, 2023<sup>1</sup> reflects that the student’s primary disability is DD affecting the areas of early learning language and literacy, early learning mathematics, learning behaviors, and expressive/receptive language. The IEP reflects that the initial date of services is September 18, 2023.

The Levels of Educational and Functional Performance in the student’s PLAAFP are as follows:

- Early learning-language and literacy, Early learning mathematics, and Learning behaviors - below age expectations when compared with same-aged peers;
- Expressive/Receptive language - mildly below age expectations when compared with same-aged peers; and
- Fine/Visual Motor, Sensorimotor, and Adaptive skills - functioning within or above age expectations when compared to same-aged peers.

The IEP includes parent concerns, proposed objectives, and proposed supports and modifications in the areas of instructional supports, social/behavioral supports, physical/environmental supports, school personnel/parental supports, early learning mathematics, early learning language, and literacy/receptive speech, expressive speech/articulation, fine motor, visual motor, sensorimotor, and adaptive. The IEP reflects that “[the student’s] developmental delay and her difficulties in the areas of communication, learning behaviors, and pre-academics/early learning skills impacts her ability to communicate with peers and adults, follow directions, complete tasks, and understand preschool concepts, including answering age-appropriate questions and demonstrating

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<sup>1</sup> The student’s IEP was amended on November 9, 2023, to “correct the timeline date on the Expressive Language Goal to reflect 2024.”

pre-numeracy skills. This impacts her ability to participate with peers and adults in the school community and generalize these skills to other settings without the provision of special education and/or related services.”

The IEP reflects that in the area of communication, “[the student has special communication needs...her speech contains errors which adversely impacts her ability to be understood when speaking with peers and adults across communication environments. She also requires monitoring of her receptive language skills to ensure that she has adequate skills to access the pre-kindergarten curriculum. Communication needs will be addressed through goals and objectives, supplemental services, and direct services.”

The IEP reflects the following speech goal:

- Expressive Language: “In a group of peers, given modeling and visual/verbal cues as needed, while describing objects/pictures/stories/events and/or answering questions, [the student] will use auxiliary verbs (is/are, am) in phrases or sentences with 80% accuracy in 2 out of 3 sessions for two auxiliary verbs.”

The supplementary aids, services, program modifications, and supports for speech and OT required by the IEP are as follows:

- Use visual/verbal cues to get the student to look at speaker’s mouth and imitate sounds/words/grammatical structures that are age-appropriate, as appropriate;
- Picture schedule, daily;
- Reminders for mealtime behaviors, as needed;
- Opportunities to practice utensil usage, as needed;
- Continued exposure to scissor safety and trials, as needed; and
- Speech/language pathologist consult, periodically.

The IEP requires three one-hour sessions of classroom instruction outside general education monthly; and two 30-minute sessions of speech/language-related services outside of general education monthly.

The least restrictive environment for the student was determined to be the service-provider location in a community group.

4. The student was dismissed from OT services at the September 8, 2023, IEP team meeting. There is no documentation to support the complainant’s allegation that OT continues to be an identified need of the student.
5. There is documentation that the student received the speech-language services as required by the IEP.
6. On September 8, 2023, the complainant emailed AACPS staff stating that she did not agree with the determinations made by the student’s service providers to remove or decrease services. The complainant requested an Independent Educational Evaluation (IEE) in the areas of functional mobility, gross motor, positioning, pre-vocational tasks, play and leisure activities, fine motor, visual motor, sensorimotor, adaptive skills, and speech therapy.

7. On September 8, 2023, AACPS staff emailed the complainant and expressed “There are specific circumstances under which the district is required to pay for an independent educational evaluation. The staff member asked the complainant if she had requested testing for the student which the IEP refused; what request was made and when; and did the team conduct assessments that the complainant disagreed with, and if so, what test results did the complainant disagree with?”
8. On September 8, 2023, the complainant responded to the AACPS staff member in an email sharing that the occupational therapist had dismissed the student from services at the second part of the IEP meeting, and the complainant questioned the data in the present levels provided by the occupational therapist. The complainant shared that she would be going into mediation for a second time due to “transitions of providers overestimating OT strengths and underestimating OT needs.” The complainant expressed that she inquired about objectives that had not been tried, but the provider still did not agree to continue services, but instead provided strategies that would be implemented by someone other than an occupational therapist. The complainant further shared that the student’s speech-language pathologist reduced the speech services, and she was still waiting on her assistive technology consultation. The complainant stated that she felt the IEP meeting had been “rushed through” and not all of her questions and concerns were addressed.
9. On September 13, 2023, AACPS staff responded to the complainant in an email stating that based on the information the complainant provided in response to questions previously submitted to the complainant, the student did not qualify for a district-funded IEE. Additionally, the staff member stated that the complainant seemed to disagree with the lack of occupational therapy services, but not with an evaluation.
10. On September 13, 2023, the complainant emailed AACPS staff expressing her disagreement with the development of the student’s draft IEP based on the data sheets provided by the occupational therapist and speech-language pathologist that were developed during home services. Specifically, the complainant stated that she was “in disagreement with what the OT has put in the present levels as reason to dismiss services, a lot of which was based on subjective evaluation/observations and not objective measurements.” The complainant asked if a request for a formal assessment should be made by a different occupational therapist and speech-language pathologist.
11. On September 18, 2023, the complainant was provided with the finalized IEP.
12. On September 21, 2023, the complainant sent an email to a different AACPS staff member expressing her concerns about the reduction of speech services and the removal of occupational therapy services from the student’s IEP. The complainant also stated that the occupational therapist had not done any “actual assessments/evaluations” but had instead based her decision that the student did not meet a “25% delay” on her 26 data sheets from services provided. The complainant expressed that she did not feel that the occupational therapist “seriously considered [the] family’s concerns for [the student’s] needs nor that family had a voice in the decision.”

The complainant shared that outside of the two IEP meetings on September 1, 2023, and September 8, 2023, there had been an informal meeting on September 14, 2023, for her to ask questions that weren’t addressed during the meetings. The complainant stated that she requested a mediation on September 17, 2023, and received the IEP on September 18, 2023. The complainant shared that on September 19, 2023, AACPS staff told her that extended IFSP services could no longer be implemented, the proposed services were on the student’s IEP, and if the complainant signed consent the services would go into effect with no impact on her mediation process. The complainant

expressed that she thought a mediation request would put a hold on the transition from an IFSP to an IEP. The complainant stated that she had been told that the student's extended IFSP "expired when the new school year started, and no further IFSP services [would] be provided. The initial IEP would be implemented once the complainant provided signed consent." The complainant shared that she had not received an IEP to sign as of the date of the email. The complainant also shared that providers should give more consideration to parent input.

13. On October 3, 2023, the student received an assistive technology assessment.
14. On October 8, 2023, AACPS sent the complainant a letter declining her request for an IEE and stating that her "disagreement about specific direct and consultative services will be addressed in [the upcoming mediation]."
15. On March 4, 2024, the complainant received the closeout IFSP.

### **CONCLUSIONS:**

Based on the Findings of Fact #1 to #4, MSDE finds that the student did not have identified OT needs to be addressed through the IEP, in accordance with 34 CFR §§300.323. and .324. Therefore, this office finds that no violation occurred concerning this aspect of the allegation.

Based on the Findings of Fact #1 to #5, MSDE finds the AACPS has developed and implemented an IEP that addresses the student's identified speech-language needs since September 2023, in accordance with 34 CFR §§300.323. and .324. Therefore, this office finds that no violation occurred concerning this aspect of the allegation.

### **ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

#### **PROVISION OF IEP DOCUMENT FIVE DAYS AFTER AN IEP MEETING**

The public agency is required to provide the parent of a student with a disability an accessible copy of the completed IEP not later than 5 business days after a scheduled IEP or other multidisciplinary team meeting. COMAR 13a.05.01.07.

Based on the Findings of Fact #3, #11, and #12, MSDE finds that the AACPS did not provide the parent with a copy of the IEP documents within five (5) business days after the IEP team meeting on September 8, 2023, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred concerning the allegation.

#### **ALLEGATION #2**

#### **REQUEST TO AMEND STUDENT RECORDS**

### **FINDINGS OF FACT:**

16. On January 29, 2024, the complainant emailed a formal request to amend and review the student's records to AACPS staff.
17. On February 5, 2024, AACPS staff sent an email to the complainant stating that all of the requested amendments had been discussed at previous meetings with the relevant providers, and the amendment requests had been deemed "inappropriate and inaccurate." The complainant was provided with a copy of the board policy regarding amendment requests, and it was stated that the

complainant had the right to submit a request in writing for a formal hearing within 10 days. The complainant was offered the opportunity to review the student's records but was told that access to the testing protocols was not a part of the record review. Assessment reports and "everything else" in the student's record would be made available to her.

18. Upon review of the student's record it was determined that two OT assessment protocols could not be accounted for.
19. There is documentation that the complainant met with AACPS staff on February 20, 2024, February 26, 2024, and February 29, 2024, to discuss the requested amendments to the student's record.

### **CONCLUSION:**

Based on the Findings of Fact #16 to #19, MSDE finds that the AACPS has followed proper procedures when responding to a request to amend the student's education record since January 2024, in accordance with 34 CFR §300.618. Therefore, this office finds that no violation occurred concerning the allegation.

### **ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

#### **MAINTANENCE OF STUDENT RECORDS**

Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The right to inspect and review education records under this section includes the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records. 34 CFR § 300.613.

Based on the Findings of Fact #18, MSDE finds that the AACPS has not followed proper procedures when maintaining student records. Therefore, this office finds that a violation occurred.

### **CORRECTIVE ACTIONS AND 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>2</sup> 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.

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<sup>2</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.

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. Ms. Barmat can be reached at (410) 767-7770 or by email at [alison.barmat@maryland.gov](mailto:alison.barmat@maryland.gov).

**School-Based:**

MSDE requires the AACPS to provide documentation by November 1, 2024, of the steps it has taken to ensure that the staff at [REDACTED] timely provide IEP documents to parents as required by IDEA and COMAR. The AACPS must also develop a process to ensure the maintenance of assessment protocols and ensure that these documents are securely maintained in the student record. The steps must include professional development and a monitoring tool to address the identified violations in this Letter of Finding.

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/ebh

c: Mark T. Bedel, Superintendent, AACPS  
Diane McGowan, Director, Specially Designed Instruction and Compliance, AACPS  
Jennifer Brown, Program Manager of Compliance and Legal Issues, AACPS  
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