

May 31, 2024

Ms. Frances Shefter, Esq.
110 North Washington Street, Suite 350
Rockville, Maryland 20850

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

RE: [REDACTED]
Reference: #24-182

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 April 1, 2024, MSDE received a complaint from Ms. Frances Shefter, Esq., hereafter, “the complainant,” on behalf of her client. In that correspondence, the complainant alleged that 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 consistently provided with special education instruction required by the Individualized Education Program (IEP) since September 2023, in accordance with 34 CFR §§300.101 and .323. Specifically, you allege the student was not provided with the use of assistive technology and the implementation of the Behavior Intervention Plan (BIP).
2. The AACPS has not ensured that the student has been provided with special education instruction from a certified special education teacher since September 2023, in accordance with 34 CFR §300.156 and COMAR 13A.12.02.
3. The AACPS has not ensured that the student's progress towards obtaining annual IEP goals was measured in the manner required by their IEP, since October 2023, in accordance with 34 CFR §§300.320.

BACKGROUND:

The student is ten years old and is identified as a student with autism under the IDEA. The student currently attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

ALLEGATION #1

PROVISION OF SPECIAL EDUCATION INSTRUCTION

1. The IEP in effect at the start of the 2023 - 2024 school year was developed on June 8, 2023. The IEP requires that the student be provided with support in the areas of Reading Comprehension, Written Expression, Math Problem Solving, Expressive/ Receptive Language, Pragmatic Language, Fine and Sensory Motor Skills, Cognitive/Intellectual, Social/ Emotional, and Adaptive Skills. The IEP requires goals in the areas of Reading Comprehension, Written Expression, Math Problem Solving, Pragmatic Language, Expressive/ Receptive Language, and Learning Behaviors. The IEP team determined that the student required 23 hours and 30 minutes weekly of specialized instruction outside of the general education classroom in an Autism Classroom with instruction provided by a special education teacher and instructional assistant, 30 minutes a month of Occupational Therapy (OT) outside of the general education classroom, and three hours a month of Speech-Language services outside of the general education classroom. The IEP required the student to receive an Assistive Technology (AT) device and services through access to a multi-model communication support aid and access to a variety of supports that include augmentative communication supports, such as picture communication symbols and picture schedules. In addition, the IEP reflects that the student participates in alternate state assessments and follows alternate academic achievement standards and will receive a Maryland High School Certificate of Program Completion.
2. The IEP developed on June 8, 2023, reflects a Functional Behavior Assessment (FBA) was completed on December 10, 2020, a BIP was developed on October 27, 2021, and was updated on November 10, 2022.
3. On March 7, 2024, the IEP team met to review and revise the IEP as appropriate. During the meeting, the parents expressed concerns regarding the student's educational programming, lack of progress, and increase in behaviors during the school day. The parent and the private Applied Behavior Analysis (ABA) therapist inquired about the support the student is receiving daily and the lack of visual supports noted during an observation by the ABA therapist on February 27, 2024, from which the student benefits. The school team reviewed the observation report provided by the private ABA therapist and determined that the recommendations should be implemented daily versus periodically, as stated in the current IEP. The IEP team proposed to revise the BIP and IEP at the upcoming annual IEP meeting to reflect these recommendations.
4. On April 11, 2024, the IEP team met for an annual review meeting. The Prior Written Notice (PWN) generated after the meeting reflects the parents expressed concern for the increase in behaviors at home and questioned the validity of the data used to calculate the baseline and progress monitoring of the student's goals and objectives. The IEP team informed the parents that data has been collected through informal assessments, as well as teacher reports. The parents expressed concerns regarding the use of the BIP in class as they want to reduce aggressive behaviors to previous levels.

The IEP team developed the Present Level of Academic Achievement and Functional Performance (PLAAFP) that states the student's "educational disability of autism impacts his ability to participate in the general education curriculum and his ability to attend to learning tasks and communicate functionally interact appropriately within the school setting. His difficulties with atypical sensory responses to learning, especially with some noise sensitivity and movement-seeking behavior, impact his ability to participate appropriately in classroom activities and to be available for learning." The student also has decreased attention and sensory-seeking behavior that limits his ability to learn new tasks.

5. On May 9, 2024, the IEP team met to conclude the annual review meeting. The IEP team reviewed and revised the BIP and revisited the student's PLAAFP to further discuss the parent's concerns. The parent informed the IEP team of strategies that are used at home when the student becomes aggressive. The IEP team updated the IEP goals and added additional supplementary aids and services per the recommendation of the private observation reviewed in the March 7, 2024, IEP meeting, to provide support daily.
6. There is documentation that the student has used his AT device to communicate throughout the school day since September 2023.
7. There is documentation that the student received AT consult, OT, and speech and language therapy as required by the IEP since September 2023.
8. There is documentation that the student received their supplementary aids and services as required by the IEP since September 2023.

CONCLUSION:

ALLEGATION #1

PROVISION OF SPECIAL EDUCATION INSTRUCTION

Based on Findings of Fact #1 through #8, MSDE finds that the AACPS has ensured that the student has been consistently provided with special education instruction required by the IEP since September 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, MSDE finds that a violation did not occur concerning this allegation.

ALLEGATION #2

PROVISION OF A CERTIFIED SPECIAL EDUCATION TEACHER

FINDINGS OF FACT:

9. From September 22, 2023, to January 12, 2024, the student's certified special education teacher was on medical leave. During this time, there is documentation that the student received instruction from a special education teaching assistant and was supervised by a certified special education teacher. The special educator provided lesson plans for the special education teaching assistant, conducted progress monitoring, developed the IEP, and consulted with the related service providers during the special education teacher's absence. The special education teaching assistant participated in weekly math and reading lesson planning and collaborated on weekly lesson plans with grade-level certified special education teacher, general education teachers, and school administration. The teaching assistant attended AT and special education professional development sessions and received support from an AACPS special education specialist throughout the year.

Additionally, the teaching assistant received training from an Autism Specialist from the [REDACTED] and Related Disorders.

10. On December 19, 2023, the parent contacted the AACPS administrator via email, inquiring how the "supervising" special education teacher was able to track the student's progress if he was not present in the classroom and who was providing the interventions outlined in the student's IEP.
11. On December 22, 2023, the AACPS administrator responded via email, stating that they were "unfortunately unable to provide information on the teacher's absenteeism." They assured the parent that the AACPS IEP staff members would contact her to explain after the winter break.
12. On January 4, 2024, the parent contacted AACPS administrators via email, stating that she had met with the supervising special educator for a parent meeting. The parent was informed that the special educator creates the lesson plans in the absence of the teacher but was not physically in the room as they have their own class. The parent expressed concern that she felt "blindsided" regarding the lack of communication and transparency.
13. On January 10, 2024, and March 12, 2024, the AACPS administration initiated the process of hiring a new special education teacher, following the departure of the previous classroom teacher.
14. On January 18, 2024, and January 19, 2024, the special education teaching assistant received a Certificate of Completion for special education training in Accommodations and Modifications, Behavior Management, and Working Safely with Students with Special Needs.

CONCLUSION:

Based in Finding of Facts #10 through #15, MSDE finds that the AACPS has not ensured that the student has been provided with special education instruction from a certified special education teacher since September 2023, in accordance with 34 CFR §300.156 and COMAR 13A.12.02. Therefore, MSDE finds that a violation occurred concerning this allegation.

ALLEGATION #3

PROGRESS REPORTS

FINDINGS OF FACT:

15. The June 8, 2023, and March 7, 2024, IEP requires that the student be provided with support in the areas of reading comprehension, written expression, and learning behaviors.
16. The June 8, 2023, and March 7, 2024, IEP reflects that the student's reading comprehension goal states: "Given a familiar instructional level text without visuals, using chunking, [the student] will respond to a variety of comprehension questions (literal and inferential) using writing or his AT device with 80% accuracy in 4 out of 5 trials."
17. The report of the student's progress dated November 31, 2023, and January 18, 2024, towards the achievement of the annual reading comprehension goal reflects that the student is "Making sufficient progress to meet goal"; however, the description of progress reflects the student regressed from completing the goals from 100% in quarter one to 50% in quarter two. There is no documentation that the parents were provided with the progress report for the third quarter.

18. The June 8, 2023, and March 7, 2024, IEP reflects the student’s written expression goal states: “Given a verbal prompt regarding his preference or opinions and access to AT device, [the student] will craft 1-2 sentences stating his opinion and justification with 80% accuracy in 4 out of 5 trials.”
19. The report of the student’s progress dated November 31, 2023, and January 18, 2024, towards the achievement of the annual written expression goal reflects that the student is “Making sufficient progress to meet goal”; however, on January 18, 2024, the goal was not measured in the manner required by the IEP. There is no documentation that the parents were provided with the progress report for the third quarter.
20. The June 8, 2023, and March 7, 2024, IEP reflects the student’s math problem-solving goal states: “When presented with a scenario which states the amount of an item and the balance available on a debit card or in cash, [the student] will determine if he has an available balance to spend by providing a "yes" or "no" response with 80% accuracy in 4 out of 5 trials.”
21. The report of the student’s progress dated November 31, 2023, and January 18, 2024, towards the achievement of the annual math problem-solving goal reflects that the student is “Making sufficient progress to meet goal”; however, the goal was not measured in the manner required by the IEP for quarter one. There is no documentation that the parents were provided with the progress report for the third quarter.
22. The June 8, 2023, and March 7, 2024, IEP reflects the student’s learning behaviors goal states: “In times of stress, given the use of the AT device and a positive reinforcement system, [the student] will independently communicate his wants and needs using verbal or AT communication to ask for a break or ask for help in place of aggression or yelling in 8 out of 10 trials.”
23. The report of the student’s progress dated November 1, 2023, and January 8, 2024, towards the achievement of the annual learning behavior goal, reflects that the student is “Making sufficient progress to meet.” There is no documentation that the parents were provided with the progress report for the third quarter.

DISCUSSION AND CONCLUSION:

ALLEGATION #3

PROGRESS REPORTING

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 Finding of Facts #16 through #23, MSDE finds that the AACPS has not ensured that the student's progress towards obtaining annual IEP goals was measured in the manner required by their IEP, since October 2023, in accordance with 34 CFR §§300.320. Therefore, this office finds that a violation did occur concerning this aspect of the allegation.

Based on Finding of Facts #17, #19, #21, and #23, MSDE finds that the AACPS has not ensured that the student's progress towards the achievement of the annual IEP goals was provided to the parent, for the third quarter, in accordance with 34 CFR §§300.320. Therefore, this office finds that a violation did occur concerning this aspect of the allegation.

CORRECTIVE ACTIONS AND 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.¹ 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.² Ms. Alison 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 August 1, 2024, that the IEP team has taken the following action:

- a. Provided the report of progress towards the achievement of the student's annual goals measured as required by the IEP.
- b. Determined the compensatory services or other remedy needed to remediate the violations identified in this Letter of Finding; and
- c. Developed a plan for the implementation of the services within one (1) year of the date of this Letter of Findings.

The AACPS must ensure that the complainants are provided with written notice of the team's decisions. The complainant 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 that AACPS provide documentation by August 31, 2024, confirming that the violation regarding progress reporting does not recur at [REDACTED]. To ensure compliance, AACPS must conduct ongoing monitoring of progress reports, and progress monitoring of IEP goals and BIPs. A random sampling of 15 students' IEPs and progress reports must be submitted on or before

¹ 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, 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.

² 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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January 31, 2025. Full compliance is required. If the sample is not 100% compliant, an additional sample must be submitted by March 1, 2025. If the second sample is not fully compliant, AACPS will confer with MSDE on the next steps.

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/sj

c: Mark T. Bedel, Superintendent, AACPS
Sonya McElroy, Co-Director, Special Education, AACPS
Jennifer Brown, Program Manager of Compliance and Legal Issues, AACPS
[REDACTED], [REDACTED], Principal, AACPS
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Stephanie James, Complaint Investigator, MSDE