

May 31, 2024

Redacted¹

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

RE: [REDACTED]
Reference: #24-186

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 2, 2024, MSDE received a complaint from 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 did not follow proper procedures when determining comparable services upon the student’s transfer to the AACPS since August 2023, in accordance with 34 CFR §300.323(e) and COMAR 13a.05.01.09.
2. The AACPS has not ensured that the student has been consistently provided with the speech-language, audiology, and Teacher of the Deaf and Hard of Hearing services required by the Individualized Education Program (IEP) since September 2023, in accordance with 34 CFR §§300.101 and .323.
3. The AACPS has not developed an IEP that addresses the student’s identified needs in the areas of hearing and speech-language since March 2024, in accordance with 34 CFR §300.324.
4. The AACPS did not ensure that an IEP team meeting convened on March 19, 2024, included the required participants, in accordance with 34 CFR §§300.321.

¹ At the complainant's request, their name and contact information will not be shared with the local education agency.

BACKGROUND:

The student is 17 years old and is identified as a student who is Deaf and Hard of Hearing under the IDEA. She attends [REDACTED] ([REDACTED]). The student transferred to AACPS with an out-of-state IEP dated November 14, 2022, that required the provision of special education instruction and related services.

ALLEGATIONS #1, #2, and #3:

DETERMINING COMPARABLE SERVICES, PROVISION OF SPEECH-LANGUAGE, AUDIOLOGY, AND TEACHER OF THE DEAF AND HARD OF HEARING SERVICES, AND DEVELOPING AN IEP THAT ADDRESS THE STUDENT'S NEEDS IN THE AREAS OF HEARING AND SPEECH-LANGUAGE

FINDINGS OF FACT:

1. Prior to June 2023, the student was enrolled in the [REDACTED], [REDACTED]. On June 8, 2023, [REDACTED] made a request for the student's records from the out-of-state high school.
2. On August 29, 2023, the student's out-of-state school district emailed AACPS staff, attaching the student's transcript and stating that the records were being sent to AACPS.
3. On September 1, 2023, AACPS central office staff received an email from AACPS school-based staff sharing that an 11th-grade student enrolled in an AACPS high school with hearing loss. The email reflects that AACPS school-based staff spoke with the parent who shared that at the student's previous school, she received consult services and accommodations including an FM system. The email reflects that the student was enrolled in all honors and advanced placement (AP) classes, did not require specially designed instruction, and a previous IEP was attached. The parent was looking for "...the most recent one from last year." The email requested assistance with getting an FM system for the student and stated that "mom and student both believe she may just need a 504² plan" but the AACPS staff member was not sure if the student could get an FM system and "monitoring" through a 504 plan.
4. On September 5, 2023, AACPS central office staff emailed the school-based staff sharing that support could be provided with providing the necessary equipment. The central office staff requested to be informed when the AACPS school-based team received the student's most updated IEP and to be included in any meetings through the transition.
5. On September 6, 2023, AACPS school-based staff emailed the student's parent stating that based upon their previous conversation the parent and student were more concerned with accommodations in the classroom. The accommodations include a "FM system, preferential seating, clear sightline to visual aids, closed captioning, etc. (supported by a 504) and less about academic support and specially designed instruction to understand the material (supported by an IEP)."

² Section 504" refers to Section 504 of the Rehabilitation Act of 1973, requiring schools to provide a free appropriate public education (FAPE) to each eligible student, including the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student as adequately as the needs of a student without a disability are met. 34 CFR § 104.33.

The email further stated that if the parent was interested in the student receiving a 504 plan the request should be made in writing to the school's assistant principal or the parent should reply to the school-based staff for an initial IEP evaluation. The school-based staff member shared that the only IEP the school had for the student was dated November 2020, and if there was a more current IEP or evaluation, they would be needed for meetings to determine the level of support required by the student.

6. The student's November 18, 2020, IEP provided an annual goal in the areas of compensatory skills (listening situations) and self-advocacy, and required that she receive the following supports, accommodations, and modifications:
 - Support instruction with visual aids (e.g., schedules, diagrams, graphic organizers);
 - Seat in a location where she has optimal auditory access to instruction with clear sight line to instruction and instructional materials;
 - Repeat comments of peers sitting at a distance from the student;
 - Access to class notes/notetaker if needed;
 - Access to written copy of school announcements/bulletins;
 - Continued use of personal FM system to reduce the impact of distance and noise;
 - Captioned media;
 - 90 minutes of consultative/indirect speech and language services to include communication with teachers, service providers, parents, student as needed, and caseload management inside regular classroom/public day school, yearly;
 - Three 30-minute sessions (90 minutes) of audiological services to monitor hearing and hearing aid function, set up and maintain FM/HAT system, consult/collaborate with staff, family, and/or private audiologist regarding hearing needs, inside the regular classroom/public day school, yearly; and
 - Four 30-minute sessions (120 minutes) of specialized deaf and hard of hearing services, up to one session can include consultation/collaborative services, in a separate classroom in a public integrated facility, yearly.
7. There is no documentation that the student received the services required by the November 18, 2020, out-of-state IEP from September 2023 to March 2024.
8. On September 6, 2023, AACPS school-based staff emailed AACPS school-based and district staff members stating that the student enrolled from an out-of-state high school "with an IEP for Hearing Loss." The email stated that while at the previous school, the student received the use of the FM system, and the accommodations of preferential seating, clear sightlines to visuals, and closed captioning. The email further stated that there were no academic goals, and a conversation had taken place with the student's parent at which time it was the parent stated that there was no concern with academics and the parent "will most likely request a meeting to discuss a 504 [plan]." The email reflects that the student's November 2020 IEP was attached to the email and the parent stated that she had a more recent IEP.
9. On September 7, 2023, AACPS central office staff emailed the school-based staff sharing they would wait for the "invitations for meetings moving forward."
10. On October 9, 2023, AACPS central office staff emailed AACPS school-based staff inquiring if the school-based team had received an updated IEP for the student, and when the IEP meetings would be planned.

11. On October 27, 2023, via email, the AACPS staff and central office staff discussed the status of the student's IEP services in Maryland.
12. On October 30, 2023, AACPS central office staff emailed AACPS school-based staff sharing that the IEP team should contact the previous school or the student's parent to determine if there was a more current IEP and a comparable services meeting should be convened. Additionally, if the student did not have a current IEP the school-based team should hold an initial IEP team meeting since there is no documentation that she was dismissed from special education services.
13. On October 30, 2023, AACPS central office staff emailed AACPS central office and school-based staff sharing that per the out-of-state central office, the student had a current IEP, and they would forward the student's IEP and cumulative folder upon receipt of a records release form.
14. On December 6, 2023, AACPS school-based staff emailed the student's parent stating that on September 6, 2023, the parent indicated that she nor the student was interested in pursuing an evaluation for IEP services in Maryland because the services that the student received in her out-of-state school central office were for hearing impairment and did not address any academic weaknesses. The email further reflects the staff member had recently learned that due to the student enrolling in AACPS with a current IEP, the school-based team needed to hold an IEP evaluation meeting to "complete the formal paperwork to either move forward with an IEP evaluation at [the parent's request] or to complete the paperwork to indicate that [the student] is not eligible for an IEP at [that] time."
15. On January 8, 2024, the AACPS school-based staff member emailed the parent a meeting invitation, notice of documents, a parent input form, and a referral for an "out-of-state enrollee with an IEP" to be reviewed at an IEP meeting on January 16, 2024. The IEP team planned to conduct an initial evaluation of the student and to determine the student's eligibility for IEP services in the state of Maryland.
16. On January 8, 2024, a summary of student performance in the school setting was conducted. The document reflects that there were no problems suspected in the areas of vision, health, cognitive/intellectual (including adaptive behavior), attention/executive functioning, reading, math, written expression, speech (articulation, voice, fluency), language (receptive, expressive, pragmatic language), motor (fine & gross motor), social/emotional/behavioral, and disciplinary actions. In the area of hearing, the form reflects no problem was suspected as the student had passed a right and left ear hearing test on January 8, 2024. However, the documentation reflects the student "wears hearing aids...Hearing: Information collected from her 2020 IEP...indicate[s] that [the student] wears hearing aids for moderate-severe sensorineural hearing loss in both ears. At this time [the student] does not utilize an FM system provided through AACPS."
17. On January 11, 2024, the student was documented as having a 504 plan in her Social Studies class for which she sometimes utilized the accommodations of extended time and redo assignments.
18. On January 22, 2024, the student was documented as sometimes utilizing the accommodation of support block of extra review/practice and redo assignments in her Algebra 2 class.

19. On February 29, 2024, AACPS school-based staff emailed the student's parent sharing that a brief meeting needed to be convened to "officially close out the paperwork for [the student] because she, at one point in her education, had an IEP...she's successful here at [her AACPS school] and you've expressed no desire to pursue an IEP here." The email reflects that a virtual meeting was scheduled for March 19, 2024.
20. On March 7, 2024, via email, AACPS school-based and central office staff shared their concerns regarding whether or not the student's parent wanted the student to receive IEP services.
21. On March 8, 2024, the AACPS central office staff member emailed the AACPS school-based staff member stating that the parent had been called that morning and "reiterated her interest in making sure [the student] has her supports for her hearing loss moving forward..."
22. On March 13, 2024, AACPS school-based staff provided the parent with an invitation to an IEP team meeting scheduled for March 19, 2024.
23. On March 19, 2024, the IEP team convened to "review available, current screening information and determine if an initial assessment is needed." The Prior Written Notice (PWN) generated after the meeting reflects the "AACPS refuse[d] the [parent's] request to complete assessments to evaluate for special education services because they do not suspect the presence of a disability that would require the provision of special education and/or related services." The PWN reflects the student had an out-of-state IEP to support her hearing impairment; however, the IEP did not require any specially designed instruction for academics. Teacher reports indicated that the student attended support blocks when necessary and without prompting, completed her assignments, was attentive and on task, asked questions when "stuck", and was a "positive member of the classroom community." The PWN also reflects that the student "benefits from flexible small grouping, rubrics, task lists, and having student choice in how she presents information." The PWN reflects that there were no concerns regarding weaknesses in math, writing, reading, social/emotional/behavioral areas, or cognitive/intellectual areas. The student's teachers shared that the student did not use any supports or supplementary aids in class, and although the teacher "noticed the hearing aids," the student did not ask the teacher to repeat or re-explain anything. The parent should contact the assistant principal to schedule a 504 meeting and the parent input reflects that the parent had not shared any concerns, but wanted to ensure that the student had the necessary resources because the student has a hearing problem although she has adapted well to her hearing loss and can compensate for it.
24. The student evaluation plan generated on March 19, 2024, reflects that as a result of the team's review of "existing assessment data, curriculum-based assessments, observations, pre-referral interventions, present levels of performance and referral information, the IEP team has determined that no assessments are needed at this time. [The AACPS school-based team] do not suspect the presence of a disability that would require the provision of special education and/or related services."
25. On March 21, 2024, AACPS central office staff emailed the out-of-state school central office providing a records release form requesting the student's last two IEPs on file.
26. On March 22, 2024, the out-of-state school's central office emailed the AACPS central office staff providing the student's two previous IEPs; the student's November 11, 2022, annual review; a November 30, 2021, triennial reevaluation; and a psychological report.

27. The student's November 14, 2022, IEP required that she receive the following services and accommodations:
- Closed captioning in English Language Arts/Literacy assessments and Science assessments;
 - Hearing Assistive Technology (HAT);
 - Seat at front of room;
 - Seat away from distractions/noise;
 - Repeat peer comments and questions;
 - Closed Captioning for all multimedia;
 - Note-taking assistance;
 - 10, 30-minute Teacher of the Deaf/Hard of Hearing sessions outside of general education, yearly;
 - 90 minutes of educational audiologist services outside of general education, yearly, to "monitor hearing and hearing aid function, set up and maintain FM/HAT system, consult/collaborate with staff, family and/or private audiologist regarding hearing needs"; and
 - 60 minutes of speech and language consult services, yearly.
28. There is no documentation that the student has received the services required by the November 14, 2022, out-of-state IEP since March 2024.

CONCLUSIONS:

Allegation # 1 Proper Procedures When Determining Comparable Services

Based on the Findings of Fact #1 to #28, MSDE finds the AACPS did not follow proper procedures by failing to determine comparable services upon the student's transfer to the AACPS since August 2023, in accordance with 34 CFR §300.323(f) and COMAR 13a.05.01.09. Therefore, this office finds that a violation occurred concerning the allegation.

Allegation #2 Provision of Speech-Language, Audiology, And Teacher of The Deaf And Hard of Hearing Services

Based on the Findings of Fact #1 to #28, MSDE finds that the AACPS has not ensured that the student has been consistently provided with the speech-language, audiology, and Teacher of the Deaf and Hard of Hearing services required by the IEP since September 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred concerning the allegation.

Allegation #3 IEP That Address the Student's Needs In The Areas of Hearing And Speech-Language

Based on the Findings of Fact #20 to #28, MSDE finds that the AACPS has not developed an IEP that addresses the student's identified needs in the areas of hearing and speech-language since March 2024, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred concerning the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

EDUCATIONAL RECORDS TRANSFER

To facilitate the transition for a child who transfers from another state, the new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled. 34 CFR § 300.323 and COMAR 13A.05.01.09.

In this case, on September 1, 2023, and October 30, 2023, the school-based team was made aware that the student had a more current IEP than the November 2020 IEP document. However, no effort was made to obtain the document until AACPS central office staff sent the records release form to the previous out-of-state school's central office on March 21, 2024.

In addition, pursuant to the Family Education Rights and Privacy Act (FERPA), education records may be disclosed to another school, school district, or post-secondary institution where the student is planning to enroll without parental consent or a release of information. 34 CFR§ 99.31(a)(2). Rather than informing the student's previous school district of the proper requirements, AACPS waited until March 21, 2024, until a release of information was provided.

Based on the Findings of Fact #1, #3, #8, #10, #12 to #15, and #25 to #28, MSDE finds that the AACPS did not take reasonable steps to promptly obtain the child's records, including the IEP, supporting documents, and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, in accordance with 34 CFR §§300.323 and COMAR 13A.05.01.09. Therefore, this office finds that a violation occurred.

ALLEGATION #4 Required Participants In An IEP Meeting

FINDINGS OF FACT:

29. There is documentation that a Notice of Individualized Education Program (IEP) Team Meeting was generated on December 19, 2023, for an IEP meeting to be held on January 16, 2024, and on February 29, 2024, for an IEP meeting to be held on March 19, 2024. The meeting invitation included a school-based administrator/designee, a special educator, a general educator, the student's parents/guardians, the student, and the school psychologist.
30. There is documentation that the student was invited, but did not participate in the March 19, 2024, IEP team meeting.

CONCLUSION:

While the student must be invited to participate in the IEP team meeting once they are over the age of 14, they are not required to attend the meeting. 34 CFR 300.321(b)(1). Based on the Findings of Fact #27 and #28, MSDE finds that the AACPS did ensure that the IEP team meeting convened on March 19, 2024, included the required participants, in accordance with 34 CFR §300.321. Therefore, this office finds that no violation 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. 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.³ 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. Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student-Specific:

By September 30, 2024, MSDE requires the AACPS to provide documentation that it has convened an IEP team meeting to:

- Complete an evaluation to determine whether the student has had a negative impact from the lack of implementation of supports and services since enrolling in the AACPS.
- Determine the amount and nature of compensatory services or other remedy to redress the failure to provide comparable services to the student since September 2023. The team must 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 of the steps it has taken to ensure that its school-based staff properly implements the requirements for determining comparable services for students who enroll in the AACPS schools with an out-of-state IEP and obtaining out-of-state education records. These steps must include staff development, as well as tools developed to monitor compliance. Monitoring must include a review of at least 10 randomly selected records of children who transfer into [REDACTED] from out of state to determine whether they received comparable services and the timely transfer of records. The first

³ 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.

Redacted

Ms. Diane McGowan
May 31, 2024
Page 9

monitoring report must be submitted to MSDE on or before November 1, 2024. Full compliance is required for all components of the monitoring sample. If 100% compliance is not achieved, a second sample of 10 randomly selected students must be submitted on or before January 6, 2025. If full compliance is not achieved, the AACPS staff will confer with MSDE on subsequent monitoring activities.

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.

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
Jennifer Brown, Program Manager of Compliance and Legal Issues, AACPS
[REDACTED], Principal, AACPS
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Elizabeth B. Hendricks, Complaint Investigator, MSDE