

June 7, 2024

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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: #24-195

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.

ALLEGATION:

On April 1, 2024, MSDE received a complaint from [REDACTED] and [REDACTED], hereafter, “the complainants,” 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 allegation that the AACPS has not implemented the student’s Behavior Intervention Plan (BIP) since April 2023, in accordance with 34 CFR §§300.101 and .324.

BACKGROUND:

The student is 10 years old and is identified as a student with Multiple Disabilities that include Emotional Disability (ED) and Specific Learning Disability (SLD) under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. The student’s BIP developed on June 14, 2022, reflects the student demonstrates the following problem behaviors:
 - Verbal Disruption - Looks like crying or yelling during instruction and shutting down (not complying) with teacher demands; and

- Elopement: Any act or attempt to leave the instructional area (or room) without adult direction. Examples: Leaving the cultural arts room or speech classroom and standing outside of teacher sight, leaving instructional area.

The BIP contains the following behavior goals:

- [The Student] will calmly state his frustration and comply with adult directions, decreasing verbal disruptions to less than 2 per day.
- [The Student] will utilize nonverbal gestures (i.e. hand signal or break pass) in place of eloping from designated areas, decreasing elopements to less than 2 per day.

The BIP requires the following Preventive Measures and Teaching Strategies:

Preventive Measures

- Preferential seating near the point of instruction with easy access to calming area
- Use of calming area
- Use of nonverbal gesture (i.e. hand signal or break pass) to request a break
- Daily incentive behavior chart with opportunity to earn a reward
- Provide parent a copy of daily chart
- Provide jobs, leadership opportunities in the classroom
- Prepare [The Student] ahead of a competitive activity and establish expectations for rules
- Use of a personal visual schedule
- Encourage [The Student] to share and focus on the positives that happen during the day
- Staff members provide positive statements to [The Student]
- Pair with appropriate peer to encourage positive social interactions
- Additional adult support during cultural arts and transition between classes
- Give [The Student] advance notice of upcoming changes in the schedule

Teaching Strategies

- Teach strategies for feelings awareness and when to ask for a break
- Reinforce with [The Student] the difference between an adult being angry and an adult providing corrective feedback for unsafe or disruptive behaviors
- Model use of calming area
- Model expressing frustration calmly
- Social stories and role play scenarios for handling a situation

2. Progress reported on June 8, 2023, towards the achievement of behavior goal #1 reflects that during marking period four the student had 12 verbal disruptions.
3. Progress reported on June 8, 2023, towards the achievement of behavior goal #2 reflects that during marking period one the student had 12 elopements, marking period two 10 elopements, marking period three 8 elopements, and marking period four 7 elopements.
4. The IEP in effect in April 2023 was developed on October 25, 2022, reflects that the student does not have a Functional Behavior Assessment (FBA) or require a BIP.

5. While there is documentation of use of the incentive behavior chart on April 25 and 26, and June 6-8, 2023, it is not consistently used as required by the BIP.
6. While there is documentation of communication with the parent regarding behavior incidents, it does not demonstrate that the BIP was implemented during these incidents or that the parent was consistently provided incentive behavior charts as required by the BIP.
7. There is documentation that the student was provided direct counseling services from April 12, 2023, to June 13, 2023. The documentation reflects that the counselor and teachers use the preventive measures and teaching strategies required by the BIP.
8. The IEP developed on October 10, 2023, reflects that an FBA was conducted on May 17, 2022, and the student requires the use of a BIP.
9. The IEP developed on April 9, 2024, reflects that an FBA was conducted on April 9, 2024, and the student requires the use of a BIP.
10. There is documentation that the student was provided with a personal visual schedule as required by the BIP.
11. There is documentation of the use of an incentive behavior chart on April 25 and 26, 2023, and June 6-8, 2023. There is no documentation that the behavior charts were provided to the parent.
12. On June 9, 2023, the IEP team convened to review the student's BIP. The Prior Written Notice (PWN) generated after the meeting reflects the student "has had a BIP for one year". The IEP team proposed and agreed to update the BIP with strategies for use in middle school.
13. The student's BIP developed on June 9, 2023, reflects the student's problem behaviors of verbal disruption and elopement were continued from the prior BIP. The IEP team added the following behavior goal: With teacher support and accommodations through his IEP and no more than 2 teacher prompts, [The Student] will initiate handwriting tasks without refusal.

The following preventive measures were added:

- Use of calming area in the special educator's room;
- Use of nonverbal gesture (i.e. hand signal or break pass) to request a (timed) break. [The Student] will access the calm down area in the classroom; when he moving towards the "Red Zone" (Zones of Regulation) he will be permitted a 5 minute break in the special educators classroom;
- Daily incentive behavior chart with opportunity to earn an am and pm reward;
- Provide parent a copy of daily chart: Google form to track shared with teachers, student support staff, parent, and related service providers;
- Daily review of chart with [The Student], praising positive elements of his day and problem solving "glitches"; and

- [The Student] has the most difficult times before and after breaks (i.e. winter and spring break). Staff (school counselor, school psychologist, special educator) will meet with staff, review expectations, review chart, and work to set him up for a positive day.

The following teaching strategy was added: "Direct counseling services addressing social skills and emotional regulation (i.e. Zones of Regulation, Big Deal/Little Deal, Size of Problem versus Size of Reaction, how to calmly express frustrations with peers). Visuals used in counseling sessions will be shared with teachers and staff so common language can be used".

14. There is documentation that the student was provided direct counseling services beginning September 5, 2023 to May 10, 2024, as required by the BIP. The documentation reflects that the counselor and teachers use the preventive measures and teaching strategies required by the BIP, including communication with the complainant.
15. There is documentation that the parent was provided targeted behaviors data for marking period one through April 29, 2024.
16. There is documentation that the student was provided a daily incentive behavior chart for marking periods one through three during school year 2023-2024.
17. There is no documentation that the daily incentive behavior chart was provided to the complainant.

DISCUSSIONS AND CONCLUSIONS:

Based on the Finding of Fact #1 through #17, MSDE finds that the AACPS has not consistently implemented the student's BIP since April 2023, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation occurred concerning the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

Developing an IEP

In developing an IEP of a student whose behavior impedes their learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 CFR §300.324.

In this case, AACPS developed a BIP on June 14, 2022, to address the student's behavior but failed to include it on the student's IEP developed on October 10, 2023.

Based on the Findings of Fact #4, MSDE finds that the AACPS did not develop an IEP that addressed the student's behavioral needs from April 1, 2023, to October 10, 2023, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred.

Ms. Sonya McElroy
Ms. Diane McGowan
June 7, 2024
Page 5

Notwithstanding the violation, MSDE finds that based on Findings of Fact #1 to #3, that AACPS developed a BIP on June 14, 2022. It was not included in the student's IEP document; however, there is documentation that progress was reported on the BIP behavior goals. Therefore, no further student-specific corrective action is required.

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 non-compliance 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 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 September 16, 2024, that the school system has convened an IEP team meeting to determine whether the violation identified in this Letter of Findings regarding implementation of the student's BIP 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 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.

¹ 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.

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.

██████████
██████████
Ms. Sonya McElroy
Ms. Diane McGowan
June 7, 2024
Page 6

School-Based

MSDE requires the AACPS to provide documentation by September 16, 2024, of the steps taken to ensure that the staff at ██████████ properly execute the requirements of the IDEA related to the use of positive behavior interventions when developing an IEP and the implementation of BIP and drafting accurate IEPs. Steps must include professional development and ongoing monitoring to ensure that the IEPs are accurate. AACPS must provide a monitoring report by December 1, 2024, reflecting a random sample of 10 students at ██████████ with BIPs and FBAs, ensuring that the information and dates regarding FBA and BIPs is accurate, that there is consistent data collection and implementation reported. Full compliance is required.

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/tg

c: Mark T. Bedel, Superintendent, AACPS
Jennifer Brown, Program Manager of Compliance and Legal Issues, AACPS
██████████, 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