

June 21, 2024

[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: #24-203

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 22, 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 ensure the student's Extended School Year (ESY) services were provided as required by the IEP from June to August 2023, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08.
2. The AACPS has not ensured that the decisions regarding the student’s speech-language service delivery model made at the beginning of the 2023-2024 school year were consistent with the needs of the student, in accordance with 34 CFR §300.323.

BACKGROUND:

The student is 19 years old and is identified as a student with Multiple Disabilities: Intellectual Disability and Orthopedic Impairment, under the IDEA. She attends the [REDACTED] and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

ALLEGATION #1

PROVISION OF EXTENDED SCHOOL YEAR SERVICES

FINDINGS OF FACT:

1. The IEP in effect for the student at the beginning of the 2023-2024 school year is dated June 21, 2022. The IEP required the student to receive two 30-minute sessions of direct speech-language therapy weekly provided by a speech-language pathologist. The IEP reflects the services “may occur in group or individually as needed.” The projected annual review date for the IEP is June 21, 2023.
2. On March 30, 2023, the IEP team convened to review reevaluation information, determine continued eligibility, and consider Extended School Year (ESY) services for the student. The Prior Written Notice (PWN) generated after the meeting reflects the team determined that the student met the criteria to receive ESY services in the areas of reading, written language, and learning behaviors. The PWN reflects that the team determined the student would receive 30 minutes of speech-language therapy per week for ESY.
3. On June 6, 2023, AACPS sent a letter to parents stating ESY services would be provided virtually “due to limited staffing.” The letter states the dates for the ESY services would not change, and information regarding the structure of the services, related services, and login information would be forthcoming.
4. There is documentation of the student’s ESY service plan developed at the June 12, 2023, IEP team meeting. The ESY plan reflects that the student requires one thirty-minute session of direct speech-language therapy outside general education weekly from July 3, 2023, to July 27, 2023, provided by a speech-language pathologist or speech-language assistant.
5. On July 6, 2023, the complainant emailed the speech-language pathologist stating that the virtual services were not working for the student and the complainant was opting out of the virtual speech-language therapy sessions.
6. There is documentation dated July 12, 2023, that reflects the student’s parent “...opted out of ESY after the first 3 days.”
7. The progress report for the student’s first expressive/receptive language goal dated July 27, 2023, reflects that the goal was “Not Yet Introduced.” The progress report states “[The student] attended 3/15 days of the extended school year, however, was withdrawn from the speech and language therapy services due to the switch from in person to virtual instruction.”
8. The progress report for the student’s second expressive/receptive language goal dated July 27, 2023, reflects that the goal was “Not Yet Introduced.” The progress report states, “Goal and objectives not tracked during the extended school year.”

CONCLUSION:

Based on the Finding of Facts #2 to #8, MSDE finds the AACPS did ensure the student's Extended School Year (ESY) services were provided as required by the IEP from June to August 2023, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08. Therefore, this office finds that no violation occurred concerning the allegation.

ALLEGATION #2

PROVISION OF SPEECH AND LANGUAGE SERVICES

FINDINGS OF FACT:

9. There is documentation that in March 2023 AACPS determined there would be a speech-language pathologist (SLP) vacancy for the 2023-2024 school year.
10. On September 3, 2023, AACPS sent parents a communication providing updates on virtual speech services.
11. There is documentation that virtual speech services began the week of September 5, 2023.
12. On September 26, 2023, AACPS emailed parents regarding the SLP vacancy and the provision of speech services during the vacancy.
13. On September 27, 2023, October 13, 2023, and November 3, 2023, the student was not provided speech-language services due to the SLP vacancy.
14. On November 13, 2023, the SLP vacancy was filled.
15. On November 13, 2023, the IEP team met to conduct the student's annual review. The PWN generated after the meeting reflects that the complainant withdrew the student from virtual 2023 ESY services and the complainant did not receive a progress report for the 2023 ESY session. The PWN reflects that the current progress report from the 2023 ESY term documented the student's progress as "new goal not worked on". However, the goals were not new. The PWN reflects that there were accessibility issues with the virtual 2023 ESY services, and the student was frustrated and overwhelmed with the virtual process. The PWN states that the complainant felt the virtual services were "more harmful than helpful."
16. The IEP developed on November 13, 2023, requires two 30-minute sessions of speech-language therapy weekly, outside general education provided by a speech-language pathologist or speech-language assistant. The IEP states "The sessions will take place in-person (unless there [is] a state of emergency that closes schools) in academic settings...and may occur in a small group or individually as needed."

17. On February 12, 2023, March 4, 2024, March 6, 2024, and March 18, 2023, the student's missed SLP services were made up.
18. The progress report for the student dated October 31, 2023, reflects that the student made sufficient progress to achieve both expressive/receptive language IEP goals.
19. The progress report for the student dated January 18, 2024, reflects that the student made sufficient progress to achieve both expressive/receptive language IEP goals.

DISCUSSION AND CONCLUSIONS:

Based on the Findings of Fact #1, #9 to #19, MSDE finds that the AACPS has ensured that the decisions regarding the student's speech-language service delivery model made at the beginning of the 2023-2024 school year were consistent with the needs of the student, in accordance with 34 CFR §300.323. Therefore, this office finds that no violation occurred concerning the allegation.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

ANNUAL REVIEW

Each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and to revise the IEP, as appropriate (34 CFR §300.324).

In this case, the student's projected annual review date for the 2023-2024 IEP was June 21, 2023, however, the annual review for the IEP did not occur until November 13, 2024.

Based on the Findings of Fact #1, #15, and #16, MSDE finds that the AACPS did not ensure that the IEP team convened to review the student's IEP before June 21, 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. 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.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 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

MSDE requires the AACPS to provide documentation by November 30, 2024, that the school system has:

- Provided the complainant with a copy of the July 27, 2023 progress report; and
- Convened an IEP team meeting to determine if the failure to ensure the student's annual IEP was developed in the required time frame 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

By September 15, 2024, MSDE requires the AACPS to conduct an audit of 25 randomly selected student records at [REDACTED] to determine whether the student's annual reviews were completed on a timely basis. Full compliance is required. If 100% compliance is not reported, a second review will be completed by November 15, 2024. If the second review does not reflect full compliance, AACPS will consult with MSDE on 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

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, 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. Sonya McElroy
Ms. Diane McGowan
June 21, 2024
Page 6

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, [REDACTED], 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