

June 26, 2024

[REDACTED]

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

RE: [REDACTED]
Case: #24-210

Dear Parties

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (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 May 1, 2024, MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complaint 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 that the student was provided with the special education instruction, related services, supplementary aids, and support as required by the Individualized Education Program (IEP) since May 2023 in accordance with 34 CFR §§ 300.101 and 323. Specifically, the complainant alleges that the student has not been provided:
 - a. special education instruction;
 - b. occupational therapy;
 - c. speech and language therapy;
 - d. extended time;
 - e. graphic organizers;
 - f. monitor independent work;
 - g. allow use of manipulatives;
 - h. models for math;
 - i. break down assignments into smaller units;

- j. chunking;
 - k. advance preparation for schedule change; and
 - l. home-to-school communication.
2. The AACPS did not ensure that the IEP team considered the parent information and concerns at the IEP meeting held in May 2023, in accordance with 34 CFR §300.324.
 3. The AACPS did not provide prior written notice (PWN) of the decisions made in the IEP team meeting in May 2023 in accordance with 34 CFR §300.503.
 4. The AACPS did not ensure that proper procedures were followed when determining the student's need for Extended School Year (ESY) services since May 2023, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08.
 5. The AACPS did not ensure that the IEP team meeting convened in January 2024, included the required participants, in accordance with 34 CFR §300.321.
 6. The AACPS has not ensured that the decisions regarding recovery services made in January 2024 were consistent with needs of the student, in accordance 34 CFR §300.324.
 7. The AACPS did not provide the complainant with access to the student's education record prior to an IEP team meeting in April 2024, in accordance with 34 CFR §§300.501 and .613.

BACKGROUND:

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

ALLEGATIONS #1

**PROVISION OF SPECIAL EDUCATION INSTRUCTION,
OT SERVICES, SPEECH-LANGUAGE SERVICES,
ACCOMMODATIONS, and SUPPLEMENTARY AIDS AND SERVICES**

FINDINGS OF FACT:

1. The IEP in effect in May 2023, was developed on January 5, 2023. The IEP requires five hours per week of instruction inside the general education setting to be provided by the special education teacher, general education teacher, and/or instructional assistant. The IEP requires Speech-Language services as a related service for four hours per month outside of the general education classroom.

The IEP requires extended time (1.5x) as an accommodation. The IEP requires the following supplementary aids and services:

- Daily - Evidence based reading intervention for comprehension, models, repetition of directions, provide proofreading checklist, picture schedule, monitor independent work, check for understanding, allow the use of organizational aids, allow the use of manipulatives, chunking of texts, breakdown assignments into smaller units, reinforce

positive behavior through nonverbal/verbal communication, and encourage/reinforce appropriate behavior in academic and non-academic settings;

- As needed - sentence starters;
- For extended writing - use of a word bank to reinforce vocabulary and/or when extended writing is required;
- When possible - use pictures to support reading passages whenever possible, advanced preparation for schedule changes; and
- Periodically - occupational therapist consult and speech-language pathologist (SLP) consult.

The IEP does not require models for math, schedule changes, or home-to-school communication. The IEP does not require an extended school year (ESY).

2. The PWN generated after the IEP team meeting on May 16, 2023, reflects the purpose of the meeting was to review and/or revise the IEP and to review data to determine whether the student requires compensatory service for missed Speech-Language services. The SLP reviewed the data and progress made. The PWN reflects the IEP team proposed and accepted that the student would receive twenty-three, 30-minute sessions of compensatory Speech-Language services for missed services due to staffing shortages. The team informed the complainant that if the student has private services, the parent can be reimbursed for services up to \$100 per session. The complainant was also informed of the right to have compensatory services provided by AACPS.

The PWN further reflects that the complainant expressed additional concerns, including a request to reconsider ESY. The IEP team responded to all concerns and agreed to reconvene in June 2023 to discuss ESY and address additional concerns raised by the complainant.

3. On May 23, 2023, the complainant was provided the PWN from the May 16, 2023, IEP meeting.
4. There is documentation of the provision of special education instruction and supplementary aids and services, accommodations, and related services as required by the IEP from May 2023 through June 2023.
5. There is no documentation of the provision of Speech-Language services as required by the IEP from May 2023 through June 2023.
6. On July 31, 2023, the IEP was amended to require the additional supplementary aid and service of weekly home-to-school communication to begin August 28, 2023. The narrative reflects the following: "the school team will provide [the parent] with communication, via e-mail, once a week to provide an update on how [the student] is doing on academic assignments, behavior during class and speech language therapy, and communication with related service providers regarding when her services were provided that week."
7. On December 21, 2023, and January 25, 2024, the IEP team convened for the student's annual review meeting. The IEP requires five hours per week of instruction inside the general education setting to be provided by the special education teacher, general education teacher, and/or instructional assistant. The IEP requires Speech-Language services as a related service for one hour per week, outside of the general education classroom.

The IEP requires extended time (1.5x) as an accommodation. The IEP requires the following supplementary aids and services:

- Daily - allow use of manipulatives, allow use of organizational aids, check for understanding, monitor independent work, picture schedule, proofreading checklist, repetition of directions, models, evidence based reading intervention for comprehension, break down assignments into smaller units, chunking of texts, encourage/reinforce appropriate behavior in academic and nonacademic settings, and reinforce positive behavior through non-verbal/verbal communication;
- As needed - sentence starters;
- Weekly - home-school communication;
- For extended writing - use of a word bank to reinforce vocabulary and /or when extended writing is required;
- When possible - use pictures to support reading passages whenever possible, advanced preparation for schedule changes; and
- Periodically - SLP consult.

The IEP does not require ESY.

8. There is documentation of the provision of supplementary aids and services as required by the IEP from August 2023 through January 2024, except for home-school communication.
9. While there is documentation that the home-school communication was provided from February 2024 through June 2024, it was not consistently provided from August 2023 through January 2024, as required by the IEP.
10. There is documentation of the provision of special education instruction, accommodations, and related services as required by the IEP since the beginning of the 2023-2024 school year.
11. On February 1, 2024, the AACPS central office staff emailed the complainant in response to her January 25, 2024, verbal request to extend compensatory services. The email informed the complainant that her recovery/compensatory services had been approved for an extension to September 2024. The AACPS requested that the complainant sign and return the documentation.
12. On March 6, 2024, the complainant signed the recovery/compensatory services agreement. The agreement reflects that the IEP team met on April 27, 2023, and June 5, 2023, and determined compensatory services were being awarded to the student. The letter reflects the following agreement:
 - The parents indicated that recovery services will be obtained by a private vendor, and AACPS will reimburse the parents for any out-of-pocket costs not to exceed \$100 per hour; and
 - The award is for 11.5 hours of Speech-Language service and 3 hours of OT services for a total of 14.5 hours.

13. On March 12, 2024, an IEP team convened to determine compensatory services. The administrator designee, literacy specialist, parent, and family advocate participated in the meeting. The PWN generated after the meeting reflects that the student was provided a reading intervention in phonics; however, the IEP required a reading intervention in comprehension. The team reviewed the student's reading comprehension progress and noted that although the student made progress, she did not make sufficient progress in the reading comprehension domain. The AACPS proposed 24 individual 30-minute sessions of compensatory services to be provided by an AACPS staff member. The complainant neither rejected nor accepted the offer.

CONCLUSIONS:

Provision of the Special Education Instruction

Based on the Findings of Fact #1, #4, #10 MSDE finds that the AACPS has provided the student with special education instruction, as required by the IEP since May 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation.

Based on the Findings Fact, #13, MSDE finds that the AACPS has met and addressed the need for additional compensatory services resulting from an error in the implementation of the IEP. Therefore, no additional student or system based corrective action is necessary to remedy this violation.

Provision of the Related Services

Speech-Language Therapy from May 2023 to June 2023

Based on the Findings of Fact #1, and #5, MSDE finds that the AACPS has not provided the student with speech-language therapy, as required by the IEP from May 2023 to June 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

Notwithstanding the violation, MSDE finds based on the Finding of Fact #2, that the IEP team met and addressed the need for compensatory services to address missed services, in accordance with 34 CFR §§300.101 and .323. Therefore, no additional student or system based corrective action is necessary to remedy this violation.

Speech-Language Therapy 2023- 2024 School Year

Based on the Findings of Fact #1, #7, and #10, MSDE finds that the AACPS has provided the student with speech language therapy, as required by the IEP since the beginning of the 2023-2024 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation

OT Services

Based on the Findings of Fact #1, #7, and #10, MSDE finds that the AACPS has provided the student with OT services, as required by the IEP since May 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation.

Accommodations

Based on the Findings of Fact #1, #4, and #9, MSDE finds that the AACPS has provided the student with accommodations, as required by the IEP since May 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation.

Supplementary Aids and Services

Based on the Findings of Fact #1, #4, and #7 to #9, MSDE finds that the AACPS has provided the student with supplementary aids and services, except home to school communication, as required by the IEP since May 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation.

Based on the Findings of Facts #8 and #9, MSDE finds that the AACPS has not consistently provided the home to school communication as required by the IEP from August 2023 through February 2024. Therefore, MSDE finds a violation occurred with respect to this aspect of the allegation.

Recovery services

Based on the Findings of Fact #2, #11 through #13, MSDE finds that the AACPS has ensured that the decisions regarding recovery services made since May 2023, were consistent with needs of the student, in accordance 34 CFR §300.324. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation.

ALLEGATIONS #2, #3, and #4

PARENT INFORMATION, PRIOR WRITTEN NOTICE, and EXTENDED SCHOOL YEAR

FINDINGS OF FACT:

14. On June 5, 2023, the IEP team convened to review the IEP, determine the student’s eligibility for ESY, and if the student required compensatory services for OT. The PWN generated following this IEP team meeting reflects that the IEP team proposed and agreed to six – 30-minute sessions of OT as compensatory services as a result of missed services from the fall of 2022 and early winter of 2023, as documented in the comparable services. The parents confirmed receipt of OT documentation being reviewed. The family disagreed with the OT as a consult and requested that service be changed to three 30-minute sessions per month as required by the out-of-state IEP. The parents also felt that the student requires ESY based on lack of appropriate speech services, OT services, regression, and lack of communication with parents.

Responding to the parents, the school staff shared that the OT assessment report written by AACPS, reflects the student is able to “write in a functional manner in order to complete tasks. Teachers have no concerns regarding fine motor/visual motor skills or written output in the classroom.” The reports reflect the student has some areas of weakness; however, she is able to meet classroom expectations. The teachers expressed concerns about the student’s ability to transition between activities throughout the day. The AACPS shared that the change from direct OT service to OT consult was based on the Occupational Therapy Assessment Report conducted on December 6,

2022, and determined on January 5, 2023, when the IEP was developed. The parent was informed of her rights to mediation and procedural safeguards. The team shared that the out-of-state IEP was based on an evaluation in 2019. No assessments were provided by the out-of-state team. Additionally, there is no academic or education deficit related to OT that is impacting the student's ability to access the curriculum.

The PWN further reflects that the IEP team determined on January 5, 2023, that there was not enough data to support eligibility for ESY. The team reviewed the student's goals, and data from progress reports. The team shared that the student does not have critical life skills. Based on the data, the IEP team proposed that the student does not require ESY. The team discussed that the student made progress and continues to do so, and "IEP progress is different from report card grades."

15. There is no documentation that additional information was provided by the complainant to the IEP team since May 2023.

CONCLUSIONS:

Parent Information and Concerns

Based on the Findings of Facts #2, #14, and #15, MSDE finds that the AACPS considered parent information and responded to parent concerns during IEP team meetings held since May 2023, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur concerning this allegation.

Provision of the PWN

Based on the Findings of Fact #3, MSDE finds that the AACPS provided the PWN of the decisions made in the IEP team meeting on May 16, 2023, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did not occur concerning this allegation.

Determining the Need for ESY

Based on the Findings of Facts #1, #7, and #14, MSDE finds that the AACPS has ensured that proper procedures were followed when determining the student's need for ESY services since May 2023, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08. Therefore, this office finds that a violation did not occur concerning this allegation.

ALLEGATION #6

IEP TEAM PARTICIPANTS

FINDINGS OF FACT:

16. The IEP team meeting sign in sheet for January 25, 2024, reflects that the Administrator/Designee, Special Educator, Occupational Therapist, Speech-Language Pathologist, General Educator, Parents, Coordinator for Specially Designed Instruction K-12, and Family Advocate participated in the meeting.

CONCLUSION:

Based on the Finding of Fact #16, MSDE finds that the AACPS did ensure that the IEP team meeting convened in January 2024, included the required participants, in accordance with 34 CFR §300.321. Therefore, this office finds that a violation did not occur concerning this allegation.

ALLEGATION #7

RECORDS REQUEST

FINDINGS OF FACT:

17. There is no documentation of a parental request to view the student's records.
18. There is documentation of attempts in April 2024 by the AACPS school staff, to schedule meetings with the complainant to address the complainant's communication concerns shared on April 3, 2024.

CONCLUSION:

Based on the Findings of Fact #17 and #18, MSDE finds that in April 2024, the complainant expressed concerns regarding information shared on the home school communication log, but she did not request to view the student's records. As there was no request made, AACPS neither provided nor denied access to the records, in accordance with 34 CFR §§300.501 and .613. Therefore, this office finds that a violation did not occur concerning this allegation.

TIMELINE:

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.

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.^[2] Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

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.

Student- based

MSDE requires the AACPS to provide documentation by September 15, 2024, that the AACPS has convened and determined if the violation concerning home to school communication from August 2024 to February 2024 had a negative impact on the student's ability to benefit from the educational program. If the 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 a year of the date of this Letter of Findings.

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/ra

c: Dr. Mark T Bedell, Superintendent, AACPS
Diane McGowan, Director, Specially Designed Instruction and Compliance, AACPS
Jennifer Brown, Program Manager of Compliance and Legal Issues, AACPS
[REDACTED], Principal, [REDACTED], AACPS
Alison Barmat, Chief, Family Support and Dispute Resolution Branch, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Tracy Givens, Section Chief, Dispute Resolution MSDE
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