

July 19, 2024




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

RE: 
Case: #24-230

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services, 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 20, 2024, MSDE received a complaint from , 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 follow proper procedures when responding to a request for an IEP team meeting that was made by the parent on October 5, 2023, and December 12, 2023, in accordance with 34 CFR §§300.324 and .503 and COMAR 13A.05.01.08.
2. The AACPS did not follow proper procedures when disciplinarily removing the student from school since May 31, 2023, in accordance with 34 CFR §300.530 and COMAR 13A.08.03.
3. The AACPS did not follow proper procedures when responding to a request to review and inspect the student’s education record since September 18, 2023, in accordance with 34 CFR §300.613.
4. The AACPS did not ensure that the student has been consistently provided with special education instruction, related services, and supplementary aids and services as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleged that the student was not provided with:
 - a. Special education instruction from August 2023 through February 2024;
 - b. Weekly home to school communication since the beginning of the 2023-2024 school year; and
 - c. Occupational Therapy (OT) since the beginning of the 2023-2024 school year.

BACKGROUND:

The student is 10 years old and is a student with Multiple Disabilities (MD) under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1

RESPONDING TO A REQUEST FOR AN IEP TEAM MEETING

FINDINGS OF FACT:

1. On October 5, 2023, the parent emailed the staff at [REDACTED], requesting an IEP team meeting to discuss concerns related to the absence of the special educator, to review occupational therapy (OT) services, and discuss supplementary aids and services and home to school communication.
2. On October 25, 2023, the parent signed the meeting notice, and informed the IEP team that he will not be able to participate in the IEP meeting proposed to take place on November 2, 2023.
3. On October 30, 2023, the IEP team developed a meeting notice proposing to meet on November 7, 2023. On November 4, 2023, the parent emailed the IEP team informing them that he will participate. The meeting link was shared with the parent.
4. There is email documentation from the parent to the AACPS reflecting that the IEP team convened on November 7, 2023, and addressed the parent's concerns with the student's progress and implementation of the IEP.
5. On December 11, 2023, the AACPS School Psychologist emailed the parent in response to a private neuropsychological report that was sent by the parent. The School Psychologist informed the parent that a meeting will be scheduled to take place after the team returns from break to consider results and recommendations. On December 11, 2023, the parent emailed the school-based team and shared his availability. There is no documentation that the parent requested an IEP team meeting in December 2023.
6. There is documentation of parent participation in an IEP team meeting to review the private Neuropsychological report on January 31, 2024.

CONCLUSION:

Based on the Findings of Fact #1 through #4, MSDE finds that the AACPS followed proper procedures when responding to a request for an IEP team meeting that was made by the parent in October 2023 in accordance with 34 CFR §§300.324 and .503 and COMAR 13A.05.01.08. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Based on the Findings of Fact #5 and #6, MSDE finds that the parent did not request an IEP team meeting in December 2023; thus, no trigger of the requirement of the AACPS to respond to a request for an IEP team meeting, in accordance with 34 CFR §§300.324 and .503 and COMAR 13A.05.01.08. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

ALLEGATION #2

DISCIPLINARY PROCEDURES

FINDINGS OF FACT:

7. On May 31, 2023, the student was placed on an eight day out of school suspension. The letter reflects the following:
 - suspension began on May 31, 2023;
 - student was allowed to make up work that was missed as a result of suspension; and
 - a reinstatement meeting would be held on Monday, August 28, 2023¹.
8. On June 8, 2023, the school staff emailed the parent, sharing that there was a discrepancy with the number of suspension days calculated in the system and the number of days reported in the May 31, 2023, suspension letter. The school staff clarified that the student had a total of 11 suspension days for the 2023-2024 school year.
9. On June 13, 2023, the IEP team convened “to determine whether the conduct, which resulted in a disciplinary action, was or was not a manifestation of the student’s disability.” The Prior Written Notice (PWN) generated after the IEP team meeting reflects that the IEP team determined that the behavior was caused by or directly related to the student’s disability and that the behavior was a manifestation of the student's disability. The team agreed to the following:
 - the student may return to school, and a reinstatement meeting will occur prior to the start of the 2023-2024 school year;
 - the school team will consider the need for a Behavior Intervention Plan (BIP) while drafting [the student’s] annual IEP. If his behavioral needs cannot be fully captured in the IEP, then a BIP will be created with the psychologist's support;
 - [Student’s] IEP will be revised with updated assessments and identified needs. Parent will be provided an annual review prior to [the student’s] return to school in the fall; and
 - academic and cognitive assessments will be completed by a special educator and school psychologist, respectively, to determine current levels and impact.

CONCLUSION:

Based on the Findings of Fact #7 through #9, MSDE finds that the AACPS did follow proper procedures when disciplinarily removing the student from school since May 31, 2023, in accordance with 34 CFR §300.530 and COMAR 13A.08.03. Therefore, this office finds that a violation did not occur concerning this allegation.

ALLEGATION #3

ACCESS TO STUDENT RECORDS

FINDINGS OF FACT:

10. On September 18, 2023, the parent emailed the AACPS requesting “a copy of all documentation of the services [the student] had received since the start of school, beginning on August 28, 2023.”

¹ AACPS last day of school for students was June 16, 2023.

11. On February 5, 2024, the parent emailed the AACPS requesting a “copy of all documentation of the services [the student] received for the entirety of quarter two and the data used to indicate the progress that he made per his report.”
12. There is documentation that the AACPS provided an Occupational Therapy assessment on February 28, 2024, and an observation report on March 4, 2024. However, the documentation was not timely and did not fully respond to the request made by the parent on September 18, 2023, and February 5, 2024.

DISCUSSION AND CONCLUSION:

Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under the IDEA. The agency must comply with a request without unnecessary delay and, in no case, more than 45 days after the request has been made (34 CFR §300.613).

Based on the Findings of Fact #10 through #12, MSDE finds that the AACPS did not follow proper procedures when responding to a request to review and inspect the student’s education record since September 18, 2023, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation occurred concerning this allegation.

ALLEGATION #4 PROVISION OF SPECIAL EDUCATION INSTRUCTION, SUPPORTS, RELATED SERVICES, AND SUPPLEMENTARY AIDS AND SERVICES

FINDINGS OF FACT:

13. The IEP in effect at the beginning of the 2023-2024 school year, was developed on August 9, 2023. The IEP requires special education instruction inside of the general education setting for six hours and thirty minutes per week, provided by the special education teacher and/or instructional assistant, weekly home-school communication as a supplementary aid, OT as a related service for thirty minutes per month outside of the general education setting.
14. There is documentation that the special educator was absent from August 28, 2023, to February 25, 2024. While there is some documentation that the student received special education instruction from a paraprofessional in collaboration with an AACPS Central Office special educator; it does not demonstrate that the special education instruction was consistently provided as required by the IEP.
15. There is documentation that services were provided by a special educator from February 26, 2024, through the end of the 2023-2024 school year as required by the IEP.
16. On April 30, 2024, the IEP team convened to conduct the annual review and revise the student’s IEP. The IEP developed requires special education instruction inside of the general education setting for six hours and thirty minutes per week, provided by the special education teacher and/or instructional assistant, weekly home-school communication as a supplementary aid, OT as a related service for thirty minutes per month outside of the general education setting.
17. There is documentation that the student was provided with OT services since the beginning of the 2023-2024 school year as required by the IEP.

18. There is no documentation that the student was provided with the home to school communication since the beginning of the 2023-2024 school year as required by the IEP.

DISCUSSION AND CONCLUSIONS:

Special Education Instruction (August 2023 to February 2024)

Based on the Findings of Fact #13 and #14, MSDE finds that there is no documentation that the AACPS provided the student with special education instruction, as required by the IEP from August 2023 through February 2024, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

Provision of OT

Based on the Findings of Fact #13, #16 and #17, MSDE finds that the AACPS has provided the student with OT services, 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 did not occur concerning this aspect of the allegation.

Home to School Communication

Based on the Findings of Fact #13, #16, and #18, MSDE finds that the AACPS has not provided the student with the home to school communication, 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 occurred concerning this aspect of the allegation.

CORRECTIVE ACTION 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.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.^[2] 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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.³ Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

²The 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.

³ 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 October 1, 2024, that the IEP team has taken the following actions:

- a. Provided the student with special education instruction and home to school communication as required by the IEP;
- b. Provided the complainant with access to the requested student record; and
- c. Convened and determined the amount and nature of compensatory services or other remedy to redress the lack of provision of special education instruction, and determined whether the violation related to home to school communication and access to the student's records had a negative impact on the student's ability to benefit from the education 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.

The AACPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain 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 by October 1, 2024, of the steps it has taken to ensure that [REDACTED] staff properly implements the requirements for the provision of special education instruction, supplementary aids, and services, and access to student records. The documentation must include a description of how the AACPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

Similarly Situated Students

MSDE requires the AACPS to provide documentation by December 2, 2024, that it has identified all students at [REDACTED] impacted by the absence of the special educator and did not receive special education instruction from August 2023 through February 2024. For those students identified, the AACPS must ensure that an IEP team convenes and determines the amount and nature of compensatory services or other remedy to be provided to the student for the loss of services and develops a plan for the provision of those services within one (1) year of the date of this Letter of Findings. If a student transfers to another school system prior to the completion of the provision of the remedy, the AACPS must coordinate with the public agency responsible for the education of the student in order to ensure that the remedy is provided.

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
Mary Tillar, Assistant Superintendent, Special Education, AACPS
Jennifer Brown, Program Manager of Compliance and Legal Issues, AACPS
[REDACTED], Principal, [REDACTED], AACPS
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Chief, Family Support and Dispute Resolution Branch, MSDE
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Rabiatu Akinlolu, Complaint Investigator, MSDE
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