


July 30, 2024




Ms. Diane McGowan  
Director, Specially Designed Instruction  
and Compliance  
Anne Arundel County Public Schools  
2644 Riva Road  
Annapolis, Maryland 21401

RE:   
Reference: #24-247

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and 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 31, 2024, MSDE received a complaint from , hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that 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 has not ensured that the student has been provided with the special education instruction as required by the Individualized Education Program (IEP) since May 2023, in accordance with 34 CFR §§ 300.101 and .323.
2. The AACPS has not ensured that the student’s IEP was reviewed and revised to address his lack of expected progress toward achieving the IEP behavior goals, since May 2023, in accordance with 34 CFR § 300.324.
3. The AACPS did not ensure that the IEP accurately reflects the team’s April 7, 2024, decisions with regard to supports and services, which has resulted in the supports and services not being provided, in accordance with 34 CFR §§ 300.101, .320 and .323.
4. The AACPS has not developed an IEP that addresses the student’s behavioral needs since May 2023, in accordance with 34 CFR § 300.101 and .324.

5. The AACPS has not followed proper procedures when disciplinarily removing the student from school since May 2023, in accordance with 34 CFR § 300.530, COMAR 13A.08.03, and COMAR 13A.05.01.10.
6. The AACPS did not ensure the proper procedures were followed when responding to a request to inspect and review the student's educational record since April 2024, in accordance with 34 CFR § 300.613.
7. The AACPS has not ensured that a Functional Behavioral Assessment (FBA) was conducted in response to a request when conducting a reevaluation of the student since May 16, 2024, in accordance with COMAR 13A.05.01.06.

**BACKGROUND:**

The student is 14 years old and is identified as a student with Multiple Disabilities (Intellectual Disability and Autism) under the IDEA. The student currently attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACT:**

**ALLEGATION #1**

**PROVISION OF SPECIAL EDUCATION INSTRUCTION**

1. The IEP, in effect since May 2023, was developed on February 7, 2023. The IEP reflects the areas impacted by the student's disability are reading comprehension, written expression, math problem solving and calculations, expressive/receptive language, pragmatic language, sensory-motor skills, and behavior. The IEP team developed IEP goals for the impacted areas. The IEP required 19 hours and 30 minutes weekly of specialized instruction outside of the general education classroom in an Alternative Curriculum Classroom (ACC) with instruction provided by a special education teacher, general education teacher, and instructional assistant, and 2 hours a month of speech-language services outside of the general education classroom. In addition, the IEP reflects that the student participates in alternate state assessments, follows alternate academic achievement standards, and will receive a Maryland High School Certificate of Program Completion.
2. The February 7, 2023, IEP reflects the student was provided a Functional Behavior Assessment (FBA) on January 5, 2023, and a Behavior Intervention Plan (BIP) was developed on February 7, 2023.
3. The IEP requires the provision of instructional support, social/behavioral support, physical/environmental support, school personnel/parental support, and support to access a modified general education curriculum. The student has special communication needs in the areas of expressive and receptive language and requires an assistive technology device.
4. There is documentation that the student had visual support in the classroom as required by the IEP during the 2023- 2024 school year.
5. On May 4, 2023, the IEP team convened to review the existing data and develop a reevaluation plan. A "Student Evaluation Plan" was developed at the request of the occupational therapist. The school team identified the need for assessments in the area of sensorimotor skills due to the student's increasing difficulties with learning behaviors that affected the student's functioning in the school

setting and needed to determine if sensorimotor difficulties were contributing to the student's interfering behaviors. Despite having access to sensory items in the classroom, the student's interfering behaviors continued to increase. Upon the completion of the occupational therapy (OT) assessment, the IEP team would consider adding OT services to support the student's access to education.

6. On May 23, 2023, at the request of the complainant, the IEP team convened to review and revise the BIP and IEP, as well as consider other positive behavior supports to prevent the current behaviors. During the meeting, the complainant and the student's private Applied Behavior Analysis (ABA) therapist expressed concerns about the student's BIP being "too vague" and not tailored to the student's needs, leading to easy suspensions and increased incident reports. The complainant also expressed concerns that the school had not provided proper behavioral support to the student, and the private ABA therapist noted that the resources he shared with the school team were not utilized effectively. The IEP team proposed discontinuing the request for an updated FBA which was recommended during an IEP meeting held on April 18, 2023, and determined they would move forward with updating the BIP with the current data. The complainant requested that a socialization goal be added. The IEP team discussed the need for a dedicated aide due to the amount of support the student required.
7. On June 6, 2023, the IEP team convened to review and revise the IEP, review and revise a BIP, and consider other positive behavioral supports to address the current behavior. The IEP team updated the student's Present Levels of Academic Achievement and Functional Performance (PLAAFP) in the areas of behavior and OT. The IEP team updated the student's behavior goal. The IEP team determined that the student requires daily close one-on-one adult support to manage appropriate classroom behaviors. During academic times, adult support is required to assist the student in completing academic tasks, ensuring appropriate behavior is exhibited, and implementing the BIP if challenging behavior occurs. During transitions, adult support is required to assist the student with refraining from elopement. After the review of the OT assessment, the IEP team determined the student requires monthly OT consultative services. The IEP team also determined the student required periodic psychologist and social worker consult services added to the supplementary aids to support socialization skills.
8. During the June 6, 2023, IEP meeting, the IEP team reviewed the BIP and agreed to incorporate recommendations from the complainant and the private ABA therapist, utilizing what could be implemented in the school setting to create a new behavior plan. The BIP focuses on elopement and physical aggression due to increased behaviors in those areas.
9. On January 31, 2024, the IEP team met for an annual review of the IEP. The IEP team used informal assessments, school team data and input, and progress reports to revise IEP goals in the areas of reading comprehension, math calculation, math problem solving, written expression, other behavior, pragmatic language, and expressive/receptive language. As part of the student's triennial reevaluation, a "Student Evaluation Plan" was developed. The IEP team determined no additional assessments were needed at this time as there has been a positive change in the student's behavior using proactive interventions. The IEP team revised the supplementary aids and services to provide access to the writing anchor chart during writing activities, updated "When giving directions...", read aloud directions, provide alternative ways for the student to demonstrate learning, and removed the "Use token system" from the supplementary aids and services. During the IEP meeting, the IEP team reviewed and revised the BIP.

10. The January 31, 2024, IEP PLAAFP reflects that the student's deficits in expressive and receptive language limit his ability to comprehend information presented within the classroom including academic instruction and directions to complete classwork. He has difficulty demonstrating that he has learned material using oral language when answering questions and participating in class discussions. The use of an AT device is required which includes access to picture communication symbols and a core board.
11. There is insufficient documentation that the student received specialized instruction as required by the IEP since May 2023.

**DISCUSSION AND CONCLUSION:**

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR § 300.101).

Based on the Findings of Fact #1 through #4, #7, #9, #10, and #11, MSDE finds that the AACPS has not ensured that the student has been provided with the special education instruction as required by the IEP since May 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, MSDE finds that a violation did occur concerning this allegation.

**ALLEGATION #2**

**ADDRESSING THE LACK OF EXPECTED PROGRESS**

**FINDING OF FACT:**

12. The report of the student's progress dated March 31, 2023, June 13, 2023, October 31, 2023, January 18, 2024, and April 14, 2024, towards the achievement of the annual math calculations, math problem-solving, reading comprehension, written expression, and behavior goals reflects that the student is "making sufficient progress to meet the goal."

**CONCLUSION:**

Based on Finding of Fact #12, MSDE finds that the reports of the student's progress towards achievement of the annual IEP goals since May 2023, stated the student was "making sufficient progress to meet the goal" thus, it did not trigger the requirement for the IEP team to meet to address a lack of progress. Therefore, MSDE finds that a violation did not occur concerning this allegation.

**ALLEGATIONS #3 & #4**

**IMPLEMENTATION OF IEP TEAM DECISIONS AND AN IEP THAT ADDRESSES THE STUDENT'S BEHAVIORAL NEEDS**

**FINDINGS OF FACT:**

13. On April 17, 2024, the IEP team convened to review the BIP per the request of the complainant due to a recent behavior that resulted in a suspension. The Prior Written Notice (PWN) reflects the complainant expressed concern that the student's BIP is not being implemented with fidelity, especially by his former Temporary School Assistant<sup>1</sup> (TSA). The complainant questioned the new

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<sup>1</sup> A Temporary School Aide (TSA) provides additional adult assistance to students who require these services in order to access instruction.

behavior of “inappropriate touching of staff” and requested a “Daily Communication Log” to monitor the student’s progress. The complainant expressed disappointment with the lack of Administration (not a designee) being present in the meeting and “requested that one be present moving forward to help enforce the monitoring of implementing the student’s BIP as it is against the law and unacceptable.” The complainant and ABA therapist expressed concerns about the student being suspended for five days although he was not able to express his wants and needs and the BIP was not being followed. An AACPS IEP member shared that the student’s pragmatic goal has been successful, however in other cases, there have been inconsistencies and the student went back to the maladaptive behaviors he was accustomed to. The AACPS IEP member apologized and shared that the school has adjusted the staff and “AACPS accepts that some things were not in place and [the student] exhibited negative behaviors because his BIP was not followed with fidelity.”

14. The PWN further reflects that the complainant and private ABA therapist proposed:
  - the use of a daily communication log;
  - Task completion 'to-do' list as opposed to a daily schedule;
  - The use of the sensory room for “cooling down” and not as a reward;
  - Breaks not to exceed three to five minutes; and
  - Additions to the BIP to reflect the use of social stories, clarification of rewards, and when to wear headphones.

While there is documentation that the use of a daily communication log was added to the IEP; the PWN does not indicate that the IEP team accepted or rejected the parent’s remaining proposals.

15. During May 2024, the student exhibited behaviors towards adults that were deemed inappropriate.
16. On June 4, 2024, the IEP team met to determine appropriate services and placement for high school. During this meeting, the IEP team increased the student’s services in the area of classroom instruction and determined the student requires a more restrictive environment of the Autism Regional Program for high school due to the need for a highly structured environment with behavioral and communication supports that specializes in supporting students with Autism. The IEP team added a learning behavior goal to the student communicating his wants and needs and a behavior goal to assist in reducing physical aggression and elopement. During the IEP team meeting, the complainant requested a social goal to address the student’s social skills, however, the IEP team rejected the request and stated those skills are addressed through the behavior and learning behavior goals.

### **DISCUSSION AND CONCLUSION:**

#### **ALLEGATION #3**

In this case, the PWN generated after the April 17, 2024, IEP team meeting does not reflect the IEP team’s decision as it relates to the parent’s proposals. Therefore, the documentation is not clear as to the decisions regarding supports and services.

Based on the Findings of Fact #13 through #16, MSDE finds that the AACPS did not ensure that the IEP accurately reflects the team's April 17, 2024, decisions with regard to the supports and services, which has resulted in the supports and services not being provided, in accordance with 34 CFR §§ 300.101, .320 and .323. Therefore, this office finds that a violation did occur concerning this allegation.

#### **ALLEGATION #4**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §§ 300.101, .320, and .324).

Based on the Findings of Fact #1 through #3, #5 through #9, #13 through #16, #17, and #19, MSDE finds that the AACPS has developed an IEP that addresses the student's behavioral needs since May 2023, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office finds that a violation has not occurred concerning this allegation.

#### **ALLEGATION #5**

#### **DISCIPLINARY PROCEDURES**

#### **FINDINGS OF FACT:**

17. Since May 2023, the student received discipline referrals on:

##### School Year 2022-2023

- May 4, 2023, for unsafe actions, resulted in a conference with the student and a phone call to the parent;
- May 11, 2023, for unsafe actions, resulted in a conference with the student, supervised time-out, a phone call to the parent, and a letter to the parent;
- May 12, 2023, for unsafe actions, resulted in one day out of school suspension ;
- May 15, 2023, for unsafe actions, resulted in two days out of school suspension;

##### School Year 2023-2024

- March 11, 2024, for unsafe actions, resulted in five days out of school suspension;
- May 6, 2024, for unsafe actions, resulted in two days out of school suspension; and
- May 29, 2024, for unsafe actions, resulted in three days out of school suspension.

18. There is no documentation the complainant was called to "pick up the student" on April 3, 2024, due to behaviors.

19. During the 2023- 2024 school year, the student was suspended for a total of 10 days.

**DISCUSSION AND CONCLUSION:**

The IDEA provides protections to students with disabilities who are disciplinarily removed from school in excess of ten school days in a school year (34 CFR § 300.530). In this case, the student was not disciplinarily removed in excess of ten days during either school year; therefore, the IDEA disciplinary removal requirements are not applicable.

Based on the Findings of Fact #17 through #19, MSDE finds that the AACPS was not required to follow procedures beyond those afforded general education students when disciplinarily removing the student from school since May 2023, in accordance with 34 CFR § 300.530, COMAR 13A.08.03, and COMAR 13A.05.01.10. Therefore, this office finds that a violation did not occur concerning this allegation.

**ALLEGATION #6                      ACCESS TO STUDENT RECORDS**

- 20. On May 17, 2024, the complainant requested copies of all PWNs created during the 2023-2024 school year to be sent to her via email. There is no documentation of the complainant receiving the requested documents.
- 21. On May 23, 2024, the complainant emailed the AACPS administrator requesting data on the student's behaviors for the school year due to recent inappropriate behavior and wanted to review the data to help assist with new strategies that would be data-driven as well used as discussion in an upcoming IEP meeting. The complainant expressed concern that she initially requested the documentation on April 26, 2024, and May 10, 2024.
- 22. While there is documentation that on May 29, 2024, an AACPS administrator emailed the complainant data for the month of September 2023, November 2023, December 2023, and May 2024; this did not include all of the records requested by the complainant.

**CONCLUSION:**

Based on the Findings of Fact #20 through #22, MSDE finds that the AACPS did not ensure the proper procedures were followed when responding to a request to inspect and review the student's educational record since April 2024, in accordance with 34 CFR § 300.613. Therefore, this office finds that a violation did occur concerning this allegation.

**ALLEGATION #7                      REEVALUATION PROCEDURES**

- 23. On May 16, 2024, the complainant emailed the IEP team requesting an FBA due to the student's behaviors and suspensions since February to find effective strategies to address the concerns. There is no documentation that AACPS responded to the request of the complainant.

**DISCUSSION AND CONCLUSION:**

In this case, the complainant alleges she made a request for an FBA. The AACPS did not respond to the complainant's request for the FBA.

Based on the Finding of Fact #23, the parent requested an FBA and the IEP team did not consider the parent's request, therefore, MSDE finds that the AACPS has not convened an IEP team meeting to discuss the parent's

request for an FBA nor have they provided prior written notice of their decision to approve or deny the request since May 16, 2024, in accordance with 34 CFR § 300.503 and COMAR 13A.05.01.06. Therefore, this office finds that a violation did occur concerning this allegation.

### **ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

#### **Implementation of the BIP**

Based on the Findings of Fact #2, #6 through #8, #13 through #15, MSDE finds the AACPS did not consistently implement the BIP since April 2024, in accordance with 34 CFR § 300.101 and .323. Therefore, this office finds that a violation occurred.

#### **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 noncompliance is corrected in a timely manner.<sup>2</sup> 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, to ensure the effective implementation of the action.<sup>3</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

#### **Student-Specific**

MSDE requires the AACPS to provide documentation by September 30, 2024, that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the violations within this letter and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

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<sup>2</sup> 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.

<sup>3</sup> MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.



The AACPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant 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 by September 30, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for monitoring and implementing BIPs, responding to parents request for records, and responding to a request for an assessment. 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.

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/sj

c: Mark T. Bedel, Superintendent, AACPS  
Sonya McElroy, Director, Birth-5 Programs, Special Services and Nonpublic Placement, AACPS  
Jennifer Brown, Program Manager, Compliance and Legal Issues, AACPS  
[REDACTED], Principal, [REDACTED], AACPS  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Nicole Green, Compliance Specialist, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
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