

October 28, 2024

Corrected Copy October 30, 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

Ms. Sonya McElroy  
Ms. Diane McGowan  
Co-Directors of Special Education  
Anne Arundel County Public Schools  
1450 Furnace Avenue  
Glen Burnie, Maryland 21060

RE: [REDACTED]  
Reference: #25-049

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 on the final results of the investigation.

**ALLEGATIONS:**

On August 29, 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 School (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning 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 required by the Individualized Education Program (IEP) from a certified special education teacher during the 2023-2024 school year, in accordance with 34 CFR § 300.156 and COMAR 13A.12.02.
2. The AACPS did not ensure that the parent was provided with timely reports of the student’s progress toward achieving the annual IEP goals during the 2023-2024 school year, in accordance with 34 CFR § 300.320.
3. The AACPS did not follow proper procedures when responding to a request to amend the student’s education record during the 2023-2024 school year, in accordance with 34 CFR §§ 300.618 - .621.
4. The AACPS did not follow proper procedures when addressing the student’s need for compensatory services since September 2023, in accordance with 34 CFR § 300.101.

**BACKGROUND:**

The student is nine years old and is identified as a student with autism under the IDEA. The student attends [REDACTED] and has an IEP that requires special education instruction and related services.

**FINDINGS OF FACT:**

1. In its written response, the AACPS acknowledges that it did not ensure that the student was consistently provided with the special education instruction required by the IEP from a certified special education teacher during the 2023-2024 school year.
2. In its written response, the AACPS acknowledges that it did not ensure that the parent was provided with timely reports of the student's progress toward achieving the annual IEP goals for the second and third quarters of the 2023-2024 school year.
3. On September 20, 2023, the complainant emailed the AACPS staff sharing that the student had not received his services to date and was now owed "24 hours of specialized instruction."
4. On September 22, 2023, the AACPS staff emailed the complainant stating, "We have noted that services hours were not provided and will need to have a meeting to address compensatory services."
5. On November 2, 2023, the IEP team convened to discuss the complainant's concerns. The prior written notice (PWN) generated after the meeting reflects that the IEP team acknowledged that "a meeting will be held in the future to discuss if [the student] qualifies for compensatory services due to him not receiving specialized instruction in reading, math, and learning behaviors [from August 28, 2024, until the first week of October]." The PWN also reflects that a reevaluation meeting would be held for the student in January 2024.
6. On November 2, 2023, the AACPS staff emailed a notice to parents and guardians regarding a "Community Conversation" for the "families of students with IEP's...and Compensatory Services." The notice stated the meeting would be held with the school principal, the coordinator of specially designed instruction, and the special education resource teacher.
7. On December 6, 2023, the IEP team convened to "review existing data and develop a reevaluation plan." The PWN generated after the meeting reflects that the school team determined to assess the student in "cognitive ability, psychological processing, attention/executive functioning, academics (reading, writing and math), expressive/receptive language, pragmatic language, and social/emotional." The complainant provided consent for reevaluation on December 6, 2023.
8. On March 9, 2024, the complainant emailed the AACPS staff stating that the team missed the 90-day deadline to review the student's assessments and determine eligibility. The complainant requested a meeting to discuss the results and implement an updated IEP.
9. On March 11, 2024, the AACPS staff emailed the complainant acknowledging that the team was past the 90-day deadline to review the student's assessments and determine eligibility, and provided options for how the situation could be addressed.

10. On March 22, 2024, AACPS staff emailed the complainant a draft IEP.
11. On April 3, 2024, the IEP team reconvened to “review [the] evaluation information and determine continued eligibility” for the student. The PWN generated after the meeting reflects that the team determined the student met the eligibility for autism and required specialized instruction in academics and communication, but did not meet the “educational requirements for ADHD (attention deficit hyperactivity disorder)” and all IEP team members agreed with those determinations. The IEP team decided to convene a “continuation” meeting to present a draft IEP.
12. On April 5, 2024, the AACPS staff emailed the complainant the documents from the April 3, 2024, IEP meeting, and documents for the upcoming IEP meeting.
13. On April 16, 2024, the IEP team reconvened to complete the assessment review and develop an IEP for the student. The PWN generated after the meeting reflects that the team determined that the student did not meet the criteria for Extended School Year (ESY) services at that time.
14. On April 18, 2024, the complainant emailed the AACPS staff stating that the subject of compensatory hours was not discussed during the April 3, 2024, IEP meeting, and asked when the issue would be discussed.

The AACPS staff emailed the progress notes from the second and third marking period to the complainant.

15. On April 22, 2024, the complainant emailed the AACPS staff stating that she received the second and third marking period progress reports and expressed her concern that the school-based team reported that the student was making progress during the IEP team meeting, but the progress reports reflect the opposite. The complainant also asked when the meeting to discuss compensatory services would be scheduled.
16. On April 23, 2024, the AACPS staff emailed the complainant stating that the school principal would be contacting her “to discuss compensatory services for [the student].”
17. On April 25, 2024, the complainant emailed the AACPS staff asking for an update on the requested compensatory hours meeting.

The AACPS staff emailed the complainant regarding the scheduling of the compensatory services meeting.

18. On May 15, 2024, AACPS staff emailed the complainant asking if the complainant was aware that the previous special educator was no longer in that position; and if anyone had discussed compensatory hours “for the time lost at the beginning of the year.”
19. On May 16, 2024, the complainant emailed the AACPS staff stating that she had been requesting compensatory services since September 20, 2023, and that it had been stated those services would be discussed “when a special education teacher was on board.” The complainant shared that she had sent several emails regarding compensatory services with no response. The complainant also shared that she made a request to have the progress reports reviewed and to receive the data used to complete the progress reports.

20. On May 30, 2024, the complainant emailed the AACPS staff stating that she had not received a response regarding the student's compensatory services for over 30 days although she has asked about those services since September 2023. The complainant also shared that she still had not received the data she requested that was used to complete the second and third quarter progress reports. The email reflects that the complainant and school staff "had in-person conversations beginning in November 2023 concerning the issue of compensatory hours." The complainant requested to schedule a meeting before June 4, 2024, to discuss compensatory hours, and to "hear back from the team concerning the progress report review."

The AACPS staff emailed the complainant stating that they were "working towards collecting informal data in the form of quick checks... [that will demonstrate the student's] progress or lack of progress on [the] goals."

21. On May 31, 2024, the complainant emailed the AACPS staff stating it had been over 30 days since she requested to review the data used to develop the second and third quarter progress reports. The complainant also requested a meeting regarding compensatory service hours.

The AACPS staff emailed the complainant providing two possible meeting dates.

22. On June 2, 2024, the AACPS emailed the complainant the information for a compensatory services meeting scheduled for June 10, 2024.

23. On June 3, 2024, the AACPS emailed the complainant the work samples from the third marking period.

24. On June 4, 2024, the complainant emailed the AACPS staff stating that the work samples provided from the third marking period were inaccurate and not acceptable and should be "rewritten as 1<sup>st</sup> quarter's report – insufficient progress made due to lack of services rendered by AACPS."

25. On June 10, 2024, the IEP team reconvened to discuss compensatory hours. The PWN generated after the meeting reflects that the school-based IEP team "proposed 64 hours of compensatory education services in reading, math and learning behaviors" because "due to teacher vacancy, [the student] did not receive all of the instructional services required on his IEP for the first 9 weeks of the 2023-2024 school year (marking period 1)." The team also determined that there was "insufficient data" for marking periods two and three, and the team "deemed that [the student] missed receiving specially designed instruction inside the general education setting." The PWN reflects that the IEP team discussed the number of service hours the student missed and determined that the student required compensatory services.

The AACPS offered 64 hours of compensatory services to the student to be provided during the ESY term from July 8, 2024, through August 1, 2024. It was determined that the student did not make sufficient progress in math problem solving and learning behaviors during the second marking period but made sufficient progress in all areas during the third marking period. The PWN reflects that the IEP team "agreed to reconvene within 30-45 days of the start of the 2024-2025 school year to reevaluate [the student's] progress and discuss further eligibility for compensatory services due to the lack of services provided during the 23-24 school year." The complainant was "undecided regarding the proposed ESY service hours" and shared that travel plans had already been scheduled for the summer and she did not

feel that it was fair that the student would have to give up his summer to receive his compensatory service hours. The PWN reflects the complainant stated that the data sheets that she received were not adequate and “inaccurate information to support the progress notes.” The complainant shared that she would reply to the offer of compensatory services later.

26. On June 12, 2024, the complainant emailed the AACPS staff stating that she was told that she would receive an email on June 11, 2024, “concerning the results, findings and offer for compensatory hours” but had not received one. The complainant shared that “during the meeting, it was determined (per [AACPS] calculations) that [the student] is entitled to 222 hours of compensatory services...” and the AACPS offered that he attends ESY. In the email, the complainant reiterated that the student had done “nothing wrong” and the IEP team spent “an hour debating” if the student required ESY and “it was determined by the IEP team that he did not qualify.” With less than 30 days’ notice, the complainant shared that she was “unable to change plans for the summer.” The complainant shared that during the “Community Conversations Meeting” in November 2023, “compensatory hours were defined as a “tutor” before school, after school, or on the weekends [and it was stated that] parents could choose the tutor...and AACPS would either reimburse or pay the provider directly up to \$100 per hour, but summer school was never stated as a viable option. The complainant shared that she had been sending emails concerning compensatory hours since September 20, 2023, and had been “continuously [asking] about compensatory hours via email/in person/IEP meetings in order to mitigate damages but was provided no attempt to resolve until June 10, 2024.” The complainant stated that 64 hours was not an acceptable option to compensate for 222 hours and requested to know what the next steps were. The complainant also shared that she asked for the student’s second and third marking period progress reports to be reviewed due to inconsistencies and that there was no data provided to support them.
27. On June 12, 2024, the AACPS staff emailed the complainant stating that if the complainant disagreed with the proposal for compensatory services that was offered by the AACPS during the June 10, 2024, meeting, the complainant should refer to the “Resolving Disagreements” section in the Parental Rights and Maryland Procedural Safeguards Notice, and to reach out to her if she had any questions about her parental rights so that she could explain them to the complainant.
28. On June 12, 2024, the complainant emailed the AACPS staff stating that “summer school” was not offered to other parents regarding compensatory hours” and requested to know why the student was being treated differently. The complainant stated that the student was being targeted due to the complainant’s “vocalizing [the missteps of the school’s special education department, and the AACPS’] unwillingness to communicate until 31 May 2024[.]” The complainant stated that she requested the progress reports from the second and third marking period to be reviewed, and at the June 10, 2024, IEP meeting that still had not been done. The complainant stated that on June 4, 2024, she requested that the progress reports be corrected, but “instead of correcting there was an acknowledgment of [the complainant’s] request[.]” The complainant alleged it was stated during the meeting that the student was entitled to compensatory hours “for that time frame.” The complainant shared that it had been 51 days since she made a request for the data from the second quarter progress report. The complainant shared that the points shared in her May 31, 2024, and June 4, 2024, emails regarding the inaccuracy of the student’s second and third quarter progress reports was not addressed, and she was not informed of her right to have a hearing to “challenge the information in [the student’s] educational record.”

29. On June 13, 2024, the AACPS emailed the complainant the PWN from the June 10, 2024, IEP meeting “regarding compensatory services.”

The complainant emailed the AACPS staff stating that she did not agree with “the notes” and asked that they be updated to reflect that per the calculations of a school-based IEP team member the student was owed 222 compensatory service hours, among other things. The complainant stated that there was insufficient data to determine the student’s progress during the third marking period, and that she did not agree that the team would meet again to determine compensatory services. The complainant also said she was not given information about her dispute resolution options until the email dated June 13, 2024. The complainant asked that the PWN be updated with the information she shared in her email.

30. On June 14, 2024, the AACPS emailed the complainant stating that the AACPS central office staff was contacted regarding her concerns, and the previous information shared with the complainant was supported. The email stated that “to initiate compensatory services, the offer of 64 hours of compensatory services would be delivered [during the summer]. Then the IEP team would reconvene “30-45 days into the 2024-2024 school year to review [the student’s] progress and performance to determine the impact on his academic performance. At that time, if it is deemed necessary, additional compensatory hours [would] be discussed.” The email also reflected that the complainant received a copy of her parental rights with the IEP notice, and when a staff member asked if she wanted to review the rights or if she had any questions, she responded that she did not; and at the conclusion of the meeting, she stated that she wanted to “think about the proposal of compensatory services.” The email reflected that it was documented in the PWN that the complainant “neither agreed nor disagreed with the proposed action”. The email went on to state that the building principal would be asked to respond to the complainant’s request to “[review] and/or [amend] records.”

31. On June 18, 2024, the AACPS emailed the student’s fourth marking period “progress notes” to the complainant.

32. There is no documentation that the AACPS amended the student’s educational record or the PWN from the June 10, 2024, IEP meeting. Nor is there documentation that AACPS informed the complainant of its refusal to amend the record or provided her with her right to a hearing.

**DISCUSSIONS AND CONCLUSIONS:**

**ALLEGATION #1                      PROVISION OF SPECIAL EDUCATION INSTRUCTION INCLUDING THE  
REQUIREMENT OF A CERTIFIED SPECIAL EDUCATION TEACHER**

Based on Finding of Fact #1, MSDE finds that the AACPS did not ensure that the student was consistently provided with the special education instruction required by the IEP from a certified special education teacher during the 2023-2024 school year, in accordance with 34 CFR § 300.156 and COMAR 13A.12.02. Therefore, this office concurs and appreciates the AACPS’ acknowledgment that a violation occurred with respect to the allegation.

## **ALLEGATION #2                      PROVISION OF PROGRESS REPORTS**

Based on Finding of Fact #2, MSDE finds that the AACPS did not ensure that the parent was provided with timely reports of the student's progress toward achieving the annual IEP goals during the 2023-2024 school year, in accordance with 34 CFR § 300.320. Therefore, this office concurs and appreciates the AACPS' acknowledgment that a violation occurred with respect to the allegation.

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

#### **ADDRESSING THE LACK OF EXPECTED PROGRESS**

Each public agency must ensure that the IEP team revises the IEP to address any lack of expected progress toward the annual goals, and in the general education curriculum. (34 CFR § 300.324).

Based on Findings of Fact #14, # 15, #25, and #28, MSDE finds that the AACPS has not ensured that the student's IEP was reviewed and revised to address the lack of expected progress toward achieving the IEP goals, since January 2024, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation occurred.

## **ALLEGATION #3                      PROPER PROCEDURES WHEN RESPONDING TO A REQUEST TO AMEND STUDENT RECORDS**

A parent who believes that information in the education records collected, maintained, or used under the IDEA is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing. (34 CFR § 300.618).

In this case, the complainant made a request to amend the student's second and third marking period progress reports and the PWN from the June 10, 2024, IEP meeting. The AACPS did not make the amendments, nor did AACPS inform the complainant of the refusal to amend and advise the complainant of the right to a hearing.

Based on Findings of Fact #24, #28, #29, #30, and #32, MSDE finds that the AACPS has not followed proper procedures when responding to a request to amend the student's education record since June 2024, in accordance with 34 CFR § 300.618. Therefore, this office finds that a violation occurred.

## **ALLEGATION #4                      PROPER PROCEDURES WHEN ADDRESSING COMPENSATORY SERVICES**

While the IDEA regulations do not specifically address the issue of missed special education and related services, courts have regularly awarded compensatory services as an equitable remedy for violations of the public agency's obligation to provide a free appropriate public education (FAPE). The purpose of compensatory services is to remediate the negative impact experienced by the student due to the denial of FAPE. When a public agency determines there were missed services, the public agency must consider the impact of the missed services on the student's progress and performance. They must also determine how to

ensure the continued provision of FAPE in order for the student to continue making progress and ultimately meet the annual goals of the IEP. Therefore, decisions should be made on a case-by-case basis. See *DEI/SES Technical Assistance Bulletin #19-03: Missed IEP Services* (August 2019).

Based on Findings of Fact #3 to #6, #15, #17 to #23, #25 to #28, #30 to #33, #35 and #36, MSDE finds that the AACPS did follow proper procedures when addressing the student's need for compensatory services since September 2023, in accordance with 34 CFR § 300.101. Therefore, this office finds that a violation did not occur concerning the allegation.

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

#### **PROPER PROCEDURES WHEN RESPONDING TO A PARENT REQUEST FOR AN IEP MEETING**

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision, a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR § 300.503).

In this case, the complainant made her first request to discuss the provision of compensatory services on September 20, 2023. Despite having four IEP team meetings during the school year, compensatory services were not discussed until June 10, 2024.

Based on Findings of Fact #3 to #6, #14, #15 to #22, #25 to #30, MSDE finds that the AACPS did not follow proper procedures when responding to a request for an IEP team meeting to discuss compensatory services during the 2023-2024 school year, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation occurred.

#### **PROPER PROCEDURES FOR COMPLETING A REEVALUATION IN THE REQUIRED TIMELINE**

When conducting a reevaluation, the public agency must ensure that assessments are conducted, the results are considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety days of the date the team determines that assessments are required (COMAR 13A.05.01.06).

In this case, the complainant provided consent to assess the student on December 6, 2023. The AACPS did not complete the reevaluation process until April 3, 2024.

Based on Findings of Fact #7 to #11, MSDE finds that the AACPS did not follow proper procedures when conducting a reevaluation of the student from December 2023 to April 2024, in accordance with COMAR 13A.05.01.06. 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.<sup>1</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 Branch, MSDE, to ensure the effective implementation of the action.<sup>2</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**

By **January 31, 2025**, MSDE requires the AACPS to provide documentation that the school system has:

- Amended the student's educational records as requested or provided the complainant with a response as required under IDEA; and
- Convened an IEP team meeting and determined the amount and nature of compensatory services or other remedies to redress the failure to provide the student with the special education instruction from a certified special education teacher and determine if the failure to address the student's lack of progress during the second marking period 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 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.

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<sup>1</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>2</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.

Ms. Sonya McElroy  
Ms. Diane McGowan  
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## School-Based

MSDE requires the AACPS to provide documentation by March 31, 2025, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the implementation of specialized instruction, progress monitoring, addressing the lack of expected progress, amending student records, responding to a request for an IEP meeting, and completing reevaluation within the required timelines under the IDEA. These steps must include staff development, as well as monitoring. The AACPS must provide monitoring reports on or before January 5, 2025, and May 1, 2025, for 15 randomly selected students reflecting the provision of special education services, progress monitoring (including meeting for the lack of expected progress, as appropriate), and conducting proper reevaluations.

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 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 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  
Dr. Brian Morrison, Branch Chief, Monitoring and Accountability, MSDE  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Nicole Green, Compliance Specialist, MSDE  
Elizabeth B. Hendricks, Complaint Investigator, MSDE