

November 15, 2024

Ms. Debrah Martin
1300 Mercantile Lane Ste 139-W
Largo, Maryland 20774

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

RE: [REDACTED]
Reference: #25- 065

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 September 16, 2024, MSDE received a complaint from Ms. Debrah Martin, 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 did not follow proper procedures when identifying and conducting an evaluation, including a Functional Behavior Assessment, to determine if the student is a child with a disability requiring special education and related services, since May 2024, in accordance with 34 CFR §§ 300.301–300.311 and COMAR 13A.05.01.06.
2. The AACPS did not provide prior written notice of the team’s decision to reject the parent’s suggestions/requests made at the Individualized Education Program (IEP) team meeting on July 22, 2024, in accordance with 34 CFR § 300.503.
3. The AACPS did not follow proper procedures when responding to a request to amend the student’s education record on August 16, 2024, in accordance with 34 CFR § 300.618.

BACKGROUND:

The student is eight years old and receives support through a 504 plan¹. The student currently attends [REDACTED].

FINDINGS OF FACT:

1. On May 06, 2024, the complainant submitted a request for the student to be evaluated to determine if she requires additional support under IDEA. The student receives accommodations under a Section 504 plan due to her diagnoses of autism spectrum disorder, generalized anxiety disorder (GAD), unspecified attention-deficit/hyperactivity disorder (ADHD), and phonological disorder. The student also has digestive conditions. The parents and the complainant note the student continues to have significant school-related anxiety, and difficulties with executive functioning, and sensory regulation. They also suspected the student has weaknesses in the areas of Math and Written Expression.
2. On May 29, 2024, the IEP team completed a student evaluation plan and requested consent to complete the recommended assessments. The team suspected a disability in the areas of autism, other health impairment, and specific learning disability. The IEP team determined that assessments were necessary in the following areas:
 - Adaptive skills: To gain insight into the student's adaptive functioning.
 - Attention/Executive functioning: To understand the student's executive functioning.
 - Academic performance: To assess the student's performance in specific academic areas identified as areas of concern.
 - Speech-language (expressive, receptive, pragmatic): To evaluate how well the student understands spoken language and expresses thoughts.
 - Fine/Visual motor and Sensorimotor skills: To determine if any fine motor or sensory-motor challenges are limiting the student's access to or participation in the educational program.
 - Social-emotional/Behavioral functioning: To examine how the student's behavior may be impacting learning.
 - Functional behavior assessment (FBA): To identify the primary behaviors the student is exhibiting and determine the function of these behaviors.
3. On June 3, 2024, the speech-language pathologist began assessing the student.
4. On June 4, 2024, the parents provided written consent.
5. On June 5, 2024, the AACPS continued a communication assessment. This assessment included a review of past data from a May 2023 speech-language assessment, in which the student scored in the average to above-average range in all subtests of the Clinical Evaluation of Language

¹ "Section 504" refers to Section 504 of the Rehabilitation Act of 1973, requiring schools to provide a free appropriate public education (FAPE) to each eligible student, including the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student as adequately as the needs of a student without a disability are met. (34 CFR § 104.33).

Fundamentals, 5th edition, and Goldman-Fristoe Test of Articulation 3 (GFTA-3). The current assessment noted that the student continues to achieve average to above-average scores in the areas of vocabulary, syntax/morphology, integrated language, verbal reasoning, and pragmatics. Additionally, the student scored an average on the Test of Auditory Processing Skills, Fourth Edition (TAPS-4) and achieved an average score on the Oral Passage Understanding Scale (OPUS).

6. On June 12, 2024, the AACPS conducted an occupational therapy assessment, that reflects “[the student] demonstrates typical performance in fine motor and visual motor skills and is able to meet classroom expectations without supports. Although [the student] shows weaknesses in sensorimotor skills, she is able to meet classroom expectations when provided with established or identified supports.”
7. On June 12, 2024, the AACPS conducted an academic assessment. The results indicate the following:
 - In the area of Basic Reading, the student is performing in the average range when compared to same-age peers;
 - In Decoding, the student is performing in the average range when compared to same-age peers;
 - In Orthographical Processing, the student is performing in the high average range when compared to same-age peers;
 - In Reading Fluency, the student is performing in the very high range when compared to same-age peers;
 - In Written Expression, the student is performing in the average range when compared to same-age peers;
 - In Math, the student is performing in the average range when compared to same-age peers; and
 - In Math Fluency, the student is performing in the average range when compared to same-age peers.
8. On July 1, 2024, the AACPS conducted a psychological assessment. The purpose of the assessment noted, “The IEP team suspects that [the student] may be eligible for special education services by meeting the disability criteria of autism”, however, on May 29, 2024, the IEP team determined the need for additional assessments was due to a suspected disability in the areas of autism, other health impairment, and specific learning disability. The psychological assessment reflects the following findings:
 - The student met the DSM-5 criteria for autism at home, but not in the school setting. The student does present characteristics of autism spectrum disorder in both settings based on reports from three or more raters, but symptoms are mild.
 - The student was rated by both school staff and parents on the Behavior Assessment System for Children, 3rd edition (BASC-3), which reflects that “[the student] does not demonstrate any Externalizing Problems of note” and provides scores indicating that “[the student] likely worries and internalizes feelings by experiencing physical symptoms of discomfort or illness.”
 - None of the raters indicated significant attention problems or learning problems.
 - The assessment also reflects: “As with many children with autism, [the student’s] overall executive functioning skills (particularly in behavior and emotional control) appear delayed or impaired at this time, as indicated by elevated to extremely elevated ratings from multiple raters.”

- Additionally, the classroom teacher, the science, technology, engineering, and mathematics STEM teacher, and the student's parents completed the adaptive behavior assessment system, 3rd edition (ABAS-3), to compare the student's adaptive skills with those of other children her age. At school, her teachers rated her general adaptive composite scores in the average range, which were significantly higher than her parents' ratings of her skills at home, which fell in the low range.
- The general education teacher reported that the student is a very creative and inquisitive child who frequently asks questions and actively participates in group conversations. However, the teacher also noted that the student often reports physical and emotional discomfort, resulting in significant missed instructional time. When uncomfortable, the student frequently moves her desk and chair, kicks desk legs, or climbs under desks. She struggles when adults try to redirect or debrief her, as well as during games and group activities. Additionally, she has difficulty transitioning into and out of preferred or high-energy activities and requires substantial support to cope with daily events that fall outside of her routine. The student is often off task.
- At school, her adaptive skills appear comparable to those of most children her age and do not present a concern or impact on her functioning at this time.

The assessment further notes evidence of an emotional condition that has been present over an extended period, though it is only evident to a marked degree.

9. On July 1, 2024, the AACPS conducted an FBA that identified the primary behaviors of concern as Escape (with permission to leave the room), and Escape and Tangible (unsafe behavior including crawling under tables/desks and kicking desks). The FBA indicates that the student was observed over a seven-day period.

The summary of findings reflects that when the student is preparing to transition from Cultural Arts and, historically, during Math class, she frequently requests to leave the class during academic instruction to escape a non-preferred task. In less structured settings (such as group instruction or clean-up time) where there is no clear visual indication of expectations, she engages in unsafe behaviors—such as crawling under tables/desks and kicking her desk—trying to either escape a task or obtain something tangible.

10. On July 15, 2024, the parents received a copy of the assessment reports.
11. On July 22, 2024, the IEP team convened to review the initial assessments conducted for the student, as recommended by the IEP team on May 29, 2024. The PWN generated after the meeting reflects that the IEP team reviewed the following assessments:
 - Communication assessment: The parents disagreed with the interpretation of the communication score report and the relative weakness addressed for the pragmatic language subtest. The complainant requested “to review the difficulties for the Pragmatic language subtest and requested the scores” as the evaluator notes the student displayed weakness when she was assessed in areas beyond grade level expectations.
 - Occupational therapy assessment: The parents expressed disagreement with the assessment, describing it as “weak” and “feeling it did not consider factors beyond the profile.” They believe the student's actions are sensory related rather than behavioral. The complainant requested parent input for the OT assessment and asked for direct OT services in response to the evaluation.

- Academic assessment: This assessment notes that the student scored in the Average or Above Average range for all subtests except Pseudoword Decoding and Math Fluency-Subtraction, where scores were one point below average.
- Psychological assessment: The parents and complainant disagreed with the assessment, challenging the use of the STEM teacher for the assessment scales since the student only spends one hour per week with that teacher and the school team shared that the "results may not be accurate as the teacher does not really know [the student]." The PWN does not reflect a response to the complainant's request, nor the parent's disagreement.
- FBA: The parents disagreed with the findings. The PWN reflects the complainant noted parental disagreement with the phrase "kicking desks toward others," and the school-based team member agreed to revise it to "kicking desks." The complainant also requested clarification on the student's behavior of leaving the classroom (non-elopement), which the school-based member agreed to adjust. The parent noted that when the student hides under the table, she cannot communicate with adults, linking this behavior to Adult Socialization as described in the Psychological Report. The parent suggested that this behavior may be sensory-related, differing from the FBA's conclusion that it was for escape.

The PWN reflects that these assessments were completed during the last two weeks of school.

Based on a comprehensive evaluation and additional information indicating that the student is performing at grade level in reading and math, the IEP team determined that the student does not qualify for specially designed instruction or special education services. Although the team concluded that the student does not meet the criteria for a specific learning disability and considered other potential areas for qualification, including Autism and Other Health Impairment, the PWN does not reflect a discussion of each potential area of concern or document the consideration of data as it applies to each area considered.

The PWN reflects that, despite the student's Autism diagnosis and frequent class absences, the student is still achieving academically. The parents noted that the student's 15 absences suggest a need for an IEP. However, the team ultimately concluded that the student did not meet the eligibility requirements for special education services.

The PWN informs the parents of their right to appeal the IEP team's decisions and notes that the procedural safeguards provide them with additional information.

12. The PWN developed after the July 22, 2024, IEP team meeting does not include all the required content of a notice. Specifically, the PWN does not indicate that the IEP team discussed all areas of suspected disabilities.
13. On August 27, 2024, the parent's advocate emailed the speech-language pathologist requesting revisions to the student's communication assessment. The advocate asked for the inclusion of detailed information from the student's pragmatic language subtest from the manual, specifically regarding the grade-level appropriateness of skills, as well as a more thorough explanation of the student's scores and the significance of her difficulties, noting that the meeting had been held a month ago.

In response, the speech pathologist emailed stating, “I am not aware of the request made on July 22, 2024, and I was not going to amend the assessment.”

The parent’s advocate then clarified that they were not requesting an amendment to change the scores but were instead asking for the additional information agreed upon during the meeting.

The PWN dated July 22, 2024, reflects a request for a review of the pragmatic subtest; however, it does not include the response from the school team.

14. On August 16, 2024, the complainant submitted a “Request to Amend Prior Written Notice” via email, outlining the proposed changes and her reasons. There is no documentation that the AACPS responded to the request.

CONCLUSIONS:

ALLEGATION #1 EVALUATION PROCEDURES

In this complaint, the complainant alleges that the assessments used to determine eligibility were rushed and failed to consider the ongoing challenges the student faces in school, despite the services provided under her 504 plan.

A public agency proposing to conduct an initial evaluation to determine if a student qualifies as a student with a disability must obtain informed consent from the student’s parent before conducting the assessments (34 CFR § 300.300 and COMAR 13A.05.01.13(A)).

In conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent that may assist in determining whether the student is a student with a disability, and the content of the student’s IEP. The information that the IEP team considers must include information related to enabling the student to be involved in and progress in the general education curriculum. The public agency must not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability or for determining an appropriate educational program for the student (34 CFR § 300.304).

The public agency must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities (34 CFR § 300.304).

To conduct an evaluation, the IEP team shall draw upon information from a variety of sources, including existing data, current classroom-based, local, and Statewide assessments, parent input, and observations by teachers and related service providers. The IEP team shall carefully consider, and document information used as a basis of the team’s decision (34 CFR § 300.305 and COMAR 13A.05.01.06(C)).

The IEP team must document the evaluation report in writing, which must include information provided by the parent, the results of assessment procedures used as a basis for determination, a statement as to whether the assessment procedures were valid for the purpose intended and valid for the student, and whether the student is a student with a disability (COMAR 13A.05.01.06(C)).

Based on Findings of Fact #1 through #9 and #11, MSDE finds that the AACPS did not follow proper procedures when identifying and conducting an evaluation, including a Functional Behavior Assessment, to determine if the student is a child with a disability requiring special education and related services, since May 2024, in accordance with 34 CFR §§ 300.301–300.311 and COMAR 13A.05.01.06. While each area was evaluated, AACPS did not capture the discussion of each potential area of concern or document how the assessment data applied to each area considered. There was also no documentation indicating that the IEP team discussed whether formal or informal data from the assessments or performance might reflect Other Health Impairment, Autism, or any other disabilities under consideration beyond Specific Learning Disability. Therefore, this office finds that a violation occurred.

ALLEGATION #2 PROVISION OF PRIOR WRITTEN NOTICE OF THE IEP TEAM DECISIONS

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).

Based on Findings of Fact #12 and #13, MSDE finds that the AACPS did not provide prior written notice of the team’s decision to reject the parent's suggestions/requests, made at the IEP team meeting on July 22, 2024, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation occurred.

ALLEGATION #3 REQUEST TO AMEND STUDENT RECORDS

A parent who believes that information in the student’s education record is inaccurate or misleading or violates the privacy or other rights of the student may request that the public agency amend the information. Upon receipt of such a request, the public agency must decide, within a reasonable period time of the receipt of the request, whether to amend the information. If the public agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing to challenge the information (34 CFR §§ 300.618 and .619).

Based on Finding of Fact #14, MSDE finds that the AACPS did not follow proper procedures when responding to a request to amend the student’s education record on August 16, 2024, in accordance with 34 CFR §§ 300.618. Therefore, this office finds that a violation occurred.

Notwithstanding, there is documentation that the AACPS special education staff and [REDACTED] special education staff received training on August 19 through August 21, 2024, on how to respond to a request to amend the student’s education record. Therefore, no further school-specific corrective action is required.

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 manner². 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 action³. Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student-Specific

MSDE requires the AACPS to provide documentation by January 15, 2025, that the IEP team

- a. Provided the parents with required prior written notice of the decisions made at the July 22, 2024, IEP team meeting; and
- b. Provide the parents with a response to "Request to Amend Prior Written Notice" provided to the IEP team on August 16, 2024.

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 February 1, 2025, of the steps it has taken to ensure that [REDACTED] staff properly implements the requirements for initial evaluations and for providing prior written notice of the team's decision to reject the parent's suggestions/requests, made at the IEP team meeting. 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. Monitoring must include a random sample of 5 students with initial referrals to determine compliance with required timelines. The monitoring report must be submitted to MSDE prior to March 1, 2025.

² 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.

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.

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/sj

c: Dr. Mark Bedell, Superintendent, AACPS
Sonya McElroy, Director, Birth-5 Programming and Service Accountability, AACPS
Jennifer Brown, Manager, Compliance and Legal Issues, AACPS
[REDACTED], Principal, [REDACTED], AACPS
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Stephanie James, Complaint Investigator, MSDE
Nicole Green, Compliance Specialist, MSDE