



Karen B. Salmon, Ph.D.
State Superintendent of Schools

June 13, 2019

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Ms. Bobbi Pedrick
Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: XXXXX
Reference: #19-122

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 February 25, 2019, the MSDE received a complaint from Margaret Joya Jones, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms .XXXXXXXXXXXX. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE identified the following allegations for investigation:

1. The AACPS has not ensured that proper procedures were followed to identify the student as a student with a disability and conduct an evaluation under the IDEA, between February 25, 2018¹ and May 2018, in accordance with 34 CFR §§300.8, .101, .111, .304 - .306, .503, and COMAR 13A.08.04.05(C)(1).

¹ While the complainant alleged that the violation occurred prior to this date, she was informed, in writing, that only those allegations of violations that occurred within one (1) year of filing a complaint can be resolved through the State complaint investigation procedure.

2. The AACPS has not ensured that the Individualized Education Program (IEP) addresses the student's social, emotional, and behavioral needs since June 2018, in accordance with 34 CFR §§300.101, .320, and .324.
3. The AACPS did not ensure that the IEP team's decision that the student was not eligible for Extended School Year (ESY) services for the summer of 2018 was consistent with the data, in accordance with 34 CFR §§300.101, .320, and .324.
4. The AACPS did not ensure that proper procedures were followed when disciplinarily removing the student from school in October 2018, in accordance with COMAR 13A.08.01.11.
5. The AACPS has not ensured that the student's IEP has been implemented, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is six (6) years old and is identified as a student with Multiple Disabilities under the IDEA, including an Emotional Disability and an Other Health Impairment related to Attention Deficit Hyperactivity Disorder (ADHD). He has an IEP that requires the provision of special education and related services and attends XXXXXXXXXXXXXXXXXXXXXXXX.

At the start of the investigation period, the student attended the XXXXXXXXXXXXXXXXXXXXXXXX. He was not identified as a student with a disability at that time.

FINDINGS OF FACTS:

1. On September 5, 2017, when the parents enrolled the student in kindergarten at XXXX XXXXXXXXXXXXXXXX, they provided information that the student was eager to go to school, was not expected to experience behavioral difficulties, had no fears or anxieties, showed no signs of unusual anger or difficulty putting thoughts into words, and no difficulty with sleeping. The parents further indicated that the student had been evaluated when he was adopted and was not identified with a disability.
2. On October 16, 2017, the student's mother shared with the school counselor that the student experiences sensory challenges and anxiety related to not having his basic needs met prior to being adopted from a Haitian orphanage at the age of eighteen (18) months, and that he receives private occupational therapy services for sensory support.
3. On October 22, 2017, the student's mother contacted the school staff by electronic mail (email) correspondence reporting that another parent shared with her that the teacher informed her that the student is aggressive towards other students, and that the parent wanted to know what the student's mother was going to do to protect others from the student. The student's mother expressed concern that the student would be "shunned from class" as a result of being labeled "the aggressive kid," which will "stimulate his sensories" and "raise his anxiety." On the same date, the student's mother also sent the school staff an

email stating, “we are requesting to start the process for a 504”² in order to help the student with his “sensory challenges.”

4. There is documentation of an October 31, 2017 letter from the student’s private occupational therapist explaining that the student has been receiving occupational therapy services since July 2017 for a sensory processing disorder that causes hyperactivity, anxiety, and poor self-regulation. It contains recommendations for accommodations at school, including movement breaks, seating in the front of the classroom, use of oral motor tools such as chewy tubes, access to a water bottle, and warnings of changes in schedule or routine.
5. There is documentation that supports were provided to the student in the general education program to assist him with his behavior. On February 15, 2018, a Collaborative Decision Making Team³ convened at XXXXXXXXXXXXXXXXXXXX to review the effectiveness of supports being provided to the student in the general education program. The team considered information that the student “made progress in class and knew the rules,” but that, even with additional adult support, social skills instruction, and calming supports, the student continued to exhibit negative behaviors. Based on this information, the team decided that a Functional Behavioral Assessment (FBA) was needed.
6. On March 7, 2018, the team began the process for conducting a FBA.
7. On April 6, 2018, the student’s mother sent an email correspondence to the school staff stating, “I think we need to take a step back and regroup. We have had many strategies this week and I feel there are too high of [expectations] for immediate results.” The student’s mother relayed that the student was aware of the interventions being provided, and that it was causing him fear and anxiety and “compounding the problem.”
8. On April 18, 2018, the student’s parents made a referral for an IDEA evaluation. The referral states that the student has no difficulty with reading and math, but that he is easily distracted and has difficulty expressing himself orally without frustration. It states that the student also experiences difficulty with changes in routine, is overactive, demonstrates frequent and sudden mood changes, needs constant approval or reassurance, demonstrates temper tantrums, and has unreasonable fears and nightmares. The parent questionnaire completed by the parents on April 29, 2018 reflects that these behaviors were seen since the student was in pre-school.
9. On April 19, 2018, the student’s parents requested that an occupational therapy assessment be conducted as part of the evaluation.

² A 504 is an Accommodations Plan under Section 504 of the Rehabilitation Act of 1973.

³ The Collaborative Decision Making Team is a group that determines supports to be provided in the general education program to address student needs and conducts ongoing progress monitoring with the provision of those supports (www.aacps.org).

10. On May 11, 2018, the IEP team at XXXXXXXXXXXXXXX began an evaluation. At that time, the team considered information from the referral. It also considered information from the parents that the student wears glasses at home, but that they are not sent to school because they are worried that they will not be returned home, and that they would like for the student to have “an assistant” at school.
11. At the May 11, 2018 IEP team meeting, the team considered information from the school staff that the student demonstrates the ability to accurately complete classroom tasks but often refuses to do work and engages in attention seeking behavior. The school staff further reported that the student demonstrates poor impulse control and is easily distracted. They reported that the student has difficulty accepting feedback and adjusting his behavior based on feedback, difficulty identifying and accepting responsibility for his actions, that he misinterprets facial expressions, and is physically and verbally aggressive. The school staff reported that the student had been provided with interventions in the general education program such as frequent movement breaks and social skills instruction with “minimal success.” They reported observing no fine or gross motor or speech problems or difficulty with mathematics, but that the student demonstrated poor phonemic awareness skills, difficulty decoding unfamiliar words, difficulty writing extended text, and difficulty with spelling, punctuation, and capitalization.
12. Based on the information, the IEP team decided that the student was suspected of being a student with an Emotional Disability and Other Health Impairment. The team recommended assessments in the areas of psychological processing, adaptive skills, reading, math, and written expression, sensorimotor functioning, as well as social, emotional, and behavioral functioning.
13. On June 13, 2018, the IEP team considered the following data:
 - a. The report of the results of a psychological assessment that states that the student scored in the “above average” range of cognitive ability, but is struggling with behavioral and emotional issues, which are exacerbating his difficulty with focusing, organizing, and following through on instructional tasks. The report further states that there is evidence that the student has exhibited inappropriate types of behavior and feelings under normal circumstances to a marked degree over a long period of time that impact his availability for learning.
 - b. The report of the results of an academic assessment that states that the student is performing in the “average” range in reading, mathematics, and written language.
 - c. The report of the results of an occupational therapy assessment that states that, while the student is demonstrating many off task behaviors, they “do not appear to be directly related to sensory dysfunction across all sensory areas.” It further states that the student “has some problems with social participation, vision, hearing, and touch, however scores are not indicative of sensory dysfunction.” The report contains recommendations to reinforce appropriate peer interactions, provide

acceptable choices for handling frustration to minimize aggression, reduce distractions, provide movement breaks and positive reinforcement, and implementation of a behavior program to maximize completion of tasks.

- d. The report of the results of an FBA conducted in May 2018 that identified impulsivity, attention seeking, work refusal, and elopement from the classroom as targeted behaviors. The report states that the behavior is most likely to occur during non-preferred tasks after being redirected, during peer group activities, and during transitions between tasks. It includes replacement behaviors, and the strategies and interventions that have been most successful in obtaining those behaviors.
 - e. A Behavior Intervention Plan (BIP) developed on May 7, 2018 prior to the student's identification as a student with a disability, which includes interventions to be used to address the behaviors identified in the FBA. These include encouraging the student to use words to express his feelings and needs, using concise language when redirecting him, and using planned ignoring for attention seeking behavior unless the behavior becomes unsafe. It also includes restating demands and giving the student wait time and adult selected choices, as well as minimizing the number of adults interacting with the student during periods of escalation.
 - f. Information from the student's parents that they do not believe the student's problems stem from ADHD, but from the trauma he experienced in the orphanage, and their concern that the student's sensory needs be addressed in order to regulate his behavior.
 - g. A May 13, 2018 report of a parent interview that reflects that the student runs from problems rather than trying to solve them, cannot control his behavior no matter how motivated he is to change, and becomes easily angered by authority figures, but wants to belong and socialize. The report reflects the parents' belief, which they previously expressed, that the student's behaviors are caused by his not being understood and valued by the school staff.⁴ The report further reflects that the parents believe that, in order to ensure that the student achieves more success, the school staff could "understand his [childhood] trauma and his diversity."
14. Based on the data, the IEP team decided that the student meets the criteria for identification as a student with an Emotional Disability and an Other Health Impairment under the IDEA.
 15. On June 27, 2018, the IEP team convened and developed an IEP. The IEP includes a goal for the student to use self-regulation strategies to manage his feelings by verbalizing when

⁴ On May 1, 2018, the student's mother sent correspondence to the school staff stating that "in no way has our transracial family received" the commitment to diversity that is stated in the AACPS strategic plan. On May 15, 2018, the student's mother sent correspondence to the school staff that the student "knows he is being treated differently than the other students," and that "he is acting out as a five year old would because he knows the school is not treating him fairly or nice."

he is anxious or frustrated, using words to express his needs without using physically aggressive behavior, and identifying and using a problem solving strategy or coping tool in three (3) out of five (5) targeted observations. It also includes a goal for the student to follow classroom routines and complete non-preferred activities in eight (8) out of ten (10) targeted trials. It further includes a goal for the student to use a safe body with peers and adults and remain in the designated instructional area 100% of the time when given a choice of two (2) areas within the school building.

16. The June 27, 2018 IEP requires the provision of weekly special education instruction in the general education classroom and monthly psychological services in a separate special education classroom to assist the student with achieving the goals. It also requires frequent breaks, reduction of distractions, use of highlighting when reading, monitoring of independent work, breaking down assignments into smaller units, providing advanced preparation for schedule changes, and providing encouragement to ask for assistance. In addition, it requires the provision of frequent changes in activity or opportunity for movement, provision of manipulatives and sensory activities, physical space to calm down when upset, and visual checklists during less structured time. It further requires the provision of reinforcement of positive behavior through verbal and nonverbal communication, use of a personal behavior chart, adult support, preferential seating, as well as psychologist and occupational therapy consultation.
17. The June 27, 2018 IEP documents that the IEP team considered all of the required factors and determined that the benefits that the student receives from his education program during the regular school year will not be significantly jeopardized without ESY services. While the team documented the basis for its decisions that the IEP includes annual goals related to critical life skills and that the student has significant interfering behaviors, it did not document the basis for its decisions regarding the remaining factors.
18. On October 15, 2018, the student was disciplinarily removed from school for one (1) day following his third (3rd) “attack on staff.”⁵ The school staff member’s documentation reflects that, when she provided the student with reminders and direction, he hit her in the face and stomach, swung an object at her striking her in the neck and arms and made a motion to bite her.
19. On October 24, 2018, the student was disciplinarily removed from school for five (5) days for hitting a pregnant teacher and stabbing her in the stomach with a pencil. The documentation reflects that the school staff member sustained an injury as a result of the attack. The teacher reported that, immediately following the attack, the student “smiled and chuckled.”

⁵ The documentation of the previous incidents on October 8 and 10, 2018 reflects that the student punched, kicked, and tried to bite staff members, and punched and grabbed staff members in the groin area following their attempts to redirect him and have him use words to express his feelings.

20. There is documentation that the school administration consulted with the school psychologist when determining that there was an imminent threat of serious harm to others that could not be reduced or eliminated through interventions or supports prior to both disciplinary removals.
21. Earlier in October 2018, the student's mother sent an email correspondence to the school staff stating that the student was not being treated fairly. She informed the school staff that she was making a report to "Human Resources" that the student had sustained an injury at school, and that she was not informed of the incident. On October 25, 2018, the student's mother wrote to an elected official reporting that the school staff do not want "her adopted Haitian son at their school." She stated that they "were assured things would get better but the hate continues." The student's mother reported that the school staff are "grabbing and being physical" with the student "because he is noncompliant." She requested that the school administrative staff be removed from the school "as their leadership and personal feelings of hate are causing it to be unsafe for my son at school," and that "this kind of hate does not go away."
22. At the end of the first (1st) quarter of the 2018-2019 school year, reports were made that reflect that the student was not making sufficient progress to achieve the behavioral goals. The reports state that the student was able to identify and select coping tools, but was not generalizing the skill in the classroom setting. They state that the student was struggling with verbalizing when frustrated or anxious, and was resorting to physically aggressive behavior. They also state that the student was not benefitting from sensory and movement opportunities and breaks when experiencing heightened emotions, although he did respond well to the use of sensory items to calm down after being removed from the classroom. The reports further state that the student had eloped out of the classroom thirty-six (36) times.
23. On October 24, 2018 and November 5, 2018, the IEP team met to review the IEP and the BIP. The student's parents questioned how the classroom aide is being instructed to address the student's escalating behaviors and whether the aide needs more training and skills to work with students with behavioral and emotional needs. They expressed concern about the student's anxiety level when he receives negative feedback for inappropriate behavior. They requested that the student be able to receive opportunities to read as a reward for appropriate behavior, and that more strategies and supports be provided for the student's sensory and behavioral needs. They also suggested a transfer of the student to a different school.
24. The IEP team revised the goals to require additional prompts and use of sensory items, increased the amount of special education instruction from six (6) hours and fifteen (15) minutes per week to twenty-one and one-half (21.5) hours per week, increased the amount of psychological services, and added direct occupational therapy services to address behavioral needs. The team added crisis intervention and the use of a token/behavior system to reinforce use of a safe body and following directions, and decided to revise the BIP and behavior chart to include additional strategies provided by the student's private

therapist. The team documented that this was done to “ensure continuity between home and school as well as less daily communication and more positive reinforcement for [the student’s] behavior.”

25. When revising the IEP on November 5, 2018, the team decided that the Least Restrictive Environment (LRE) in which special education instruction could be provided is a separate special education classroom in all academic areas due to his need for more behavioral supports, and that the closest school to the student’s home with such a placement was XXXXXXXXXXXX School. The team further decided that the student required transportation as a related service.
26. On January 30, 2019 and April 9, 2019, reports were made that the student is making sufficient progress to achieve the annual IEP goals.
27. On February 25, 2019, the IEP team reconvened to address the parent’s concerns about transportation services. The parents reported that the bus was not consistently arriving to pick the student up in the morning to ensure that he arrives at school by the start of the school day. They also expressed concern about addressing the student’s behavioral needs on the bus.⁶ The team agreed to revise the BIP to require that the bus staff provide an explanation to the student of any loud noises and prompt him to use headphones, and to provide additional training for the bus staff on addressing the student’s needs during transportation. While the transportation staff gave the parents contact information to determine where the bus is at any time, there is no documentation that the parents’ concerns about the lateness of the bus arrival at school were addressed.
28. There is a substantial amount of documentation of the provision of IEP and BIP supports to the student, and no documentation that he was denied the opportunity to remove himself away from the other students and staff to calm down when upset or that the number of adults interacting with the student during periods of escalating behavior was not minimized.

DISCUSSION/CONCLUSIONS:

Allegation #1 Identification and Evaluation

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR § 300.111). It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services.

⁶ There is documentation that a bus aide informed the parents that she broke the student’s backpack, and that she gave the parents a new backpack to replace the one she broke. The documentation reflects that, as a result, the parents expressed concern to the school staff about the student’s safety on the bus with this bus aide because she broke the student’s backpack and she had threatened to give the student a behavior referral for his conduct on the bus.

To meet this expectation, school staff may review a student's academic and behavioral performance and determine teaching strategies, modifications to instruction, and behavior management techniques, which will appropriately assist the student. However, the public agency must ensure that implementation of intervention strategies do not delay or deny a student's access to special education services under the IDEA (34 CFR §300.111).

In order to be identified as a student with a disability under the IDEA, a student must have one (1) of a list of disabilities, including an Emotional Disability and an Other Health Impairment, and require the provision of special education instruction as a result of that disability. A student who requires accommodations and related services, but not special education instruction, does not qualify as a student with a disability under the IDEA (34 CFR 34 CFR §300.8).

An Emotional Disability means a condition exhibiting one (1) or more of a list of characteristics, including inappropriate types of behavior and feelings under normal circumstances, over a long period of time and to a marked degree, which adversely affects the student's educational performance (34 CFR 34 CFR §300.8). The IDEA does not define terms such as "long period of time," "to a marked degree," or "adversely affects the student's educational performance."

The United States Department of Education, Office of Special Education Programs (OSEP) has indicated that these terms are subjected to a variety of interpretations by States. The OSEP further indicates that a number of States define "long period of time" by a range of time between two (2) and nine (9) months, but that the application of such terms for a particular student continues to be based largely on the unique facts and circumstance of each case (*Letter to Anonymous*, 213 IDELR 247, August 11, 1989).

In this case, the complainant alleges that, eight (8) months prior to the IDEA evaluation, on October 17, 2017, the student received the first (1st) of several disciplinary actions, which should have resulted in a referral for an IDEA evaluation for an Emotional Disability. The complainant alleges that the student was subjected to physical restraint and excessive exclusion without a referral to either a pupil services team for interventions in the general education program or an IEP team for an IDEA evaluation. She states that the school system treated the student's behaviors "as manifestations of his cultural upbringing" instead of that of a "child that was merely calling out for help and unable to express what he was feeling."

Based on the Findings of Facts #1 - #8, #13, and #21, the MSDE finds that the student was provided with pupil services to address his behaviors in the general education program, in accordance with COMAR 13A.08.04.

Based on the Findings of Facts #8 - #14, the MSDE finds that the documentation reflects that the AACPS took appropriate steps to conduct an evaluation when supports in the general education program were found to be ineffective, in accordance with 34 CFR 34 CFR §§300.8 and .111.

Based on those Findings of Facts, the MSDE finds that the AACPS did not use interventions in the general education program to delay or deny the student's evaluation under the IDEA. Therefore, this office finds no violation with respect to this aspect of the allegation.

The complainant also alleges that the student was not provided with access to a quiet place in the classroom at XXXXXXXXXXXXXXXX.

Based on the Findings of Facts #16 and #28, the MSDE finds that there is no documentation that the student was denied access to a quiet place in order to calm down, in accordance with 34 CFR 300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

In this case, the complainant further alleges that communication between the student's parent and the XXXXXXXXXXXXXXXX staff demonstrates that the school system did not minimize the number of staff members interacting with the student during periods of escalating behavior.

Based on the Findings of Facts #13 and #28, the MSDE finds that there is no documentation that the the number of staff interacting with the student during periods of escalating behavior was not minimized, in accordance with 34 CFR 300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #5 Disciplinary Procedures

In this case, the complainant and the student's parents allege that, while there is no documentation to substantiate the claim, the school staff required the student's early dismissal from school on numerous occasions, which constituted disciplinary removals.

They further assert that the XXXXXXXXXXXXXXXX staff were "instigating" the student when he demonstrated behavior that resulted in his documented disciplinary removals from school. They allege that the school staff intentionally aggravated the student in order to "cause the types of physical reactions and responses they were trying to invoke," and that they were "setting the stage for [the student's] removal" to another school.

At the same time, the complainant and the student's parents allege that the school staff fabricated the events that were documented as a basis for the disciplinary removals and that he was removed for doing no more than pinching and swatting at staff and making offensive comments. They assert that the injury reported by the pregnant staff member was "questionable" and "unsubstantiated" because she did not seek medical treatment and that the student would not purposely attempt to injure anyone.

Based on the Findings of Facts #18 - #23, the MSDE finds that the documentation does not support the assertions, but that there is documentation that the school administration consulted with the school psychologist before disciplinarily removing the student from school, in accordance with COMAR 13A.08.01.11. Therefore, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the AACPS to provide documentation by the start of the 2019-2020 school year that steps have been taken to ensure that the student is transported to school prior to the start of the school day.

The MSDE requires the AACPS to provide documentation by October 1, 2019 that the student is consistently being transported to school prior to the start of the school day.

The MSDE requires the AACPS to provide documentation by November 1, 2019, that the IEP team has determined whether the violations identified through this investigation had a negative impact on the student's ability to benefit from his education program, and if so, the compensatory services or other remedy for the violations.

Similarly-Situated Students

The MSDE requires the AACPS to provide documentation by November 1, 2019, that the IEP team for each student who was assigned to the student's bus has convened and determined whether the violation related to the provision of transportation services had a negative impact on the student's ability to benefit from the education program, and if so, the compensatory services or other remedy for the violation.

School-Based

The MSDE also requires the AACPS to provide documentation by the start of the 2019-2020 school year of the steps taken to ensure that proper procedures are followed at the Central Elementary School for determining each student's need for ESY services. The documentation must include a description of the action that will be taken to monitor the effectiveness of the steps taken.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the AACPS by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Birenbaum can be reached at (410) 767-7770.

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

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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 student's parents and the school system 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. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

MEF/aam

c: XXXXXXXXXX
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