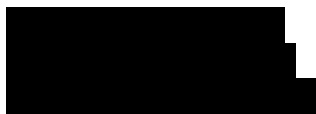



April 24, 2025




Ms. Sonya McElroy
Director of Birth to 5 Programming and Service Accountability
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

Re: 
Reference: #25-284

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 February 27, 2025, MSDE received a complaint from , hereafter, “the complainant,” on behalf of the above-referenced student. 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) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The AACPS did not properly address the student’s fine motor needs by providing direct occupational therapy services since February 2024, in accordance with 34 CFR §300.101 and COMAR 13A.05.01.09.
2. The AACPS failed to follow proper procedures in response to a request to amend the student’s record since February 2024, in accordance with 34 CFR §300.618.
3. The AACPS failed to consistently implement the student’s supplementary aids and services, specifically: the student’s second lunch; use of her mobile cushion throughout her school day; use of headphones; correct use of the visual schedule; prompting to hold her pencil correctly; use of alternative seating (wiggle stool); quiet work space; social stories for learning difficult

routines, weighted lap pad; movement breaks; as required by her IEP since September 2024, in accordance with 34 CFR §300.101 and COMAR 13A.05.01.09.

4. The AACPS failed to accurately include assessment information provided by the parent when updating the student's present levels of academic achievement and functional performance, since October 2024, in accordance with 34 CFR §300.324.
5. The AACPS failed to use the student's assistive technology (AT) device as required by her Individualized Education Program (IEP) since September 2024, in accordance with 34 CFR §300.101 and COMAR 13A.05.01.09.

BACKGROUND:

The student is six years old and is a student with autism under the IDEA. The student attends [REDACTED] School, a comprehensive elementary school located in AACPS. The student has an IEP that requires special education.

FINDINGS OF FACT:

ALLEGATIONS #1 AND #4

OCCUPATIONAL THERAPY SERVICES AND UPDATING THE IEP

1. The student's IEP in effect in February 2024 was drafted on November 8, 2023, when the student was enrolled in pre-kindergarten. The student was identified as having a developmental delay with the following areas impacted: Early Learning-Language and Literacy, Early Learning-Mathematics, Learning behaviors, Expressive/Receptive Language. At the time the IEP was drafted, the student was determined to be functioning within age expectations for fine, visual motor and sensorimotor activities, as well as adaptive skills.
2. The student's November 8, 2023, IEP does not include the implementation of accommodations but does require the implementation of supplementary aids and services, including instructional supports, social/behavioral supports, physical/environmental supports, and school personnel/parental supports. The student was not found eligible to participate in extended school year services. She has goals in mathematics, language and literacy, expressive language, and learning behaviors. The student's IEP requires that she receive three, one hour sessions monthly of classroom instruction and two, thirty minute sessions of speech monthly. All services were to be provided outside of the general education setting.
3. The complainant expressed her disagreement with the assessment results and submitted several documents relating to the student's needs, specifically, an audiological report, notes from [REDACTED], evaluation reports from "As You Are," (virtual evaluation platform). The information provided by the complainant suggests that the student requires direct occupational therapy services and should be identified as a student with autism.
4. There is documentation that AACPS considered the information provided by the complainant through the IEP process.

5. In the spring of the student's pre-Kindergarten year, AACPS completed a reevaluation process (referral January 2024, Comprehensive Reevaluation completed April 2024). The student's IEP team recommended and conducted fine motor, psychological, gross motor, articulation, expressive and receptive language assessments by April 2024. The student's eligibility code of Developmental Delay was continued, however, it was changed from developmental delay to autism on July 29, 2024, during a second Comprehensive Reevaluation after the complainant provided private assessments.
6. The student's next IEP, which is her current IEP, is dated June 27, 2024, with the areas impacted by the student's disability identified as: Early Learning-Language and Literacy, Early Learning-Mathematics, Learning Behaviors, Articulation / Phonology, Cognitive/Intellectual, Adaptive Skills, Attention/Activity Level, Social/Emotional/Behavioral.
7. The student's current IEP was updated with the information from the recent AACPS assessments that were completed and reviewed by the IEP team.
8. The current IEP includes the use of an assistive technology device, specifically, a dynamic display speech-generating device and picture communication symbols, with the requirement that the augmentative-alternative communication systems (AT Devices) should be utilized throughout the educational environment by school staff.
9. The student's current IEP does not include instructional or testing accommodations, but does include supplementary aids and services, including instructional supports, social/behavioral supports, physical/environmental supports, and school personnel/parental supports.
10. The student's June 2024 IEP includes goals in the areas of phonics, phonological awareness, reading comprehension, math number sense, articulation, and learning behaviors. It requires that she be provided with two hours of specially designed instruction inside of the general education setting each week, two hours of specially designed instruction outside of the general education setting each week, and six, thirty-minute sessions of speech/language therapy outside of the general education setting monthly.
11. Based on a disagreement with the AACPS occupational therapy report, the complainant requested, and was granted, an independent educational evaluation (IEE) in the area of occupational therapy. The complainant selected [REDACTED] to complete the IEE. The assessment was conducted when the student was in Kindergarten in October and November of 2024, and provided to AACPS in November.
12. The AACPS IEP team considered the OT report on December 19, 2024. The assessment results were considerably different to those obtained by the AACPS team in Spring 2024, and showed deficits in fine and visual motor. There is no documentation of any discussion regarding the discrepancies in the data. There is documentation that the IEP team agreed to include some of the recommendations from the report in the student's supplementary aids and services and rejected others. There is some documentation that the complainant disagreed when the IEP team rejected recommendations from the IEE report, however, documentation is silent with regard to the complainant's agreement or rejection of others.

13. Fine motor is checked as an area of impact in the student's present levels of performance on her current IEP.
14. The team agreed to include an occupational therapy consult in the student's supplementary aids and services, but did not agree to include direct occupational therapy services on the student's IEP. The manner of delivery for the occupational therapy consult services is described as: "OT consult 1x monthly may be provided in gen ed classroom, special ed classroom, cultural arts/encore classroom, cafeteria or in a separate pull out space and may include consultation with teacher/family/ caregiver/service provider, direct observation, suggestion of and/or training for strategies, provision/training of adapted equipment, ongoing monitoring of accommodations, imited adaptive trials with OT , in the areas of fine motor tasks, visual motor tasks, sensorimotor strategies, self-help tasks, academic adaptations. OT Service will be delivered by a licensed Occupational Therapist."
15. The data from the IEE was not used to update the student's present levels of performance following the IEP team consideration of the report.

DISCUSSION AND CONCLUSION:

Occupational Therapy Services

Related service is the term for those services, a child with a disability, as defined in IDEA, needs to benefit from special education. Related services may include, but are not limited to, speech therapy, occupational therapy, physical therapy, and rehabilitation counseling are related services.

Transportation to and from school is a related service. They are typically provided within the educational environment and are closely integrated with the student's learning experience. These services are tailored to the educational needs of the student and are documented in the student's IEP. They are provided at no cost to the family and are delivered within the school setting to ensure that students can access and participate in the general education curriculum alongside their peers. Related services aim to support the student's ability to access and benefit from the educational curriculum. They differ from clinical services in that clinical services focus on therapeutic interventions to address specific health or developmental issues.

In this case, the complainant contends that the student continues to have motor needs that require direct services from an occupational therapist. The IEP team disagrees and feels that the student can access and benefit from her learning environment with supplementary aids and services supporting any needs she has in that area, but does not require direct services. The AACPS has completed evaluations, considered information the complainant provided, considered information provided by the student's teacher and observed the student, in making their determination.

Based on Findings of Fact #5 through #14, the AACPS did properly address the student's fine motor needs since February 2024, in accordance with 34 CFR §300.101 and COMAR 13A.05.01.09. Therefore, this office does not find a violation.

Revising the Student's IEP with Current Evaluation Data

Updating present levels with data from new assessments helps ensure that the IEP is a living document that evolves to meet the changing needs of the student, allowing for more effective educational planning and progress monitoring. The present levels of performance section of an IEP should accurately reflect the student's current abilities and challenges based on recent evaluations or assessments. This ensures that the educational goals and services are tailored to the student's current needs. Any new data should be included in the present levels, attributed to the source and dated.

In this case, the team agreed to include some of the recommendations from the private IEE report into the student's IEP. They elected to include some things from the report and not others, with no data. Had the report been one from AACPS all the data would have been included, as it was for other AACPS reports. An IEP team cannot pick and choose to include only data they agree with, assuming the evaluator was credentialed and met AACPS criteria to complete the assessment, as she did. The data was what it was. It should have been included in the present levels, attributed to the evaluator, and dated.

Based on Finding of Facts #15, The AACPS failed to accurately include assessment information provided by the parent when updating the student's present levels of academic achievement and functional performance, since October 2024, in accordance with 34 CFR §300.324. Therefore, this office finds a violation.

FINDINGS OF FACT:

ALLEGATION #2

AMENDING THE STUDENT RECORD

16. The MSDE investigated the allegation that the AACPS failed to follow proper procedures based on the complainant's request to amend the student's records in case 24-181. The Letter of Findings in that case was issued on May 24, 2024, found that there were no violations regarding that allegation. Since that time, however, the complainant has appealed the decision of the hearing officer to the AACPS Board of Education.
17. In January 2025, the complainant received communication from the AACPS personnel asking whether she still wanted an in person hearing because it may not be scheduled before the Board until "February/March or even April."
18. To date, from January 2024, when the complainant first requested a record amendment, while there have been several levels of administrative proceeding that occurred within five to six weeks, she has not received a date for a hearing.

DISCUSSION AND CONCLUSION:

While FERPA does not provide a specific timeframe for the hearing but requires the hearing to be held within a reasonable period after the request. Although this is an appeal and not an initial hearing, waiting over fifteen months to even receive a date is not reasonable.

Based on Findings of Fact #16 through #18, the AACPS failed to follow proper procedures in response to a request to amend the student's record since February 2024, in accordance with 34 CFR §300.618. Therefore, this office finds a violation.

FINDINGS OF FACT:

ALLEGATIONS #3 AND #5

Supplementary Aids and Services and Assistive Technology

19. The student's current IEP, dated June 27, 2024, includes the following supplementary aids and services to be provided daily:

- Visually delineated space on carpet (the student needs a cushion or carpet square to visually remind her to stay in her spot on the carpet. The cushion or carpet square should be mobile, so it can be taken to other areas in the school (e.g., Cultural Arts) with [REDACTED] (e.g., Media, assemblies, music, etc.)
- Opportunities for movement (Teachers can use movement breaks with a choice of movement activities (e.g., heavy work, jumping jacks, push-ups) and flexible seating options (e.g., standing to work; kneeling; cushion, if kneeling; seated at traditional table/chair or desk; wobble chair/stool; wobble cushion on chair; etc.) to help with restlessness and promote increased focus. Teachers will provide prompting and/or reminders to the student to use the wiggle stool and/or wobble cushion.)
- Portable personalized daily schedule to include lunch, recess, cultural arts, push in/pull out services, speech/language (Access to a portable personalized daily schedule with velcro that designates when student has daily activities to include recess, cultural arts, lunch, and push-in/pull-out services for SDI, S/L Therapy, special activities/events, and dismissal (teach/practice/encourage student to put finished activities in a "Finished" box).
- Social stories for learning new routines-provided as needed (Supports will be provided by all staff working with her, as appropriate, to the situation and setting.) Social stories can be used to help student with learning new or difficult routines.)
- Adult Support (Supports will be provided by all staff working with her, as appropriate, to the situation and setting. Adult support/adult proximity to assist with task initiation, attention/focus, communication, transitions, and targeted problematic situations when/if needed (e.g., morning arrival/dismissal, cultural arts, recess/lunch, etc.). Student needs an escort to and from the car during arrival and dismissal times to maintain safe transitions. In order to reduce overstimulation during the arrival/dismissal transition, student should be retrieved from her parents' car and taken into class approximately 5 minutes early and taken from class to her parents' car approximately 5 minutes prior to dismissal time. Student also requires adult support at the end of lunch to clean up her food/drink, repack, and then be given an additional 15-20 minutes to finish eating her lunch within the classroom due to her difficulty with attention, being easily distracted, and eating her lunch much slower than her peers. Due to parent report that student orally pockets food at home, adult to check-in at the end of meals/snacks to observe that student has cleared food from her mouth before going to the next activity.)
- Quiet work space (Student needs a quiet work space free from distractions)
- Adapted writing utensil (grips/shortened utensils), Adapted pencil grasp, and slant board (Adaptive equipment will be provided that will include (but not limited to) writing utensils or grips (with prompts to use correctly) and a slant board to help promote stability when writing and isolate wrist and finger movements.)

20. The student's current IEP includes the use of an assistive technology device, specifically, a dynamic display speech-generating device and picture communication symbols, with the requirement that the augmentative-alternative communication systems (AT Devices) should be utilized throughout the educational environment by school staff.
21. The student's supplementary aids and services also require that the student have "access to and modeling of Assistive Technology to repair communication breakdowns." The manner this will be delivered is described as "The student will be provided access to and modeling of low tech and high tech assistive technology to repair possible communication breakdowns, specifically a speech generating device (SGD) and pacing tool (e.g., pacing board). For example, if not understood by peers or adults, the student will be provided opportunities to clarify her message using a speech –generating device (SGD). Modeling of the device will be provided to help [REDACTED] navigate vocabulary when necessary. A pacing board will be provided to emphasize appropriate rate of speech when commenting or responding to direct questions during structured activities."
22. There is evidence that the student is provided with a cushion that she uses in different activities throughout her day, receives reminders to use her pencil grip, uses her visual schedule and has social stories available when needed. There is also evidence that the student has her assistive technology device with her during different classroom activities and has access to different types of seating. The student is able to take movement breaks should she need or want them and has access to a quiet space in front of the teacher's desk should she need or want that, however, there is no evidence that the student has access to a quiet work space in the classroom. The student has access to a weighted lap pad when needed or wanted and may have a second lunch when wanted.

DISCUSSION AND CONCLUSION:

Many of the student's supplementary aids and services are to be used when the student wants or needs them. As such, it is difficult to document their use other than to demonstrate they are available and offered to the student. Others are required to be implemented daily. There is evidence that all of the supplementary aids and services are in place and available for the student, with the exception of a quiet workspace, although there is a quiet space in the classroom.

Based on Findings of Fact #19 through #22, AACPS failed to consistently implement the student's supplementary aids and services, specifically: a quiet workspace; as required by her IEP since September 2024, in accordance with 34 CFR §300.101 and COMAR 13A.05.01.09. Therefore, this office finds a violation.

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 timeframes below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with the 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.² 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 June 1, 2025, that the IEP team has taken the following actions:

- a. Updated the student's present levels of performance with data from the IEE assessment from [REDACTED].
- b. Provided the parents with a date for their appeal.
- c. Convene an IEP team meeting to determine whether the student continues to require a quiet work space to access the general education curriculum, and adjust her IEP as appropriate, and whether there was a negative impact from the failure to consistently impact the student's supplementary aids and services, and if so, determine the amount and nature of compensatory services or other remedies to redress the violation, and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

The AACPS must ensure that the complainant is provided with prior written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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. Request for reconsideration should be sent directly to Tracy Givens, Section Chief, Dispute Resolution at Tracy.Givens@maryland.gov.

¹ 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 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 year to complete. If noncompliance is not corrected in a timely manner, the 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.

² MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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 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/ab

c:

Dr. Mark Bedell, Superintendent, AACPS
Mary Tillar, Assistant Superintendent, Special Education, AACPS
Jennifer Brown, Senior Manager, Compliance, AACPS
[REDACTED], Principal, [REDACTED] School, AACPS
Dr. Paige Bradford, Chief, Specialized Instruction, MSDE
Dr. Brian Morrison, Branch Chief, Accountability and Data, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicole Green, Compliance Specialist, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Rabiatu Akinlolu, Complaint Investigator, MSDE