



Mohammed Choudhury
State Superintendent of Schools

August 19, 2021



Ms. Diane McGowan
Co-Director of Special Education
Specially Designed Instruction/Compliance
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: [REDACTED]
Reference: #21-123

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education 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.

ALLEGATION:

On June 29, 2021, the MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of her son, 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) with respect to the above-referenced student.

The MSDE investigated the allegation that the AACPS did not ensure that the eligibility determination was consistent with the data when conducting an IDEA evaluation of the student during the 2020 - 2021 school year, in accordance with 34 CFR §§300.303 - .311.

BACKGROUND:

The student is thirteen (13) years old and has not been identified as a student with a disability under the IDEA. He attends [REDACTED] School and has a Section 504 Plan (504 Plan) under the Rehabilitation Act of 1973, that requires the provision of accommodations.

FINDINGS OF FACTS:

1. On December 15, 2020, the complainant made a referral for the student to be evaluated for special education services under the IDEA. The referral reflects that the complainant had concerns with the student's hearing, physical health, cognitive, executive functioning, and academic abilities.

January 11, 2021 IEP Team Meeting

2. On January 11, 2021, the Individualized Education Program (IEP) team convened. The student's teachers reported that the student "does not have his camera on during class and that he only responds to teachers in the chat box, and he is not completing his classwork." The complainant reported that the student had lost his hearing in one ear and most of his hearing in his other ear. She also reported that the student's memory had worsened and he could not retain information longer than fifteen (15) minutes. The complainant provided the IEP team with a private neuropsychological evaluation of the student, dated December 14, 2020. The evaluation indicated that the student's overall cognitive ability was in the "very low range with a full scale IQ score of 76," and a diagnosis of Mild Neurocognitive Disorder and a Specific Learning Disorder, related to math. The evaluation included recommendations for supports such as, structured classrooms with set schedules and routines, extended time with math assignments, a calculator or math facts sheets, information presented in verbal and non-verbal formats, repeating of information, preferential seating, periodical breaks, communication between school staff and parents, a quiet space to complete work, and organizational strategies.
3. The IEP team summary, dated January 11, 2021, reflects that the team discussed that the assessment results "may not be an accurate reflection of his abilities" because the assessment was conducted without the student using hearing aids. The team requested from the complainant, a copy of the student's most recent audiological assessment report, but the complainant indicated that the student had not had a recent hearing assessment and she did not have a copy of the previous report. The team recommended additional assessments for the student but were concerned that the student's difficulty with hearing would "invalidate" the assessment results. The team proposed that an audiological assessment be completed first, and then the team could reconvene to review the data and recommend additional assessments for the student, as appropriate. The complainant provided consent for the assessment on the same day.

February 5, 2021 IEP Team Meeting

4. On February 5, 2021, the IEP team met to review the results from the audiological assessment. The results reflect that the student has "mild sloping to profound sensorineural hearing loss in the right ear, and the left ear results reveal moderate sloping to profound rising to moderately-severe sensorineural hearing loss." The report included recommendations for the student, which the school staff indicated they would provide to the Section 504 Team while the IEP evaluation process was in progress. The results also recommended that the conducting of any additional assessments be postponed until after the student receives his hearing aids to ensure the assessments are "valid," and that it was "imperative that he receive new hearing aids, which can largely impact his learning and development."

5. The IEP meeting summary reflects that the complainant raised concern about the student's "lack of academic progress and memory loss." The student's teachers reported that the student missed 32 days of school to date and that they were concerned that he is not coming to class or completing his work. The school-based members of the team recommended that an academic assessment be conducted after he receives his hearing aids. The complainant disagreed with the recommendation to delay the assessment and reported that the student can hear out of one ear "well enough" to be assessed. In response, the team agreed to proceed with the education assessment, and on February 9, 2021, the complainant provided consent for the assessment to be conducted. The team also decided that, if the student's "memory problems persist, despite the use of amplification and classroom supports, the team will consider additional assessments in the area of psychological processing."

March 5, 2021 IEP Team Meeting

6. On March 5, 2021, the IEP team met. The complainant reported that the student had received his hearing aids and was able to hear appropriately. The school staff reported that the student did not have hearing aids during the time the educational assessment was conducted, but the examiner repeated directions and questions to the student, as needed. The team reviewed the results of the student's educational assessment which reflected that, in the areas of reading fluency, written expression, and broad written language, he performed in the "average" range. In the area of math calculation, he performed in the "very low average" range, and in math reasoning, he performed in the "low average" range. The report included recommendations to improve the student's skills in math.
7. At the IEP meeting, the team discussed the student's lack of school attendance and classwork. The school staff reported that the student had not "consistently participated in virtual learning for the last several months, and that the team needed classroom data, informal assessments in the area of math, and information on evidence-based math strategies for the student to help determine his needs and strengths." It was also reported that, when the student attends class, he continues to have his "camera off and only participates in the chat box, but when assignments are turned in, he receives full credit." The IEP meeting summary reflects that the complainant reported that the student receives "a lot of help at home when he completes his work, and that most assignments that have been turned in were completed by her or his father." Based on this review, the team determined that there was insufficient data to identify the student as a student with a disability under the IDEA. The team recommended a cognitive assessment be conducted with the student using his hearing aids in order to determine his "memory strengths and weaknesses to assist in determining special education eligibility."
8. The IEP meeting summary, dated March 5, 2021, reflects that the complainant did not provide consent for the school staff to conduct the cognitive assessments because she believed there was enough data available to support the determination that the student requires special education services under the IDEA.

April 9, 2021 IEP Team Meeting

9. On April 9, 2021, the IEP team convened to review the informal data collected from the student in the area of math. The student's teachers reported that the student continues to miss class

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instruction, “does not respond in the chat, does not turn on his camera, interact with peers or teachers, and has completed 5 out of 12 assignments.” Based on this review, the team determined that there was “still not enough information to determine eligibility” for special education services for the student. The team decided that, once the student is back in the school building for instruction and the teachers have an opportunity to gather academic data, classroom performance and attendance information, it would reconvene to consider whether there is sufficient data to identify the student as a student with a disability under the IDEA.

CONCLUSION:

Based on the Findings of Facts #1 - #9, the MSDE finds that the IEP team decisions were consistent with the data, in accordance with 34 CFR §§300.303 - .311. Therefore, this office does not find that a violation occurred with respect to the allegation.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation.

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. 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/Special Education Services

MEF:ac

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