




August 9, 2023




Ms. Sonya McElroy
Ms. Diane McGowan
Co-Directors of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: 
Reference: #23-253

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.


ALLEGATIONS:

On June 6, 2023, MSDE received a complaint from Ms.  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.

MSDE investigated the following allegations:

1. The AACPS has not ensured that the student has been consistently provided with the special education instruction and related services as required by the Individualized Education Program (IEP) since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323.
2. The AACPS has not developed an IEP that addresses the student’s behavior and social/emotional needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324.

BACKGROUND:

The student is fifteen years old and is identified as a student with Multiple Disabilities that include Intellectual Disability, Autism, and Other Health Impairment under the IDEA. He attends  School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student’s IEP in effect at the start of the 2022-2023 school year was developed on March 22, 2022. The IEP reflects the student is identified as a student with an Intellectual Disability and Other

Health Impairment. The student has reading comprehension, math problem solving, written expression, expressive language, verbal reasoning, and pragmatic language needs.

The IEP requires the following social behavior supports:

- frequent reminders of expected behaviors;
- use of positive/concrete reinforcers;
- manipulatives/sensory activities to promote listening and focusing skills;
- frequent change in activity or opportunities for movement;
- encourage/reinforce appropriate behavior in academic and nonacademic settings;
- adult support;
- frequent eye contact/proximity control; and
- social worker consult.

The IEP requires twenty hours per week of specialized instruction outside of the general education setting for English language arts, math, science, and social studies, four hours monthly of specialized instruction inside of the general education setting for community-based instruction, and one hour per month of speech and language services outside of the general education setting.

2. On October 6, 2022, the IEP team met to review the student's IEP. The complainant expressed concern about the phone calls she received concerning the student's behavior and feels that he is mimicking negative behaviors. She requested a THRIVE referral. The IEP team reviewed his daily school behaviors. AACPS staff reported that the student demonstrates negative behaviors such as mocking peers, intentionally passing gas, does not follow adult directions, and inappropriate social interactions with female peers. AACPS staff has not witnessed any negative behaviors by peers for the student to mimic; he chooses to engage in negative behaviors. AACPS staff reports they would implement recommended strategies to support the student in the building.
3. On October 28, 2022, the IEP team met to review existing data and develop a reevaluation plan. The IEP team reviewed a private neuropsychological assessment provided by the complainant, and the AACPS team agreed with "the report with the exception of the autism diagnosis." The IEP team reviewed the student's Behavior Intervention Plan (BIP) and agreed to revise it to reflect the student's current behaviors. The IEP team also reviewed the student's behavior since the last IEP team meeting and determined there had been no improvement. The student participated in two social skills groups. The IEP team determined that behavioral and social/emotional assessments were needed.
4. On December 21, 2022, the IEP team met to review reevaluation information and determine continued eligibility. The IEP team reviewed communication and psychological assessments, and the student's BIP. The BIP has three expected behavior goals that address desired social, peer and school interactions. The IEP team discussed the continued need for the social work consult.
5. The student's IEP was revised on February 7, 2023, to reflect that the student is identified as a student with an Intellectual Disability, Autism, and Other Health Impairment. The student has reading comprehension, math problem solving, written expression, expressive and receptive language, verbal reasoning, social/emotional, behavior, cognitive/intellectual, adaptive skills, and pragmatic language needs. The IEP includes present levels of academic achievement and functional performance and goals in all of the student's areas of need. The IEP requires the implementation of a BIP.

The IEP requires the following social behavior supports:

- frequent reminders of rules;
- use of positive/concrete reinforcers;
- manipulatives/sensory activities to promote listening and focusing skills;
- frequent change in activity or opportunities for movement;
- encourage/reinforce appropriate behavior in academic and nonacademic settings;
- adult support;
- home/school communication system;
- encourage to attempt work before asking for help;
- in the moment social/emotional support;
- social skills training;
- use the same language in school as outside therapists; and
- school psychologist/social worker consult to staff and family.

The IEP requires eighteen hours and thirty minutes per week of specialized instruction outside of the general education setting for math, science, and social studies in the alternative curriculum classroom, four hours monthly of specialized instruction inside of the general education setting for community based instruction, and two hours monthly of speech and language services outside of the general education setting, and thirty minutes per month of speech and language services inside of the general education setting.¹ Progress reports document that the student received the required services and that he was making sufficient progress on his annual goals, with the exception of one quarter where he was not making sufficient progress on his behavior goal.

6. On May 19, 2023, the IEP team met to review the student's IEP, BIP, and to consider positive behavior supports. The complainant requested two thirty-minute sessions per month of counseling services. The IEP team agreed to thirty minutes per month of counseling services outside of the general education setting. The student's IEP was updated to reflect the updated service.
7. There is documentation that the student was provided speech and language services outside and inside of the general education setting from the start of the school year until June 2023 as required by the IEP.
8. There is documentation that the student was provided specialized instruction outside of general education in English language arts, math, science, and social studies.
9. While there is some documentation of the provision of specialized instruction inside of the general education setting for community-based instruction since the start of the 2022-2023 school year, it was not provided as required by the IEP.
10. There is documentation that the student received counseling services outside of the general education setting since May 19, 2023, as required by the IEP.

CONCLUSIONS:

Allegation #1: PROVISION OF SPECIALIZED INSTRUCTION AND RELATED SERVICES

Based on the Finding of Facts #1, #5 and #6 to #10, MSDE finds that the AACPS has ensured that that the student has been consistently provided with the special education instruction outside of the general

¹ English Language Arts was omitted due to a clerical error. There is documentation that the student received services in this area.

education setting and related services as required by the IEP since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Based on the Finding of Facts #1, #5 and #9, MSDE finds that the AACPS has not ensured that that the student has been consistently provided with the special education instruction inside of the general education setting for community-based instruction as required by the IEP since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Allegation #2: AN IEP THAT ADDRESSES THE STUDENT’S SOCIAL EMOTIONAL AND BEHAVIORAL NEEDS

Based on the Finding of Facts #1 to #6, MSDE finds that the AACPS has developed an IEP that addresses the student’s behavior and social/emotional needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation did not occur with respect to this allegation.

CORRECTIVE ACTIONS/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 non-compliance is corrected in a timely manner.² 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

Student-Specific

MSDE requires the AACPS to provide documentation by November 1, 2023, that the school system has taken the following actions:

- a. Provided the student with specialized instruction inside of the general education setting for community-based instruction; and
- b. Convened an IEP team meeting to determine the amount and nature of compensatory services or other remedy to redress the lack of provision of specialized instruction since the start of the 2022- 2023 school year and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

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.

The AACPS must ensure that the parent is provided with 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.

School-Based

MSDE requires the AACPS to provide documentation by October 1, 2023, of the steps taken to ensure that the staff at [REDACTED] School properly execute the requirements of the IDEA related to IEP implementation. Steps must include professional development and ongoing monitoring. AACPS must also develop a monitoring tool to ensure the consistent provision of specialized instruction for community-based instruction at [REDACTED] School, beginning no later than September 15, 2023. The monitoring must include a monthly reporting to MSDE of the provision of specialized instruction for community based for all IDEA eligible students at [REDACTED] School beginning on November 15, 2023, through January 30, 2024. The completed monitoring report must be provided to MSDE no later than February 15, 2024. Full compliance is required.

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. 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,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMC/tg

c: Mark T. Bedell
Alison Barmat
Gerald Loiacono
Diane Eisenstadt
Nicole Elliot
Paige Bradford
Tracy Givens