



August 4, 2023

REVISED COPY AUGUST 10, 2023¹

[REDACTED]

Ms. Diane McGowan
Director, Specially Designed Instruction and Compliance
Anne Arundel County Public Schools
1450 Furnace Avenue
Glen Burnie, Maryland 21060

RE: [REDACTED]
Reference: #23-256

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 8, 2023, MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of her daughter. 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 did not ensure that the student was provided with the special education classroom instruction and related services, in the educational placement required by the student’s Individualized Education Program (IEP), from August 2022 to June 2023 due to inconsistent or no bus transportation provided by the school district, in accordance with 34 CFR §§300.101 and 323.
2. The AACPS did not ensure that the IEP team considered the parent’s information and concerns at the IEP meeting held on December 16, 2022, when the parent shared her concerns regarding bus transportation inconsistencies, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is 17 years old and is identified as a student with Specific Learning Disability under the IDEA. She attends [REDACTED] School. The student has an IEP that requires the provision of special education instruction and related services.

¹ This revised Letter of Findings includes the deletion of a paragraph on page 7, which was included in the original Letter of Findings in error.

FINDINGS OF FACTS:

1. The student attends a public comprehensive high school in the AACPS.
2. The student's IEP dated December 16, 2022, states that her primary disability is Specific Learning Disability, with affected areas in reading comprehension, math problem-solving, written expression, and social/emotional.
3. According to the student's December 16, 2022, IEP, her Least Restrictive Environment is inside general education between 40-79% of the school day.
4. The service hours required by the IEP reflect 7 hours and 0 minutes weekly outside of the general education classroom for 3.5 hours weekly in a self-contained classroom to address Math and English needs. Additionally, the student is to receive two 30-minute counseling sessions to address social/emotional/behavioral skills, totaling 1 hour per month.
5. The instructional and assessment accommodations provided to the student in the IEP include:
 - o Text-to-speech for mathematics, science, and government assessments;
 - o Specified area or setting;
 - o Reduced distractions to others;
 - o Calculation device and mathematics tools on non-calculation sections of the mathematics assessment;
 - o Extended Time (1.5x); and
 - o Monitor test response.
6. Although the student did not receive transportation as a related service, she was to receive bus transportation to and from school by Anne Arundel County Public Schools on Bus #88 and Bus #53 based on her address.

First Semester

7. During the first semester, the AACPS did not provide bus transportation for this student for 36 days spanning from August 29, 2022, to December 2, 2022. On thirty-three of those days, the student was absent from, or tardy to, school.
8. During these days, the student also missed six counseling sessions with the school psychologist.
9. A review of the student's case manager's parent contact log indicates that the student's case manager contacted the complainant six times during the first semester. None of those contacts concerned the students' absences from school or bus transportation issues.
10. The prior written notice from the student's IEP team meeting on December 16, 2022, documents:
 - o The complainant stated that she "...was working very hard to get [the student] back into the swing of school due to her lack of transportation."
 - o The school guidance counselor stated, "... [the student] is on track with her credits. It is important that she passes all of the classes she is currently taking to graduate. He will reach

out to her teachers to ensure that they communicate with [the complainant] about assignments and grades, etc.” There is no documentation that this occurred.

- “[The assistant principal] stated that she will be meeting with [the school principal] and team to discuss more on [the student] and some behaviors as well as transportation...She will be in contact with the parent about any changes or information that is new...”

11. The prior written notice from the December 16, 2022, IEP meeting also states, “[The student] receives special education services as a student with a learning disability due to the presence of a cognitive processing deficit in the area of language. She experiences difficulty with tasks that involve verbal reasoning and non-verbal reasoning. Low verbal reasoning can impact an individual’s ability to comprehend written text due to the lack of vocabulary knowledge, basic concepts, and general life experiences that are needed to understand the text. In addition, it can impact the ability [to] learn basic math processes, due to difficulty in the ability to listen to, and follow directions. [The student] struggles [with] tasks that require abstract thinking and manipulation and processing of information. All these affect her ability to effectively participate in the teaching-learning process.”
12. At the time of this meeting, the student was failing American Sign Language (ASL) and Child Development but was passing two other classes in addition to receiving two satisfactory marks and one unsatisfactory mark in three other classes. The comments for the two classes that the student was failing included “Absences affect achievement,” “In danger of failing,” and “Does not makeup work.”
13. There is no documentation that the team addressed the student’s failing grades or considered ways to address the student’s transportation issues.
14. By the end of the second marking period, the student had failed the first semester of American Sign Language and Child Development but had passed her other two classes. She received the same marks in the other three classes that she had previously received at the end of the first marking period.

Second Semester

15. During the second semester, the AACPS did not provide bus transportation for this student for 21 days spanning from January 13, 2023, to May 15, 2023. On twenty-one of those days, the student was absent from, or tardy to, school.
16. There is documentation that during the early part of February 2023 the complainant, the student, and the student’s ASL teacher communicated regarding how and when the student could make up her missing assignments from the first semester. The ASL teacher explained that due to the nature of the course, the student could not receive the work in written form as requested. Additionally, the school psychologist sent an email to the assistant principal requesting assistance with referring the student to Concentric due to her issues with attendance. There has been no documentation provided regarding the administrative response to this request.
17. The student’s case manager’s “Parent Contact Log” reflects that in early February 2023, the case manager reached out to the complainant by email regarding the student’s absences from her class and work completion. There is no indication that the case manager addressed the student’s grades or attendance.

18. On February 22, 2023, the complainant received an email from the [REDACTED] School counseling department stating that the student had not earned the credit needed for graduation and that it was imperative that the student contact her counselor within two days to arrange how this credit could be recovered in order to participate in the June 8, 2023, graduation ceremony. The complainant responded immediately stating that it was her understanding from the student's last IEP meeting that she had earned all her credits for graduation. The complainant stated that she had called the school, but no one answered the phone, and she requested that someone contact her. There has been no documentation provided indicating a response to the complainant's request.
19. Other documentation provided shows that throughout the months of March and April, the student's ASL teacher and school psychologist worked with the student to assist her with making up her missing assignments. The student's Child Development teacher also communicated with the student and the complainant and expressed that she would accept make-up work until the end of the day on March 31, 2023.
20. Student absences from school and missed scheduled meetings with her ASL teacher were a hindrance to the student completing her work. Additionally, the student continued to reiterate that she was unable to understand her assignments and expressed the need to have them in writing.
21. There has been no documentation provided that reflects that the student's case manager participated in assisting the student in these efforts.
22. There has been no documentation provided that reflects actions taken by the IEP team to address the student's academic and attendance concerns after the December 16, 2022, IEP meeting.
23. At the end of the third marking period, the student was passing the second semester of all her classes.
24. Documentation reflects that the student and the complainant continued to reach out to teachers, school staff, and the [REDACTED] School administration regarding her continued issues with inconsistent bus transportation to school and her desire to complete her missing assignments well into late April 2023. They were told that the student needed to meet with her ASL teacher to make up her work from the first semester to pull her grade up to passing so that she could graduate.
25. The student also missed five counseling sessions with the school psychologists during the second semester due to absences on days when there was no bus transportation provided.
26. On April 25, 2023, the complainant received an email from the [REDACTED] School counseling department stating that the student had failed at least one class needed for graduation, and if the student was not passing this class by the end of the fourth quarter, she would be unable to graduate.
27. The student continued to communicate with her ASL teacher regarding makeup work, however, she also continued to miss scheduled meetings with her teacher. Bus transportation issues continued until May 15, 2023.
28. On May 18, 2023, the complainant received an email from the student's counselor expressing that after meeting with the administration it was determined that the 45-day grace period to make up missing work from the first semester had expired and the student would not be able to graduate.

29. On May 26, 2023, the student's case manager called the complainant to discuss the fact that the student would not be able to graduate. The case manager stated that she did not become aware of the situation until after the complainant.
30. On May 30, 2023, the complainant emailed [REDACTED] School staff and administration stating, "...I have been calling and reaching out to the staff at [REDACTED] however, no one has responded to me...I was never told if that was a final decision on graduation, and I was told that the principal would contact me about it (that has not happened). Also, as a result of...the late notice of her graduation status, and of all that has transpired since May 18th it has caused [my daughter's] mental health to be affected. I believe that some of her issues stem from the fact that she was given her cap and gown, her yard sign, and her [t-shirt] which fostered the idea that she was graduating. She was told so late in the school year; a week before the end of the year for seniors...She did not have proper transportation for a large part of the year...She has had mental health issues in the past, and is currently seeing a therapist and a psychiatrist, in conjunction with taking medication. This situation has caused crisis after crisis to happen since May 25, 2023. My daughter is a worthy individual, she deserves to graduate. I don't want anything deadly to happen to her, because now she feels like a failure...She already felt as though [REDACTED] School and AA County Public Schools did not care about her, with the lack of transportation and assistance throughout the year."
31. At the end of the fourth marking period the student had received passing grades in all of her classes for the second semester, however, due to the fact that she did not complete all of the make-up work from her first semester ASL class she did not achieve a passing grade for that semester, and she did not graduate.

CONCLUSIONS:

ALLEGATION #1: PROVISION OF INSTRUCTION AND RELATED SERVICES IN APPROPRIATE EDUCATIONAL PLACEMENT

A free appropriate public education (FAPE) must be available to all children residing in the State between the ages of 3 and 21, including children with disabilities. The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday. Each State must also ensure that FAPE is available to any individual child with a disability who needs special education and related services. (34 CFR §300.101)

At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP. Each public agency must ensure that as soon as possible following the development of the IEP, special education, and related services are made available to the child in accordance with the child's IEP. Each public agency must also ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and each teacher and provider is informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. (34 CFR §300.323)

The facts, in this case, show that at the beginning of the school year, the student had an appropriate IEP in place, all her teachers had a copy and were informed of their specific responsibilities relating to it. The facts also show that during the school year, various members of the school staff communicated with the student and the complainant regarding opportunities for the student to complete missing assignments, as well as opportunities to work with teachers to do so. However, the facts do not show that the IEP team took any action regarding the student's failures or her absences. Since the student was already failing two classes at the

time of her December IEP meeting, the student's case manager should have been in constant communication with the complainant, the student, and her teachers regarding efforts to ensure that the student completed any missing assignments.

Regardless of these issues, the fact that the student did not have transportation to school for almost half of the semester during the first two marking periods, and almost one-third of the semester for the last two marking periods, was the greatest hindrance to the provision of specialized instruction and related services as required by her IEP. Although the student's attendance may have still been an issue of concern outside of the lack of bus transportation, the overall issue regarding the student's attendance was exacerbated by the fact that the school district itself failed to provide reliable and consistent transportation. Providing the student with worksheets and packets to complete missing assignments does not replace the face-to-face instruction that a student receives when they are at school.

Based on the Finding of Facts #4 to #15, #17, #20 to #22, #25, #27, and #29 MSDE finds the AACPS did not ensure that the student was provided with the special education classroom instruction and related services, in the educational placement required by the student's Individualized Education Program (IEP), from August 2022 to June 2023 due to inconsistent or no bus transportation provided by the school district, in accordance with 34 CFR §§300.101 and 323. Therefore, this office finds that a violation did occur with respect to this allegation.

ALLEGATION #2: CONSIDERATION OF PARENT INPUT FROM IEP MEETING

In developing each child's IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. (34 CFR § 300.324)

The complainant in this case not only contacted [REDACTED] School teachers, staff, and administrators throughout the school year regarding the lack of transportation for her child, but she expressly discussed it at the December 16, 2023, IEP meeting. There has been no documentation provided that shows that either the [REDACTED] School administration or the AACPS Department of Transportation ever reached out to the complainant directly to discuss her concerns or explain how the situation was going to be resolved by the school district. As the failure to provide transportation resulted in the student's inability to attend school and receive FAPE, the IEP team should have addressed this issue.

Based on the Finding of Facts #10, #12, #13, #17, #21 to #23, #29 and, #30, MSDE finds that the AACPS did not ensure that the IEP team considered the parent's information and concerns at the IEP meeting held on December 16, 2022, when the parent shared her concerns regarding bus transportation inconsistencies, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did 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.

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MSDE has established reasonable time frames below to ensure that noncompliance 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 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. 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

The IEP team must meet no later than September 1, 2023, in order to determine the compensatory services or other remedy that will be provided to the student in order to compensate for the 54 days that the student was unable to receive the specialized instruction and related services that were mandated by her IEP because there was no bus transportation provided by the school district.

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/ebh

c: Monique H. Jackson Gerald Loiacono Elizabeth B. Hendricks
 [REDACTED] Nicol Elliott Diane Eisenstadt
 Alison Barmat Paige Bradford

² The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.