




February 2, 2023




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

RE: 
Reference: #23-105

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 December 5, 2022, MSDE received a complaint from Dr. , hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that 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 allegation that the AACPS has not ensured that the student was provided with the transportation services required by his Individualized Education Program (IEP) since August 30, 2022, in accordance with 34 CFR §§300.101 and .323, as well as 34 CFR §300.34(c)(16). Specifically, the following was alleged:

- a. The student was not provided with daily transportation to and from school with an air-conditioned bus with a lift;
- b. The student was not provided with adult support during transportation; and
- c. The student was not provided with a nurse during transportation.

BACKGROUND:

The student is 14 years old and is identified as a student with Multiple Disabilities (Intellectual Disability, Other Health Impairment, and Visual Impairment) under the IDEA. He attends  School. He 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 25, 2022. The IEP required that the student receive 8 hours per week of specialized instruction outside of the general education classroom, 8 hours per week of specialized instruction inside of the general education classroom, 30 minutes per quarter of physical therapy outside the general education classroom, 2 hours a month of speech and Language inside of the general education classroom, 23 hours and 45 minutes a week of nursing services in the general education classroom, and transportation as a related service.
2. The March 25, 2022, IEP also required that the student receive "transportation to and from school daily on a lift bus with air conditioning and with a nurse accompanying him to monitor and assist with any medical needs during travel." The IEP further requires that a "bus assistant" assist with the student's manual wheelchair.
3. There is documentation that the student's bus had an operational lift and functioning air conditioning prior to the start of the 2022-2023 school year.
4. On September 9, 2022, the parent emailed the school requesting an "alternate solution for transportation to and from school as the required aide is frequently absent and the school bus has been inconsistent with picking up the student." The complainant provided a follow-up email to the school on September 20, 2022, September 22, 2022, and December 1, 2022, to inquire about a plan for transportation due to inconsistencies in the required service. The complainant received a response from the district on December 1, 2022, stating they will "let her know what they find out when the supervisor of the Transportation department gets back to them."
5. Documentation from the AACPS Department of Transportation reflects that the student was not provided with transportation on the following dates:
 - Ten full days without transportation (am/pm) since August 30, 2022;
 - Two days transportation was late;
 - Five days with partial service; and
 - School bus out of service the week of September 5, 2022.
6. There is documentation that the bus assistant was absent 1 day on December 14, 2022.
7. There is documentation that when transportation was provided to the student, he received the assistance of a nurse on the school bus.

CONCLUSIONS:

Provision of Daily Transportation Services

Based on the Finding of Facts #1 - #5, MSDE finds that the AACPS has not ensured that the student was consistently provided with the transportation services required by his IEP since August 30, 2022, in accordance with 34 CFR §§300.34,.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Transportation To And From School With An Air-Conditioned Bus With A Lift

Based on the Finding of Facts #1-#3, when transportation services were provided, MSDE finds that there was an air-conditioned bus with a lift in accordance with 34 CFR §300.34(c)(16). Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Adult Support and Nursing Services During Transportation

Based on the Finding of Facts #1, #2, and #7, MSDE finds that when transportation services were provided, the student was provided with adult support and with a nurse during transportation to and from school when the bus was available in accordance with 34 CFR §§300.101. Therefore, this office does not find that a violation occurred with respect to this aspect of the 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 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 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.² 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 March 1, 2023, that the IEP team has convened to discuss any interim options to the provision of the student's transportation services, create a plan of action if his assigned bus, bus driver, nurse, or bus assistant is not available, update the IEP if appropriate, and determined whether the lack of the provision of transportation services since the start of the 2022-2023 school year has had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

¹ 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.

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.

[REDACTED]
Ms. Diane McGowan
February 2, 2023
Page 4

The AACPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

Similarly Situated Students:

MSDE requires the AACPS to provide documentation by April 1, 2023, identifying each student on the student's bus route who, since the start of the 2022-2023 school year, did not receive consistent transportation services required by their IEP since August 30, 2022. The AACPS must determine whether the lapse in transportation services since the start of the 2022-2023 school year has had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

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

DC/sj

c: Mark T. Bedell
Sonya McElroy
[REDACTED]
Gerald Loiacono
Diane Eisenstadt
Stephanie James