



May 26, 2023

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Ms. Diane McGowan
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RE: [REDACTED]
Reference: #23-191

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 March 30, 2023, MSDE received a complaint from Ms. Sara Platenberg, hereafter, "the complainant," on behalf of her clients, Mr. [REDACTED] and Ms. [REDACTED]. 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 following allegations:

1. The AACPS did not follow proper procedures to ensure that the evaluation conducted for the student identified all of the student's special education and related service needs during the 2022-2023 school year, in accordance with 34 CFR §§.303 - .311, and COMAR 13A.05.01.06.
2. The AACPS did not ensure that the Individualized Education Program (IEP) developed for the student addressed his reading or social/emotional and behavioral needs during the 2022-2023 school year in accordance with 34 CFR §300.324.
3. The AACPS did not ensure that the student's IEP includes present levels of academic achievement and functional performance that properly identify and address all of the needs that arise from his disability, including the impact of the student's behaviors, during the 2022-2023 school year, in accordance with 34 CFR §300.320.
4. The AACPS has not ensured that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achieving the IEP goals during the 2022-2023 school year, in accordance with 34 CFR §300.324(b)(1)(ii)(A).

5. The AACPS did not follow proper procedures when disciplinarily removing the student from school during the 2022- 2023 school year, in accordance with 34 CFR §§300.530 – .533 and .536, COMAR 13A.08.03, and COMAR 13A.05.01.10.
6. The AACPS does not have a continuum of alternative placements to meet the needs of students who require separate special education schools from the 2022-2023 school year in accordance with 34 CFR §300.114.

BACKGROUND:

The student is 12 years old and is identified as a student with Multiple Disabilities (Specific Learning Disability, Other Health Impairment for attention-deficit/hyperactivity disorder (ADHD), and Tourette Syndrome) under the IDEA. The student attends [REDACTED] School. He has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. On January 24, 2022, and February 24, 2022, the IEP team convened for an evaluation as a part of the student’s triannual review, to review and revise the student’s IEP, and address concerns from the parent regarding the student’s trouble initiating and completing tasks. The written summary from the IEP team meeting reflects that the school team determined that the student meets the eligibility criteria for Multiple Disabilities, including Specific Learning Disability and Other Health Impairments, (ADHD), and requires specialized instruction in the areas of reading and written expression. The student’s Multiple Disabilities result in needs in the following areas: phonological processing, reading, and written language, and also “impacts his ability to participate with peers and adults in the school community and generalize these skills to other settings without the accommodations and modifications of special education.” The IEP states the student has difficulty with Attention/Executive Functioning that impacts the student’s academic achievement and/or functional performance.
2. The February 2022 IEP contains present levels of academic achievement and functional performance (PLAAFP) and goals to assist the student. The IEP required that the student receive specialized instruction inside the general education classroom for one hour weekly for Reading and one hour for Written Expression. The IEP requires that the student receive direct and specific instruction in reading strategies for fluency and reading comprehension. He requires opportunities for instruction in a small group environment with reduced distractions from other students in the general education classroom. The student also receives an evidence-based reading intervention daily.
3. During the 2022-2023 school year, the student was disciplinarily removed from school on the following dates:
 - Three days on September 9, 2022, for Possession of a Knife;
 - One day on December 15, 2022, for Unsafe Behavior;
 - One day on February 2, 2023, for Insubordination;
 - Two days on February 28, 2023, for Disruption to Classroom/School;
 - Two days on March 10, 2023, for Disruption to Classroom/School;
 - Three days on March 23, 2023, for Fighting: Physical; and
 - Ten days on April 14, 2023, for Possession of a Knife.

4. The reports of the student's progress dated November 4, 2022, reflect that he was "making sufficient progress" to meet his reading decoding, reading comprehension and written expression goals.
5. During the month of January of 2023, the parents received several emails from multiple teachers describing the student's refusal to come to class, needing assistance to escort him to class, task avoidance, refusal to complete work, and possible failing of the third marking period.
6. On January 24, 2023, the parents received an email from one of the student's teachers stating he was absent for 12 days of his reading intervention classes, from November 30, 2022, to January 24, 2023, as well as informing them that he had failed the class for the second marking period. The student was given the opportunity to make up the work, but the student refused.
7. The reports of the student's progress dated January 24, 2023, reflect that he was "making sufficient progress" to meet his reading comprehension goal; however, he was "not making sufficient progress" on his reading decoding and written expression goals.
8. On January 30, 2023, the IEP met to review and revise, as appropriate the student's IEP. During the meeting, the team discussed the lack of progress the student made on the informal assessment that placed him on a Kindergarten level in reading. The parent proposed that the student receive "Wilson Reading intervention" three to four sessions a week in a 1 to 1 setting by a certified instructor or dyslexia therapist. The school team agreed to administer an informal assessment to determine the student's decoding strengths to better respond to the parent's proposal.
9. During the meeting the team discussed the student's emerging behaviors and informed the parent that the school staff has implemented the "Multi-tiered Systems of Support" (MTSS) to address the student's behavior with universal support available to students in the school. The team agreed that these supports were insufficient and recommended that a Functional Behavioral Assessment (FBA) be conducted for the student. The team informed the parent that data collection would take a period of 6- 8 weeks as they determined the behaviors to target and observe. The team agreed to implement additional interim behavior support pending the completion of the FBA. The plan included an individualized incentive plan, opportunities to request in-class breaks, opportunities to wear headphones and/or to listen to music during independent work time in class, and a behavior contract with the student.
10. From January 2023 to March 10, 2023, there were 42 "conferences with student" due to the disruption to school, insubordination, class cutting, excessive tardies, unsafe actions and possession of a knife. The student was also suspended on September 9, 2022, December 5, 2022, February 2, 2022, February 28, 2023, and March 10, 2023.
11. On February 10, 2023, the IEP met to review and revise, as appropriate, the student's IEP. The parent expressed concerns about the student's abilities in written expression, and the student's behavior. The school team agreed to conduct additional informal assessments in writing, as well as administer a preference assessment regarding preferred and non-preferred tasks. The data gathered would be used to update the student's present levels of performance. The IEP team drafted a learning behavior goal for the student. AACPS invited the AACPS Behavior Specialist to the meeting to support the school team with conducting an FBA and to consult with the team to offer additional recommendations to address the family's concerns about the student's behavior.
12. On March 15, 2023, the IEP team met to review and revise the IEP as appropriate. The team agreed that present levels in the area of reading decoding would remain, as the school team was

- unsuccessful in completing the informal reading assessment recommended during the January 30, 2023, IEP meeting due to the student's lack of attendance or refusal to participate. The AACPS Behavior Specialist provided the school team with strategies to help the team to get him to take the test, as well as to observe him.
13. The parent expressed concern that the student is not receiving the privileges that were created for him as an incentive by using his pass, which was causing him to lose trust in his teachers.
 14. During the meeting, the parent and complainant requested a "change in placement outside the general education setting," as the strategies the school team is using with the student are not working, the student is not attending class and is below grade level in reading. The school team considered and rejected the parent's request and stated the current school is able to implement current IEP. The family requested information about compensatory services; however, they were informed that "once the process is completed, and if compensatory services are determined to be needed, then it will be discussed at another meeting." At that time, the annual review for the student has not been completed yet, nor has the FBA process. The family and advocate disagreed with waiting until the process is over as that is "wasting a lot of time."
 15. On March 20, 2023, the student received an FBA to determine the function or intent of the student's behavior and to assist in the development of effective behavioral support.
 16. On March 27, 2023, a manifestation IEP team meeting was held to determine whether the conduct (fighting) which resulted in disciplinary removal on March 23, 2023, was or was not a manifestation of the student's disability. The IEP team determined that the behavior was a manifestation of the student's disability, that the student would return to the placement from which he was removed, a BIP would be developed based on the information from the recently completed FBA, and that the team would consider additional behavioral supports.
 17. On March 28, 2023, a BIP was developed due to concerns about the student's escalating behavioral concerns, class avoidance, and deteriorating grades.
 18. The reports of the student's progress dated March 31, 2023, reflect "Newly introduced skill: progress not measurable at this time" as the student's annual review was held on March 30, 2023.
 19. On April 13, 2023, the student was suspended for 10 days for possession of a knife on school grounds. On the same day, the school staff informed the student that he would be assigned to an Interim Alternative Education Setting (IAES) and that an IEP team meeting would be scheduled to discuss the student's conduct.
 20. On April 18, 2023, the parents received a Letter of Assignment for IAES naming the school location prior to the IEP team meeting.
 21. April 18, 2023, a manifestation IEP team meeting was held to determine whether the conduct (bringing a knife to school), which resulted in disciplinary removal on April 14, 2023, was a manifestation of the student's disability. The IEP team determined that the behavior was not a manifestation of the student's disability, and the student's IEP would be implemented in an IAES with transportation.

22. The family expressed concerns regarding the delayed behavioral intervention provided to the student. The parent also disagreed with the scope of the data collected for the FBA and the resulting BIP. The parents disagreed with the proposed IAES and proposed that the IEP team consider a different interim placement for the student. The AACPS staff explained that a change in the student's school assignment to the IAES was not a change in placement, but a change in the location of services. The IEP team agreed to reconvene to consider the parent's proposal that the IEP team determine the appropriate IAES setting for the student.
23. On April 27, 2023, the IEP team met to review and revise the IEP as appropriate, review the BIP, and to consider other positive behavioral supports to address the student's behavior. In response to the parent's concerns regarding the AACPS proposed IAES, the IEP team proposed that the student's IAES for the term of his removal would be a regional program at a comprehensive school near the student's home, [REDACTED] School. The IEP team agreed that this school would be able to provide the student with the services and support required by his IEP.

CONCLUSIONS:

Allegation #1: Conducting an Evaluation of the Student

Based on the Finding of Facts #1,#15,#17, MSDE finds that the AACPS ensured that the student was evaluated and determined eligible for services in January 2022 and that the AACPS collected additional information for the student by conducting an FBA when the student began to exhibit new behaviors in January 2023, in accordance with 34 CFR §§.303 - .311, and COMAR 13A.05.01.06. Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #2: An IEP that Addresses the Student's Needs

Based on the Finding of Facts #8, #11 to #12, MSDE finds that the AACPS developed an IEP for the student that identified and addressed the student's needs and met to address the student's emerging needs when evident, during the 2022-2023 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #3: An IEP that Contains Appropriate Present Levels

Based on the Find of Facts #8, #9, #11, #12, MSDE finds that the AACPS properly developed present levels of performance for the student and revised them related to the student's behaviors once the additional behaviors became apparent in January 2023, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #4: Addressing the Lack of Expected Progress

Based on the Find of Fact #8, the MSDE finds that the AACPS has ensured that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achieving the IEP goals during the 2022-2023 school year, in accordance with 34 CFR §300.324(b)(1)(ii)(A). Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #5: Disciplinary Procedures

Based on the Findings of Facts #16 and #21, MSDE finds that the AACPS appropriately convened IEP team meetings and determine if the disciplinary removals resulting from the student's violations of the code of conduct were a manifestation of the disability, in accordance with 34 CFR §300.530.

However, Based on the Find of Facts # 20 and #22, MSDE finds that the AACPS did not follow proper procedures when it was determined, prior to the IEP team meeting where the incident was discussed, which IAES the student would attend following his proposed 45-day removal in April 2023, and rejected alternative proposals made by the parent, in accordance with 34 CFR §300.531. Notwithstanding this violation, based on the Finding of Fact #23, the MSDE finds that the AACPS convened a meeting shortly after the correspondence was sent to the parent and convened an IEP team meeting where the IEP team determined the IAES the student would attend. Accordingly, no further corrective action is required to address this violation.

Allegation #6: A Continuum of Placement Options

Based on the Find of Facts #23 MSDE finds that the AACPS has in place a continuum of placement options available to the student that would address the student's particular needs while maintaining his ability to be educated alongside his non-disabled peers, in accordance with 34 CFR §300.114. Therefore, this office finds that a violation did not occur with respect to the allegation.

TIMELINE:

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

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