




Mohammed Choudhury
State Superintendent of Schools

August 31, 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: #24-002

Dear Parties:

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 July 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 did not follow proper procedures when determining comparable services upon the student’s transfer to the AACPS since the start of the 2022-2023 school year, in accordance with 34 CFR §300.323 and COMAR 13A.05.01.09.
2. The AACPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified reading needs, behavioral, and social emotional needs since the start of the 2022-2023 school year, in accordance with 34 CFR §300.324.

BACKGROUND:

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

FINDINGS OF FACTS:

1. On August 29, 2022, the student enrolled in AACPS with an IEP from Calvert County Public Schools (CCPS).
2. The CCPS IEP was developed on January 25, 2022, and requires two hours and thirty minutes per week of specialized instruction outside of the general education setting for reading phonics, one hour per week of specialized instruction inside of the general education setting for written language, and one hour per week of specialized instruction inside of the general education setting for math.

The IEP also requires the provision of the following supplementary aids and services:

- chunking of text; and
- break down assignments into smaller units.

The IEP also requires the provision of the following Social/Behavioral and Physical/Environmental supports:

- check in and check out;
 - encourage the student to make and use a checklist to track his work;
 - check for understanding;
 - encourage/reinforce appropriate behavior in academic and nonacademic settings; and
 - opportunities to move built into the day, allow the student to stand.
3. On August 30, 2022, the complainant met with the AACPS IEP Facilitator and Special Education Teacher to review the CCPS IEP and offer comparable services. The AACPS team determined the student would receive two hours per week of specialized instruction inside the general education classroom¹, one hour per week of specialized instruction within a co-taught, general education setting for written language needs, and one hour per week of specialized instruction within a co-taught, general education setting for math. The AACPS team and complainant determined that the student continued to require the supplementary aids and services, and Social/Behavioral and Physical/Environmental supports required in the CCPS IEP.
 4. While the student's schedule reflects that he was enrolled in "Access to Read" from August 30, 2022 to September 15, 2022, there is no documentation of the provision of the determined comparable services for reading phonics from September 15, 2022 to October 3, 2022.
 5. On October 3, 2022, the IEP team met to review current data and determine if initial assessments were needed. The Prior Written Notice (PWN) generated after the meeting reflects that the IEP team determined that assessments were not needed to address the student's needs or determine his eligibility under the IDEA. The student's present levels of performance in the areas of reading, phonics, math calculation and problem solving, written language, behavior, and fine/visual motor were updated based on his classroom performance. Goals and objectives in the area of learning behaviors were added to the student's IEP. The IEP service hours were revised to require one hour per week in a co-taught, general education classroom for language arts to address phonics, writing

¹ The documentation does not indicate which areas of need would be addressed by this service.

and learning behavior needs; one hour per week in a co-taught, general education classroom for math calculation and learning behavior needs; a half hour per week in a co-taught general education classroom for science to address writing and learning behavior, and a half hour per week in a co-taught general education classroom for science to address writing and learning behavior. The IEP continued to require the supplementary aids and services to address the student's reading needs and the Social/Behavioral and Physical/Environmental supports from the January 25, 2022 IEP.

6. The student's present level of performance in the area of reading-phonics reflects that the student's current reading instructional level is "lower fourth grade". The student's reading phonics goal developed by the IEP team states that "Given a word list or an independent level text passage, [the student] will apply phonics and word analysis skills to decode words with various patterns."
7. The student's present level of performance in the area of behavior reflects that the student's current behavior instructional level is below grade level expectation. The student enjoys being social and active in class, participates when confident, works well with like- peers, communicates well with his teachers, and responds well to positive adult interaction and praise. The student has difficulty staying on task during instruction and requires multiple prompts and reminders of classroom assignments/expectations. The student also struggles to "ask for help with difficult tasks and will refuse to complete assignments". The student's learning behaviors goal developed by the IEP team states that "With multiple teacher prompts and guided instruction [the student] will initiate tasks, remain, and complete tasks within a given timeframe".
8. On May 3, 2023, the IEP team met to conduct an annual review of the student's IEP. The IEP team determined that the student exhibited needs in the areas of reading decoding, comprehension, math calculation and problem solving, written expression, cognitive/intellectual, attention/executive functioning, and fine/visual motor. The IEP developed at this meeting requires specialized instruction in language arts to address decoding, reading comprehension, writing, learning behavior, and behavior needs for 1.5 hours per week in a co-taught, general education classroom in math to address calculation, problem solving, learning behavior, and behavior needs for 1.5 hours per week in a co-taught, general education classroom in science to address reading comprehension, writing, learning behavior, and behavior needs for a half hour per week in a co-taught, general education classroom and in social studies to address reading comprehension, writing, learning behavior, and behavior needs for one half hour per week in a co-taught, general education classroom. The student's IEP further requires counseling to address behavior needs for two - thirty-minute sessions per month outside of the general education setting.

The IEP requires the following supplementary aids and services to address the student's reading needs:

- use of highlighters;
- copy of teacher notes;
- provide a checklist for work and behavior;
- use of word bank to reinforce vocabulary;
- check for understanding;
- research based intervention program;
- chunking of text; and
- break down assignments into smaller units.

The IEP requires the following Social/Behavioral and Physical/Environmental supports:

- check in and check out as needed by teachers;
- provide manipulatives and/or sensory activities to promote listening and focusing skills;
- encourage/reinforce appropriate behavior in academic and nonacademic settings;
- home-school communication system;
- adult support;
- opportunities to stand or move around in designated area assigned by the teacher;
- quiet space or reduced distractions when possible; and
- a psychologist consult to teach self-calming strategies and support direct behavioral and social emotional support as needed.

The IEP requires the use of a Behavior Intervention Plan (BIP) to address the student:

- leaving the classroom during instruction, group work, or independent time;
- off task behaviors: engaging in activities not related to instruction or an assigned task; and
- emotional dysregulation: abrupt changes in mood.

9. The student's present level of performance in the area of reading decoding, reflects that the student's current reading instructional level is fourth grade. The student can decode instructional level words with 75% accuracy, and read instructional level words fluently with 80% accuracy. The student reads "very slowly", has difficulty decoding words which includes sounding out words and recognizing words out of context. The student's reading decoding goal developed by the IEP team states: "Given an instructional level text/passage, and blending and segmenting strategies, [the student] will apply phonics and word analysis skills to decode words with various patterns."
10. The student's present level of performance in the area of reading comprehension, reflects that the student's current reading instructional level is fourth grade. The student responds accurately to the prior knowledge questions, is able to recall main ideas and details at a third grade instructional level and can identify the setting and background of a passage. The student struggles to recall details and main ideas at the fourth grade level. The student's reading comprehension goal developed by the IEP team states: "Given instructional level text, graphic organizer, highlighter, and teacher prompts, [the student] will be able to increase comprehension of a variety of texts."
11. The student's present level of performance in the area of social/emotional, reflects that the student manages uncomfortable emotions below age-level expectations. The student is "funny, respectful, loving, athletic, enthusiastic, creative, sociable, and determined." He advocates for himself, has positive relationships with peers and adults, is academically capable when focused, and admits fault when he is wrong. The student struggles to manage his emotions and externalizing behaviors. The student's learning behavior goal developed by the IEP team states: "Given a situation that elicits a strong emotional response, [the student] will use a coping strategy (e.g., deep breathing, request a short break, talk to a teacher and/or preferred adult, use fidgets, etc.) to regulate uncomfortable emotions (e.g., anger, frustration) in the academic setting."
12. The student's present level of performance in the area of attention/executive functioning reflects that the student's current instructional level is below grade level expectations. The student is able to sustain focus one-on-one with an adult, despite impulsive and inattentive behaviors. The student

struggles to sustain attention independently, is easily distracted, requires verbal prompting to initiate a task, and engages in off-task behaviors. The student's learning behavior goal developed by the IEP team states: "During a minimum of 45 minutes of academic instruction, given an academic task (e.g., independent work, group work), [the student] will initiate tasks, remain on-task (e.g., actively working on the task, minimal disruption to self/others, asking relevant questions to peers/teachers), advocate for assistance when needed, and remain in the classroom in order to encourage work completion."

13. On June 7, 2023, the IEP team met to review the student's IEP and BIP, and to consider other positive behavioral supports. The IEP team determined that the student continued to exhibit needs in the areas of reading decoding, comprehension, math calculation and problem solving, written expression, cognitive/intellectual, attention/executive functioning, and fine/visual motor. The IEP continued to require the specialized instruction hours from the May 3, 2023 IEP. In response to the complainant's advocate's request for an increase in counseling services, the IEP team recommended an increase in the student's increased counseling services to three - thirty-minute sessions per month to address his behavior needs.

The IEP continued to require the May 3, 2023 IEP supplementary aids and services to address the student's reading needs. "Take medication at the nurse after lunch" was added as a Social/Behavioral support. The IEP continues to require the implementation of a BIP.

14. The student's present levels of performance and annual goals in the area of reading decoding and comprehension, social/emotional, and attention/executive functioning were continued from the May 3, 2023 IEP.

CONCLUSIONS:

Allegation #1: Determination and Provision of Comparable Services

Based on the Finding of Fact #1 to #4, MSDE finds that the AACPS followed proper procedures when determining and providing appropriate comparable services upon the student's transfer to the AACPS from August 30, 2022 to September 15, 2022, in accordance with 34 CFR §300.323 and COMAR 13A.05.01.09. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

However, based on the Findings of Facts #1 to #4, MSDE finds that there is no documentation that the student received appropriate reading phonics comparable services as determined by the AACPS from September 15, 2022 to October 3, 2022, in accordance with 34 CFR §300.323 and COMAR 13A.05.01.09. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Allegation #2: Addressing the Student's Needs

Based on the Finding of Facts #5 to #14, MSDE finds that the IEPs developed by the AACPS since the start of the 2022-2023 school year address the student's identified reading needs, behavioral, and social emotional needs, in accordance with 34 CFR §300.324. 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 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 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 convened an IEP team meeting to determine whether the violation identified in this Letter of Findings regarding comparable services violation for reading phonics from September 15, 2022 to October 3, 2022 had a negative impact on the student's ability to benefit from the education program. If the IEP 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 one year of the date of this Letter of Findings.

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 November 1, 2023, of the steps taken to ensure that the staff at [REDACTED] properly execute the requirements of the IDEA related to comparable services. Steps must include professional development and ongoing monitoring. AACPS must also develop a monitoring tool and provide a report reflecting documentation of discussion and implementation of comparable services for all students transferring into [REDACTED] from August 29, 2023 through December 1, 2023. The monitoring report must be submitted to MSDE no later than

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.

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January 15, 2023. If needed, AACPS will provide a plan to address any violations or concerns discovered in the monitoring process. The corrective action plan will be implemented and further monitoring activities to ensure compliance must be completed prior to June 15, 2024.

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/tg

c: Mark T. Bedell
Alison Barmat
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