

January 12, 2024



Ms. Chris Wittle
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: [REDACTED]
Reference: #24-073

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 November 18, 2023, MSDE received a complaint from Mr. [REDACTED] and Ms. [REDACTED], hereafter, the “complainants” on behalf of their son. In that correspondence, the complainants alleged that the Carroll County Public Schools (CCPS) 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 CCPS has not provided the student with special education services in the placement required by the Individualized Education Program (IEP) during the 2022-2023 school year, in accordance with 34 CFR §§300.101, .114, .116 and .323.
2. The CCPS did not ensure that the student was provided with the specialized instruction, related services, and support required by the IEP during the 2022-2023 school year, in accordance with 34 CFR §§ 300.101 and 323.
3. The CCPS did not ensure that proper procedures were followed when determining the student’s placement for the 2022-2023 school year, in accordance with 34 CFR §§300.114 and .116.

BACKGROUND:

The student is 12 years old and is identified as a student with Autism under the IDEA. He attends [REDACTED] School. During the 2022- 2023 school year, the student attended [REDACTED] School. The student has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP at the start of the 2022- 2023 was developed on January 10, 2022. The IEP reflects identified needs in the areas of communication, math calculation, math problem solving, physical education, reading comprehension, reading phonics, speech and language pragmatics, written language expression, written language mechanics, behavioral - social emotional/behavioral, physical - sensory processing, and regulation. The IEP includes goals to address communication, math calculation, math problem solving, physical education, reading comprehension, speech and language pragmatics, written language expression, and social emotional/behavioral.
2. The IEP team determined that the student required 18 hours and 15 minutes weekly of specialized instruction outside of the general education classroom in a self-contained classroom from a special education teacher and/or an instructional assistant to address his IEP goals, one hour a week of physical education inside of the general education setting per week, 30 minutes a week of physical education outside of the general education setting per week, and one hour per week of speech and language services outside of the general education classroom as a related service. The IEP team agreed the student would attend the English Language Arts (ELA) inside the general education setting for 25 minutes each day.
3. The IEP reflects that the student requires a "small, structured learning environment to facilitate his special communication and behavior needs." The student uses multimodal communication, including a 90 PODD book, to communicate as he currently does not always use verbal communication. He requires a variety of behavior intervention strategies based on Applied Behavior Analysis, including instruction for skill acquisition and behavior reduction, to address maladaptive behaviors such as loud vocalizations, eloping from work area, throwing furniture, swiping materials, hitting, kicking, and biting (self and others).
4. On October 10, 2022, the IEP team met to determine continued eligibility for the student under IDEA. The IEP team determined the student continues to qualify for special education services with the disability classification of Autism. During the meeting, the IEP team discussed the student's participation in the alternate state assessments and alternate academic achievement standards, and determined additional testing was needed in order to make that determination. The IEP team proposed additional testing in areas of adapted physical education, reading, writing, mathematics, occupational therapy for sensory processing, communication for expressive/receptive language and pragmatics, functional/adaptive performance, and intellectual/cognitive functioning to gather more information.
5. On January 5, 2022, the IEP team met to review the evaluations recommended during the IEP meeting held on October 10, 2022, along with the student's progress reports, teachers' observations or reports, and classroom-based assessments. The team decided to remove testing accommodations for a human scribe and a human reader for math. Additionally, they incorporated an additional social-emotional goal aimed at addressing social interactions into the student's IEP.
6. The IEP team determined that the student required 19 hours a week of specialized instruction outside of the general education classroom to address the student's behavior/social-emotional, reading phonics, reading comprehension, math calculation, math problem-solving, written language mechanics, and written language expression goals. During this time, instruction would also address sensory and behavior needs. The student would attend ELA/humanities in the general education setting for 25 minutes each day to engage with non-disabled peers. The IEP team proposed that

services be provided by the general education teacher, special education teacher, instructional assistant, and/or a Speech/Language Pathologist.

7. The IEP team also determined that the student required one hour a week of adaptive physical education inside the general education setting, 30 minutes a week of adaptive physical education outside of the general education setting, 30 minutes a week of counseling services inside the general education setting to address his social interaction goal, and one hour per week of speech and language services outside of the general education classroom, as related services.
8. The Prior Written Notice (PWN) from the January 5, 2022, IEP meeting reflects the IEP team discussing placement options, including "No services," "All Services In Regular Education Setting," "Services to be provided via Combination of In and Out of Regular Education Setting (regular education setting and special education classroom setting)," and "All Services to be provided Out of Regular Education Setting." The team determined that the student required "Services to be provided via Combination of In and Out of Regular Education Setting (regular education setting and special education classroom setting)." The notice further stated, "[The student] needs a small, highly structured setting, with a low student-to-staff ratio and intensive communication instruction and support. [The student] requires a structured learning environment within an intense, complex, and language-rich environment designed for students with communication needs related to Autism. [The student] needs specialized instruction in an environment that provides alternative strategies to demonstrate learning and a flexible schedule for the implementation of the behavior intervention plan."
9. The PWN reflects that the student requires a small, structured learning environment to accommodate special communication and behavior needs. Using multimodal communication, including a 90 PODD book, due to limited verbal communication, the student requires various behavior intervention strategies to address maladaptive behaviors such as loud vocalizations, hitting, yelling, cursing, and self-biting. The IEP team acknowledged the potential harmful effect of the student not participating in academic activities in the general education setting and determined he can engage in nonacademic and extracurricular activities (art, music, media, P.E.) with adult support to implement his Behavior Intervention Plan (BIP) and IEP accommodations when he engages in instruction with his nondisabled peers.
10. There is documentation that the student received specialized education instruction and support from the special education teacher and/or an instructional assistant as prescribed by the IEP. When additional support was needed, the student would also receive assistance from the student support assistant (SSA). The student's special education classroom was a mixed-grade-level classroom that was divided into two sections based on the students' grade level. There is documentation that the student received instruction with one to two other students while present in his separate special education class. He was with grade level peers when included in the general education setting.
11. On May 22, 2023, the IEP team met to review and revise the IEP as appropriate and discuss placement for middle school. Utilizing data from progress reports on goals and objectives, current classroom performance, the behavior intervention plan, parent input, and work samples, the IEP team proposed changes needed to the student's IEP and current programming. These changes included proposed revisions to the student's BIP, adjustments in instructional and testing accommodations, supplementary aids and services, modifications to the reading comprehension goal and the social interaction goal, as well as continued services in the areas of special education, speech-language therapy, and adapted physical education. The IEP team determined that the least restrictive environment was the Autism Program, currently located at [REDACTED] School.

12. During the IEP meeting, the team considered but rejected [REDACTED] School as the placement because it lacked the resources and personnel to support and monitor the student's BIP or provide the ongoing support required for his social-emotional skills. The student's homeschool did not offer a behavior support specialist. The IEP team proposed the Autism Program at [REDACTED] School as it has a dedicated behavior specialist and naturally incorporates aspects of the student's BIP throughout its service delivery model.
13. The IEP team openly discussed and acknowledged potential challenges, such as exposure to other student behaviors and "limited general education interactions, having those opportunities in related arts," but they determined the program could meet the student's needs and implement the student's IEP. The complainants disagreed with the IEP team's decision, expressing concerns about travel time and potential exposure to inappropriate behaviors. They believed the harmful effects outweighed the benefits of the proposed placement in the Autism Program at [REDACTED] School.
14. The representatives from the Autism Program discussed the strategies used, emphasizing that other students also have long rides. The local education agency representative offered both oral and written explanations of the complainants' due process rights due to their disagreement surrounding the placement determination.
15. During the 2022-2023 school year, the student's BIP was revised on September 26, 2022, and May 10, 2023, to address the targeted behaviors of Physical Aggression, Cursing, and Yelling.
16. There is documentation that the student received the speech and language services as required by his IEP during the 2022-2023 school year.
17. There is documentation that the student received counseling services as required by his IEP during the 2022-2023 school year.

CONCLUSIONS:

ALLEGATION #1: PLACEMENT REQUIRED BY THE IEP

Based on Findings of Facts #1- #3, MSDE finds that the CCPS has provided the student with special education services in the placement required by the Individualized Education Program (IEP) during the 2022-2023 school year, in accordance with 34 CFR §§300.101, .114, .116 and .323. Therefore, this office finds that a violation did not occur with respect to this allegation.

ALLEGATION #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION, SUPPORTS, AND RELATED SERVICES

Based on Findings of Facts #10 - #16, and #17, MSDE finds that the CCPS did ensure that the student was provided with the specialized instruction, related services, and support required by the IEP during 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 allegation.

ALLEGATION #3: PLACEMENT

Based on Findings of Facts #8- #14, MSDE finds that the CCPS did ensure that proper procedures were followed when determining the student's placement for the 2022-2023 school year, in accordance with

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34 CFR §§300.114 and .116. Therefore, this office finds that a violation did not occur with respect to this 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,

Antoine L. Hickman, Ed.D.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

ALH/sj

c: Cynthia McCabe, Superintendent, CCPS
Wayne Whalen, Supervisor of Special Education Data and Compliance, CCPS
[REDACTED]
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Paige Bradford, Section Chief, Programmatic Support and Technical Assistance, MSDE
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