


June 13, 2024



Ms. Diane McGowan
Director of Specially Designed Instruction and Compliance
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: 
Reference: #24-200

Dear Parties:




The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 April 15, 2024, MSDE received a complaint from the complainant, on behalf of 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 allegation that the AACPS did not ensure that the student was provided with a free appropriate public education (FAPE), when he was not permitted to attend school on the morning of April 17, 2024, while some students in his school were engaged in taking the Practice Student Achievement Test, in accordance with 34 CFR §300.101.

BACKGROUND:

The student is 14 years old and is identified as a student with a disability under the IDEA. He attends  in the  () and has an Individualized Education Program (IEP) that requires the provision of special education services and related services.

FINDINGS OF FACT:

1. The student participates in the Alternate State Assessments and does not take the Practice Student Achievement Test (PSAT), or Student Achievement Test (SAT) offered by the AACPS.

2. On April 17, 2024, AACPS provided students in their junior year of high school the opportunity to take the SAT and sophomores the PSAT during the school day. In order to inform families, on April 14, 2024, a message was sent through their Connect Ed system to all high school families with the following information:

“Hello parents of high school students, this message from Anne Arundel County Public Schools is to remind you that all high school juniors will be given the SAT college assessment and all high school sophomores will be taking the PSAT on Wednesday, April 17, 2024. Students taking these assessments should bring their own calculator and their Chromebook.

The following schedule applies to high school students only. All high school students NOT taking the PSAT or SAT on April 17 will report to school 3 hours and 30 minutes later than normal. Most schools will conduct periods 1B and 2B after the assessments, but parents of students should check the website of their child’s school to obtain the exact schedule for the day. Buses will make two runs, with the second occurring 3 hours and 30 minutes after the first.

Exceptions include: students at magnet schools, at the [REDACTED], at [REDACTED], at the [REDACTED], and at the [REDACTED]. All students at the [REDACTED], the [REDACTED] and the [REDACTED], and students at magnet schools who live outside that school's regular attendance area will report to school at their normal times. Students at the AACPS [REDACTED] who are testing will test at [REDACTED].

Once again, this schedule applies to high school students only. There will be no classes at the Centers of Applied Technology on April 17. If you have further questions, please contact your child’s school. Thank you.”

3. The student arrived to school three hours late on April 17, 2024, and did not receive a full day of educational services pursuant to his IEP.
4. Students who participated in [REDACTED] in several comprehensive AACPS high schools were permitted to arrive to school on time and receive a full day of educational services.
5. High School students enrolled in AACPS [REDACTED] who did not take the PSAT or SAT assessments were permitted to arrive on time and received a full day of educational services.

DISCUSSION AND CONCLUSION

Pursuant to 34 CFR §300.101, AACPS is responsible for providing eligible students with disabilities a free appropriate public education (FAPE). The IEP team is responsible for developing an IEP that provides the student with FAPE, including related services. These related services are dictated by the student’s needs and may not be determined based on administrative convenience. Thus, the AACPS may not decide to provide special education and related services to some students with IEPs and not others based on staffing needs.

In this case, the decision to delay the start of the school day for students in the [REDACTED] at [REDACTED] was based on staffing issues (i.e., coverage for assessments), transportation needs, and other reasons that are not articulated in the letter. Other high schools provided FAPE for students in [REDACTED] classes if staff coverage wasn't needed. If students with IEPs were in magnet programs, alternative programs, or a developmental center, they also received a full day of educational programming. It is the unequal implementation of special education and related services for the AACPS high school students on April 17, 2024, due to staffing and transportation needs, that makes the three hour delay a denial of FAPE.

Based on Findings of Fact #1 through #5, MSDE finds that the AACPS did not ensure that the student was provided with FAPE, when he was not permitted to attend school on the morning of April 17, 2024, while some students in his school were engaged in taking the Practice Student Achievement Test, in accordance with 34 CFR §300.101. Therefore, this office finds that a violation did occur with respect to this allegation.

CORRECTIVE ACTIONS AND 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 Sarah Denney, Complaint Investigator, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action². Ms. Denney can be reached at (410) 767-7770 or by email at sarah.denney@maryland.gov.

Student-Specific

MSDE requires the AACPS to provide documentation by June 28, 2024, that the IEP team has convened to determine if the failure to provide FAPE on the morning of April 17, 2024, 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 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 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.

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.

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

System-wide

By September 3, 2024, the AACPS must examine the current practice surrounding scheduling SAT and PSAT testing, students participating in the Alternate State Assessments who will not be taking the SAT or PSAT tests, and other students with IEPs who will not be testing and make revisions to practice that are not based on administrative convenience and will ensure the continued provision of FAPE for all students with IEPs.

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 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/ab

- c:
- Dr. Mark Bedell, Superintendent, AACPS
 - Mary Tillar, Assistant Superintendent, Special Education, AACPS
 - Jennifer Brown, Manager, Equity Assurance and Compliance Unit, AACPS
 - April Pierman, Compliance Specialist, AACPS
 - Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
 - Tracy Givens, Section Chief, Dispute Resolution, MSDE
 - Ms. Sarah Denney, Complaint Investigator, MSDE
 - Dr. Paige Bradford, Chief, Program Support and Technical Assistance, MSDE
 - Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE