

July 3, 2024

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #24-216

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services 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 May 6, 2024, MSDE received a complaint from [REDACTED], hereafter, “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 following allegations:

1. The AACPS did not follow proper procedures when disciplinarily removing the student from school since May 2023, in accordance with 34 CFR §300.530, COMAR 13A.08.02, and COMAR 13A.08.03.
2. The AACPS did not ensure that the student has been provided with the academic interventions required by the Individualized Education Program (IEP) since July 2023, in accordance with 34 CFR §§300.101 and .323.
3. The AACPS did not ensure that proper procedures were followed when determining the student's Home and Hospital Teaching (HHT) services in September 2023, in accordance with COMAR 13A.03.05.03 and 13A.05.01.10.
4. The AACPS did not provide prior written notice of the IEP team's rejection of the parents' request for an Occupational Therapy assessment on October 17, 2023, and the change in the academic intervention that the IEP requires in September 2023, in accordance with 34 CFR §300.503.

BACKGROUND:

The student is eight years old and is a student with Multiple Disabilities under the IDEA. She attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1

DISCIPLINARY REMOVAL OF THE STUDENT SINCE MAY 2023

FINDING OF FACT:

1. There is no documentation to support the allegation that the student received a disciplinary removal from the educational setting since May 2023.

CONCLUSION:

Based on the Finding of Fact #1, MSDE finds that the student has not been disciplinarily removed from school since May 2023, in accordance with 34 CFR §300.530, COMAR 13A.08.02, and COMAR 13A.08.03. Therefore, this office finds that a violation did not occur concerning this allegation.

ALLEGATION #2 and #4

PROVISION OF ACADEMIC INTERVENTIONS AND PROVISIONS OF PWNS

FINDINGS OF FACT:

2. The student's IEP developed on July 20, 2023, requires one hour and thirty minutes per week of special education instruction inside the general education setting to address "reading with learning behaviors embedded" provided by the special education teacher, general education teacher, and/or instructional assistant. The IEP requires reading intervention as a supplementary aid and service to be provided three times per week.
3. On October 16, 2023, the complainant emailed school staff requesting an emergency IEP team meeting to discuss new accommodations. The school staff responded on October 17, 2023, and proposed to meet on October 18, 2023.
4. On October 17, 2023, the complainant sent an additional email, informing the IEP team that the student might return to school after her discharge from the private facility on October 24, 2023.
5. On October 17, 2023, the complainant emailed the school-based team. The email reflects:
"We kindly request that the following matters be discussed during the next IEP meeting:
1. Occupational therapy during the school day for increasing self-regulation and to develop coping skills in a crisis, rather than acting on impulses. We have scheduled [student] to attend outpatient occupational therapy, but as is the case with behavior therapy, after school appointments are not available. [Student] will have to miss a portion of the school day multiple times per month to attend outpatient occupational therapy."

The email also reflects the complainant suggested a smaller classroom environment or self-contained classroom, terminate the agreement to allow the student to stay after school, a change in location and exploring alternative placements if the student's needs cannot be met at [REDACTED].

The complainant also informed the IEP team that the student will be absent on Thursday and Friday of that week to attend an intake session and appointment with the private provider. When the student returns to school the complaint requested the student attend for a shortened day due to appointments in the afternoon.

6. On October 18, 2023, the IEP team convened to discuss accommodations and revise the IEP as necessary. The PWN generated after the meeting reflects that the parents “inquired about OT service in school.” This was based on a referral for outpatient OT. The parents wanted to know if the student “could receive the same OT service from the school-based therapist.” In response to the request, the school-based Occupational Therapist explained the differences between outpatient and school-based services. The IEP team did not have OT concerns at this time. The parents agreed that a school-based OT evaluation was not warranted. The parents agreed to sign a release allowing the school-based Occupational Therapist to speak with the private Occupational Therapist.

The PWN also reflects the complainant expressed concern that the “[student] struggles mostly with Reading, which makes her feel embarrassed.” To address concerns, the school-based staff proposed the student will receive reading intervention outside of the general education classroom. The student will receive Foundations Reading with the Special Education teacher. The complainant agreed with the proposed reading intervention.

7. On October 19, 2023, the IEP was amended. The IEP requires ten hours per week of special education instruction outside of the general education setting “in the area of reading and to support behaviors.” The IEP continues to require reading intervention as a supplementary aid and service to be provided three times per week.
8. On February 21, 2024, March 8, 2024, and April 12, 2024, the IEP team convened to conduct the student’s annual review meeting. The IEP reflects the following areas are impacted by the student’s disability: Reading Decoding, Cognitive/Intellectual, Social/Emotional, Learning Behaviors, Sensorimotor, and Reading -Fluency. The IEP requires five hours per week of special education instruction outside of the general education classroom, to “address reading decoding, fluency, and behavior IEP goals.” The service is to be provided by the special education teacher and/or instructional assistant.

The IEP requires a reading intervention as a supplementary aid and service to be provided daily by the special education teacher, general education teacher, and/or instructional assistant.

9. There is documentation that the student was provided with a reading intervention in the following manner:
 - August 28, 2023 through September 28, 2023 - 30 minutes per day;
 - September 22, 2023 - September 28, 2023 the student refused services;
 - September 29, 2023 through October 23, 2023 the student was absent; and
 - October 24, 2023, through June 11, 2024 - 30 minutes per day.

CONCLUSIONS:

Special Education Instruction

Based on the Findings of Fact #2, #6 through #9, MSDE finds that the AACPS has provided the student with academic interventions as required by the IEP since July 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Provision of the PWN Rejecting the Parent's Request for an OT Assessment

Based on the Findings of Fact #5 through #8, there was no request for an OT evaluation by the parents. As a result, the PWN did not reflect that a request was rejected in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Provision of the PWN Reflecting the Change in the Academic Intervention

In this case, the student was absent from school from September 28, 2023, to October 24, 2023. When the student returned to school, the re-entry plan determined that the reading intervention program would need to be changed. The student's IEP required a reading intervention; however, it did not identify a specific reading program intervention. The change in the reading intervention is not an IEP team decision; therefore, prior written notice is not required.

Based on the Finding of Fact #6, MSDE finds that the AACPS was not required to provide prior written notice of the IEP team's decision to change the program used to provide the academic intervention that the IEP requires in October 2023, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

ALLEGATION #3

PROPER PROCEDURES TO DETERMINE HHT SERVICES

FINDINGS OF FACT:

10. On September 28, 2023, the student was taken to a private hospital for an evaluation. The hospital staff determined the student tested positive for COVID-19 and, as a result, was placed in isolation for ten days.
11. On October 2, 2023, an AACPS school staff emailed the parent sharing that teachers can prepare work for the student to be picked up. AACPS school staff also shared that if the student can access her chromebook she can work on iReady. The parent informed the school staff that the student "can't use any type of electronic device. She also can't have a pencil, but I will continue to ask if they can loosen up some restrictions." The parent agreed to pick up the work.
12. On October 11, 2023, the parent informed the IEP team that on October 9, 2023, the student was transferred to another private hospital for treatment. The student was discharged on October 19, 2023.

13. The October 18, 2023, discharge summary reflects the following recommendation “please excuse [student] from as much missed work as possible during their absence (10/09/23 - 10/19/2023).” The summary also reflects the student was cleared to return to school.
14. There is no documentation that the HHT application was submitted to AACPS for the consideration of HHT services since September 2023.

DISCUSSION AND CONCLUSION:

In order for a student to be eligible for HHT, the parent or guardian must submit a statement from a practitioner verifying that the current physical or emotional condition prevents the student from participating in the student’s school of enrollment. (COMAR 13A.03.05.04)

HHT is required to begin no later than 10 school days following the local school system’s receipt of: 1) notification that the student is unable to attend school, and 2) verification of the need for services. Once the local school system has received both requirements, the IEP team should be prepared to meet within 10 school days as well, so that HHT can begin timely and in accordance with the student’s IEP. If the IEP team cannot meet within 10 school days, HHT may still begin so that the student has access to instruction. (COMAR 13A.03.05.03)

After a student is approved it is the responsibility of the IEP team to: 1) determine the instructional services to be provided to the student as long as the medical restrictions apply, and 2) develop a plan for returning the student to a school-based program. (COMAR 13A.05.01.10)

Based on the Findings of Fact #10 through #14, MSDE finds that the complainant did not submit a request for HHT services to the AACPS; therefore, AACPS was not required to determine HHT services since September 2023, in accordance with COMAR 13A.03.05.03 and 13A.05.01.10. Therefore, this office finds that a violation did not occur concerning this allegation.

TIMELINES:

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.

Ms. Sonya McElroy
Ms. Diane McGowan
July 3, 2024
Page 6

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

ALH/ra

c: Dr. Mark T Bedell, Superintendent, AACPS
Mary Tillar, Assistant Superintendent, Special Education, AACPS
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