




**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

June 24, 2020




Ms. Bobbi Pedrick  
Director of Special Education  
Anne Arundel County Public Schools  
2644 Riva Road  
Annapolis, Maryland 21401

RE:   
Reference: #20-125

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 April 28, 2020, the MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of the above-referenced student and his mother. 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. The MSDE investigated the following allegations:

1. The AACPS did not ensure that proper procedures were followed when determining the student’s educational placement for the 2019-2020 school year, in accordance with 34 CFR §§300.114 - .116.
2. The AACPS has not ensured that the student has been provided with special education instruction required by the Individualized Education Program (IEP) to enable him to advance appropriately toward attaining the annual goals and to be involved in and make

progress in the general education curriculum during the 2019-2020 school year, in accordance with 34 CFR §§300.101 and 323.

3. The AACPS has not ensured that the student has been provided with the following services required by the IEP during the 2019-2020 school year, in accordance with 34 CFR §§300.101 and .323:
  - a. Use of text-to-speech technology for instruction and assessments in math, science, and government;
  - b. Human reader for instruction and assessments in math, science, and government;
  - c. Reduced distractions for instruction and assessments;
  - d. Noise cancellation headphones for instruction and assessments;
  - e. Extended time to complete assignments and assessments;
  - f. Repetition of directions for self-paced work;
  - g. Adult support for written assignments; and
  - h. Monitoring of independent work.

### **BACKGROUND:**

The student is thirteen (13) years old and is identified as a student with Specific Learning Disability under the IDEA. He has an IEP that requires the provision of special education instruction.

During the 2019-2020 school year, he attended the [REDACTED] School, until the March 16, 2020 Statewide closure of all schools, as the result of the national COVID-19 pandemic.

### **ALLEGATION #1**

### **EDUCATIONAL PLACEMENT**

### **FINDINGS OF FACTS:**

1. The IEP team determined the student's educational placement for the 2019-2020 school year at an IEP team meeting held on December 4, 2018 while the student was still in elementary school. At that meeting, the IEP team determined the supplementary aids and services that could be provided in order to implement the IEP in a general education classroom and decided that special education instruction would be provided by both general and special education teachers in the school he would attend if not disabled.
2. On September 26, 2019, the IEP team reviewed and revised the IEP. At that time, the team considered data that the student had made sufficient progress on the IEP goals and progressed through the general curriculum with the special education services and supplementary aids and services provided in the general education classroom that was taught by both general and special education teachers. Based on this data, the IEP team decided that the Least Restrictive Environment (LRE) in which the IEP could be implemented continued to be a general education classroom in the school he would attend if not disabled.

## **DISCUSSION/CONCLUSIONS:**

The IDEA requires that each IEP be implemented in the LRE in which the student can benefit from the education program. This means that, to the maximum extent appropriate, students with disabilities must be educated with students who are not disabled. The removal of students with disabilities from the general education classroom can occur only if the nature or severity of the disability is such that education in the general education classroom with the use of supplemental aids and services cannot be achieved satisfactorily (34 CFR §300.114).

Each public agency must ensure that there is a continuum of alternative placements available to meet the needs of students with disabilities. This continuum must include general education classrooms, separate special education classrooms, separate special education schools, home instruction, and instruction in hospitals and institutions (34 CFR §300.115).

The educational placement must be in the school the student would attend if not disabled unless that school does not have sufficient supports, and must be as close as possible to the student's home. In selecting the LRE, consideration must be given to any potential harmful effect on the student or on the quality of services that the student needs, and the student may not be removed from the general education classroom solely because of needed modifications in the general education curriculum (34 CFR §300.116).

The LRE refers to a student's education with nondisabled students to the maximum extent possible. The types of service providers in an educational setting do not impact whether the setting is the LRE in which the IEP can be implemented.

In this case, the complainant asserts that, because the student's classes are taught by general and special education teachers, he is being removed from the general education classroom and is not placed in the LRE in which his IEP can be implemented.

Based on the Findings of Facts #1 and #2, the MSDE finds that the student is not removed from the general education classroom. Based on those Findings of Facts, the MSDE finds that, because the student is placed in the general education classroom with nondisabled peers, there is no less restrictive environment on the continuum of placement options. Therefore, this office does not find a violation with respect to the allegation.

## **ALLEGATION #2 PROVISION OF SPECIAL EDUCATION INSTRUCTION**

### **FINDINGS OF FACTS:**

#### **IEP Goals**

3. Based on informal and formal assessments, quarterly assessments, classroom teacher reports, work samples and anecdotal records, the student's reading/decoding goal stated on the IEPs dated December 4, 2018 and September 26, 2019, read, "Given multisyllabic

words with open and/or closed syllables, [the student] will decode words in context at a middle fourth grade level.” While decoding standards cease after the fifth-grade level, those decoding skills were being applied to grade level texts, as evidenced by curriculum documents and student assignment reports.

4. Based on informal and formal assessments, quarterly assessments, classroom teacher reports, work samples and anecdotal records, the student’s reading fluency goal stated on the IEPs dated December 4, 2018 and September 26, 2019, read, “Given instructional level text, [the student] will increase his correct words read per minute from 83 words per minute to 103 words per minute.” While fluency standards cease after the fifth-grade level, those fluency skills were being applied to grade level texts, as evidenced by curriculum documents and student assignment reports.
5. Based on informal and formal assessments, quarterly assessments, classroom teacher reports, work samples and anecdotal records, the student’s written expression goal stated on the IEPs dated December 4, 2018 and September 26, 2019, read, “Given available resources (Quickword book, 5th grade classroom word packet, anchor charts) and/or word prediction software, [the student] will write a paragraph (5-7 sentences) while utilizing appropriate targeted conventions (spelling, capitalization and subject/verb agreement) of standard English grammar.” Language standards dictate that the student must have command of the conventions of standard English grammar and usage when writing, including capitalization, punctuation and writing, which were applied daily to the student’s classroom assignments.
6. Based on reading records, progress reports, and the quarterly assessment, the student’s reading goal on the updated IEP dated December 18, 2019, read, “Given multisyllabic words with open and/or closed syllables, [the student] will decode words in context at a middle sixth grade level text in order to read fluently for comprehension.” While decoding standards cease after the fifth-grade level, those decoding skills were being applied to grade level texts, as evidenced by the goal, curriculum documents and student assignment reports.
7. Based on informal assessments, quarterly assessments and progress reports, the student’s expository text written language expression goal reads, “when provided with a teacher checklist/rubric, a proofreading checklist, technology, and graphic organizers, [the student] will write to support a claim with clear reasons and relevant evidence.” This goal addresses grade level writing standards as evidenced by the curriculum documents, assignments, quarterly assessments and the goal itself.

### **Reading/Decoding**

8. On February 8, 2019, the student’s progress report indicated he was making progress in decoding multisyllabic words with open and closed syllables.
9. On November 8, 2019, the student’s progress report stated that he had achieved the goal of decoding multisyllabic words with open and closed syllables.

10. On January 30, 2020 an IEP progress report was issued in the area of reading/decoding for the goal of decoding words in context at a middle sixth grade level, which stated that the student achieved the goal. He was able to read a sixth-grade reading passage with 97.44% accuracy.

### **Reading/Fluency**

11. On February 8, 2019, an IEP progress report was issued in the area of reading fluency for the goal of increasing the number of words read per minute, given instructional level text. The student was reported as having made sufficient progress.
12. On November 8, 2019, an IEP progress report was issued in the area of reading fluency which indicated that the student was not making sufficient progress to meet his goal.
13. The IEP developed December 18, 2019 combined decoding and fluency into one reading goal. The January 30, 2020 IEP progress report stated that the student had achieved the goal of decoding words in context at a middle sixth grade level text in order to read fluently for comprehension.

### **Written Language Expression**

14. On February 8, 2019, an IEP progress report was issued in the area of written language expression for the goal of supporting a claim with reason and evidence. It stated that the student was making progress towards achieving the goal. Given his required IEP supports, the student was able to write a paragraph using targeting conventions of standard English grammar with 85% accuracy.
15. On November 8, 2019, an IEP progress report was issued in the area of written expression, which stated that the student was making sufficient progress to meet his goal. The report indicated that when given his required IEP supports, including co-writer, adult scribe for initial brainstorm, anchor charts and a graphic organizer, the student was demonstrating some progress. The student continued to struggle with language conventions.
16. On January 30, 2020, an IEP progress report was issued in the area of written expression-expository text which stated that the student was making sufficient progress to meet his goal.
17. There is evidence in the form of work samples, curriculum documents, and the electronic grade reporting system which lists assignments, that the student is using grade level texts and working on grade level content.
18. There is evidence in the form of grade reports that the student is progressing through the general education curriculum. The following is a breakdown of the student's quarterly grades in the areas of social studies, science and English:

	<b>Social Studies</b>	<b>Science</b>	<b>Language Arts</b>
Q1	100%	98%	98%
Q2	98%	98%	95%
Q3	93%	97%	91%
Q4	99%	85%	88%

19. The Social Studies benchmark assessment shows that the student earned an 83.33% for the second quarter of the 2019-2020 school year.
20. The Science benchmark assessment shows that the student earned an 84.38% for the second quarter of the 2019-2020 school year.
21. The Language benchmark assessment shows that the student earned a 66.09% for the second quarter of the 2019-2020 school year.
22. Based on reading assessments administered on October 24, 2019, the student was reading at grade level, which demonstrated an increase of one grade level from an assessment given on May 22, 2019. Additionally, results of reading assessments demonstrated that the student could identify the theme of reading passages above his grade level, and identify the meaning of tenth grade vocabulary words. The student still struggled with reading fluency.
23. Based on present level of performance data in the area of written expression, the student's expository text skills remained at a fourth-grade level. However, assessments indicated some improvements. The student's narrative text skills increased from a fourth to fifth grade level.

**DISCUSSION/CONCLUSIONS:**

The IDEA requires that a student with a disability be provided with a Free Appropriate Public Education (FAPE), through an IEP that includes measurable annual goals designed to assist the student with access to and progress through the general curriculum, which is the same curriculum provided to nondisabled students. Through the IEP, the student must be provided with special education to assist the student with achieving the annual goals (34 CFR §§300.39, .101, .320, .323 and COMAR 13A.05.01.09).

The IDEA defines special education as specially designed instruction. It defines this as adapting, as appropriate to the needs of the student, the content, methodology, or delivery of instruction to address the unique needs of the student and ensure access to the general curriculum so that the student can meet the educational standards that apply to all students. The specially designed instruction should be designed to narrow the gap in the students' performance compared to their same age peers. The United States Supreme Court has clarified that the IEP for each student with a disability must be reasonably calculated to enable the student to make progress that is

appropriate in light of the student's individual circumstances (34 CFR §§300.39, *Dear Colleague Letter*, United States Department of Education, Office of Special Education and Rehabilitative Services, November 16, 2015, and *Andrew F. v. Douglas County School District*, 2017).

The MSDE has issued guidance on the interdependency of curriculum, instruction, and assessment to deliver specially designed instruction through the Technical Assistance Bulletin #19-01, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, November 2019. This guidance explains that, in order to ensure that all students receive access to the same general curriculum, Maryland uses a standards-aligned curriculum to inform what is taught and assessed (Maryland College and Career Ready Standards). Students with and without disabilities are assessed on their achievement of these academic content standards.

Developing the IEP is a collaborative process, where teachers and services providers, parents, and others, such as the student in some cases, work together to develop the goals and objectives for the student to achieve and how progress will be measured on those goals, as well as the special education and related services needed to assist the student in achieving the goals. This purpose of this process is to consider how special education and related services can change the trajectory of a student's growth to reduce or close the gap between the student's performance and grade level expectations (*Dear Colleague Letter*, United States Department of Education, Office of Special Education and Rehabilitative Services, November 16, 2015 and MSDE Technical Assistance Bulletin #19-01, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, November 2019).

In order to do so, the IEP team must develop goals that are: (1) aligned to academic content standards of grade level enrollment; (2) aligned to academic content standards from earlier in the learning progressions; or (3) aligned to age/grade appropriate functional skills impacted by the student's disability that interfere with participation in school and learning activities and independent in school and potential post-school settings (MSDE Technical Assistance Bulletin #19-01, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, November 2019).

Using the general education curriculum as the reference point for IEP goals is critical to maintaining high expectations and setting ambitious, meaningful, and achievable goals, considering the student's unique circumstances. The IEP team must consider how a student's disability impacts the student's ability to make progress toward grade level standards during the period covered by the IEP. While annual goals are not required to result in the student attaining grade level proficiency within the year covered by the IEP, the goals should be sufficiently ambitious to help close or reduce the achievement gap (*Dear Colleague Letter*, United States Department of Education, Office of Special Education and Rehabilitative Services, November 16, 2015 and MSDE Technical Assistance Bulletin #19-01, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, November 2019).

In order to develop ambitious and achievable IEP goals, the IEP team must first understand the age and grade appropriate skill expectations outlined in the Maryland College and Career Ready

Standards. Next, the IEP team must review the student's present levels of academic and functional performance in light of the grade level standards as well as those unique needs that result from the student's disability. This allows the IEP team to analyze the gaps between current skills and expectations of the grade level standards, and allows the IEP team to identify the behaviors and skills that are needed for active participation in school as a learner and for the future as an employee, family and community member (MSDE Technical Assistance Bulletin #19-01, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, November 2019).

The IEP goals should be aligned to academic content standards of grade level enrollment or from the content standards from earlier in the learning progressions, or align with age/grade appropriate functional skills impacted by the student's disability. However, they need not address all grade level standards, as priority should be given to skills that support the achievement of multiple standards or the student's access to grade level content in multiple areas (MSDE Technical Assistance Bulletin #19-01, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, November 2019).

Once the priority skills and targets are identified, the IEP team should develop goals that are estimates of the student's anticipated growth that would result from receiving specially-designed instruction. Therefore, the IEP team is required to use data to decide which grade level standards the student is not on track to achieve and why, and then backward map the development of academic content standards to isolate the underlying skills needed to access and progress in the general education curriculum (MSDE Technical Assistance Bulletin #19-01, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, November 2019).

In order to teach to a variety of learners with diverse needs, schools must have a strong integrated tiered system of supports that include evidence-based screening, standards aligned curricula, team-based collaborative planning, and an evidence-based instructional approach based on universal design for learning principals and differentiated instruction to address the individual students in each class. This serves as the instructional base for all students, including students with disabilities (MSDE Technical Assistance Bulletin #19-01, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, November 2019).

However, students with disabilities also require specially designed instruction in order to make progress in the curriculum. In addition to the instruction provided to all students, students with disabilities must be provided with specially designed instruction that is based on individual learning characteristics and combines evidence-based practices, intensive instruction, accommodations, supplementary aids and services, **program modifications** [Emphasis added], and personnel support (*Dear Colleague Letter*, United States Department of Education, Office of Special Education and Rehabilitative Services, November 16, 2015 and MSDE Technical Assistance Bulletin #19-01, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, and Assessment*, November 2019).



In this case, the complainant asserts that in order to ensure access to the general education curriculum, the student must work on all grade level standards covered in his grade.

As stated above, there is no requirement to address all grade level standards. Rather, the IEP team is required to use data to decide which grade level standards the student is not on track to achieve and why, and then backward map the development of academic content standards to isolate the underlying skills needed to access and progress in the general education curriculum. Therefore, this office does not find a violation with respect to this aspect of the allegation.

The complainant also asserts that the student is not being instructed and assessed on grade level standards because of the modifications made to the instruction provided.

As stated above, program modifications are a part of specially-designed instruction that enable a student with a disability under the IDEA to work on the content standards needed to progress through the general curriculum. Therefore, this office does not find a violation with respect to this aspect of the allegation.

The complainant alleges that the student has been denied access to grade level content standards because: (a) he has not been provided with grade level instructional texts in science and social studies or opportunities for independent reading of grade level instructional texts provided to same grade peers in other classrooms in language arts class; (b) his instructional materials contain a reduced level of content and complexity as those of same aged peers; (c) his assignments and assessments do not require the same degree of difficulty as those of his same grade peers; and (d) he is not held to the same standards as same aged peers for testing purposes, including being provided with questions and answers prior to tests, having access to notes during testing, and having some test scores omitted from grade calculation.

The complainant also asserts that all students in the student's school who are placed in general education classrooms that are taught by general and special education teachers are provided with instruction using a modified curriculum. She alleges that placement in such a setting denies the student the opportunity to make progress on the general education curriculum.

Based on the Findings of Facts #3 - #23 the MSDE finds that the documentation reflects that the student is provided with instruction and assessment on the Maryland College and Career Ready Standards, which reflects the general education curriculum in effect for all students and that any modifications to the instruction constitutes specialized instruction, which is required for students with disabilities under the IDEA. Therefore, this office does not find that a violation occurred with respect the allegation

### **ALLEGATION #3 PROVISION OF IEP SUPPORTS**

#### **FINDINGS OF FACTS:**

24. The IEP requires the provision of supports, including: text-to-speech technology, human reader, reduced distractions, noise cancellation headphones, extended time, repetition of directions, adult support for writing assignments and monitoring of independent work.

**Text-to-speech technology for instruction and assessments in math, science, and government**

25. An audiotape recording of the September 26, 2019 IEP team meeting provides evidence of the use of text-to-speech technology. One teacher stated that the text-to-speech technology is beneficial to the student in instruction because he is able to listen back to what he typed and edit his work accordingly.
26. An audiotape recording of the December 18, 2019 IEP team meeting provides evidence that the student is provided with this accessibility feature for selected sections.
27. The therapeutic support aid (TSA) supports log provides evidence that the student is provided with the text-to-speech technology for math, science and government.

**Human Reader for instruction and assessments in math, science, and government**

28. An audiotape recording of the IEP team meeting on September 26, 2019 documents that a human reader is provided for instruction in science and government. The school-based team explained that during instruction this support might be provided in different ways then is seen in the elementary school setting. It was explained that instead of the one-to-one pull-outs that may be seen in an elementary school, in the middle school setting the support may be provided in a small group of students, where either the TSA or another student is reading aloud.
29. The TSA support log provides evidence that the student is provided with a human reader for math, science and government.

**Reduced distractions for instruction and assessments**

30. The TSA support log provides evidence that the student is provided with reduced distractions in different ways, such as removing the student to the media center, relocating the student to another area of the classroom, through the use of a study carrel, or through the use of noise cancelling headphones.

**Noise cancellation headphones for instruction and assessments**

31. An email from school staff to the complainant, dated October 15, 2019, indicates that noise cancelling headphones had been ordered for the student and that, in the interim, alternate headphones had been offered to the student.
32. The TSA support log provides evidence that the student is provided with noise cancellation headphones, although the student at times would indicate that he does not want to use them.

### **Extended time to complete assignments and assessments**

33. An audio tape recording of the IEP team meeting on December 18, 2019 documents that the student is provided with extended time to complete assessments and assignments. This support was reduced from two (2) times the amount of time given for the assignment to one and a half (1.5) times the amount given for the assignment, because the teachers reported that it was rare that the student used this accommodation. The complainant expressed concern that the student wasn't offered this accommodation for each assignment or assessment; however, the teachers stated that by observing the student, they could determine if the student would require extra time and remind the student of this support. The teachers pointed out that middle school students, and this student, do not like to be singled out, and reminding the student of his accommodations all the time could create a distraction for the student.

### **Repetition of directions for self-paced work**

34. The TSA support log provides evidence that the student is provided with repetition of directions for self-paced work.

### **Adult support for written assignments**

35. An audio tape recording of the IEP team meeting on September 26, 2019, indicates that the team collected data in order to determine what "adult support" for the student required. The team determined that the student would need adult support to "assist with some of the supplementary aids on an as needed basis." The student's classroom included a general and special educator, as well as a therapeutic aide, which all team members, including the complainant and parent, deemed beneficial to the student.
36. The audio tape recording of the IEP team meeting held on December 18, 2019 documents that the student was asked each time a writing assignment is more than two paragraphs if he needs help writing his answers. The team reported that sometimes he would accept the support and other times he would not.
37. The TSA support log provides evidence that the student is provided with adult support for written assignments.

### **Monitoring of independent work**

38. The TSA support log provides evidence that the student is provided with monitoring of independent work.

### **DISCUSSION/CONCLUSIONS:**

As indicated above, in order to ensure the provision of a FAPE, the public agency must provide the student with the services and supports that the IEP team has determined necessary for the

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student to advance appropriately toward attaining the IEP goals and progress through the general curriculum (34 CFR §§300.101 and .323).

Based on the Findings of Facts #24 - #38, the MSDE finds that there is documentation that the supports required by the IEP are being provided, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred 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 FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Early Intervention/Special Education Services

MEF:dee

c:

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