

MEMORANDUM

June 16, 2023

TO: Education and Culture Committee

FROM: Essie McGuire, Senior Legislative Analyst
Joseph Crupi, Legislative Analyst

SUBJECT: **Update: Special Education**

PURPOSE: To receive an update on processes related to special education services in Montgomery County Public Schools.

Expected participants:

- Diana Wyles, Acting Associate Superintendent, Office of Special Education, MCPS

Today the Education and Culture (E&C) Committee will receive an update on processes related to special education services in Montgomery County Public Schools (MCPS). MCPS staff will provide an update presentation and answer questions.

I. BACKGROUND

Free Appropriate Public Education must be made available to children with disabilities pursuant to the Federal Individuals with Disabilities Education Act (IDEA). IDEA governs the provision of early intervention, special education, and related services and authorizes grants to states to support special education. Maryland meets the requirements established by IDEA through its Statewide Individualized Education Program.

In Montgomery County Public Schools, the Office of Special Education provides, implements, and monitors special education services to ensure that MCPS provides Free Appropriate Public Education to students with disabilities. On its website, MCPS states that “special education services provide specially designed instruction that involves modifications to the curriculum itself and/or the way the curriculum is taught to meet the specific needs of the student.”

MCPS Special Education Enrollment Data

MCPS provides data on students receiving special education services in its [Special Education at a Glance](#) report. A total of 20,233 MCPS students (12.7% of all MCPS students) were receiving

special education services as of October 1, 2022. Of the MCPS students receiving special education services, 67.6% were male, 32.4% were female, and less than 5% were unspecified/non-binary. Of MCPS students receiving special education services:

- 37.6% were Hispanic/Latino (compared to 34.6% of all MCPS students),
- 26.6% were Black or African American (compared to 21.8% of all MCPS students),
- 22.9% were White (compared to 24.4% of all MCPS students),
- 8.1% were Asian (compared to 13.9% of all MCPS students),
- Less than 5% were two or more races (compared to 5.1% of all MCPS students),
- Less than 5% were American Indian or Alaskan Native (compared to less than 5% of all MCPS students), and
- Less than 5% were Native Hawaiian or other Pacific Islander (compared to less than 5% of all MCPS students).

Of the students receiving special education services in MCPS, 26.6% were Emergent Multilingual Learners (compared to 18.8% of all MCPS students), and 51.7% participate in the Free and Reduced-price Meals System (compared to 43.8% of all MCPS students).

Special Education Resources

The Maryland State Department of Education (MSDE) and MCPS provide several resources for parents regarding special education services.

- [A Parent's Guide to Understanding Your Individualized Education Program \(IEP\) Rights and Responsibilities in Maryland](#), Maryland State Department of Education
- [Family Support Center](#), MCPS
- [MCPS Special Education Compliance Manual](#), MCPS
- [Common Questions in Special Education](#), MCPS

There is also a [Special Education Citizens Advisory Committee](#) (SECAC) in MCPS. SECAC is comprised of parents and guardians, MCPS staff, and community group representatives. SECAC advocates for families as well as for the MCPS Office of Special Education, and acts as a resource for families and students with special needs.

FY24 Budget

Special education services are budgeted in Category 6, Special Education. As defined by the State, this category includes all instructional costs and supplies for special education services, and it also includes all dedicated administrative costs and professional development related to special education service provision.

For FY24, the total appropriation in Category 6 is \$425,546,035, and includes 4,776.4 FTE. This is an increase of \$28.6 million and 202.5 FTE over the FY23 approved level. The Board of Education's approval memorandum for the FY24 Operating Budget dated June 6, 2023, reflected increased funding for two areas of special education:

- \$2.1 million and 33.8 FTE to increase the number of Pre-K classrooms for young children with special needs; and
- \$931,169 and 3 positions to support 504 Plan Administration efforts.

II. SPECIAL EDUCATION SERVICE PROCESSES

The following information about the special education determination and dispute resolution processes is drawn from the above resources.

Special Education Determination Process

In Montgomery County, a teacher or group of teachers work with parents/guardians in a collaborative problem-solving process before decisions are made regarding a student's need for special education services. Teachers develop an intervention plan for assisting the student and document the impact of that intervention. If the student's outcomes do not improve, the case may be referred to an Educational Management Team, which may recommend a screening for consideration of special education services.

The Maryland State Department of Education outlines an eight-step process for determining whether to provide special education services to a student in [A Parent's Guide to Understanding Your Individualized Education Program \(IEP\) Rights and Responsibilities in Maryland](#).

- **Step 1: Referral** – A parent/guardian or teacher may make a written referral to the school if they suspect a student may have a disability and needs special education services. The parent/guardian will be invited to an IEP team meeting to review the referral and other information to decide if testing is needed.
- **Step 2: Assessment** – The student completes tests related to all areas connected to the suspected disability, such as: health, reasoning, communication, social/emotional skills, behavior, self-help, physical and vocational needs and abilities. Parent/guardian permission (consent) is required before individualized tests can be given.
- **Step 3: Eligibility (Initial Evaluation)** – The IEP team decides whether the student has a disability that requires special education.
- **Step 4: IEP Development** – If the student's IEP team decides the student has a disability and needs special education, the IEP team develops a program of services based on the student's needs within 30 days of the Initial Evaluation Meeting. The school may not begin to provide special education services until the parent/guardian gives consent.

IEPs differ from 504 plans in that IEPs are developed for students with a documented disability that has a significant educational impact while 504 plans are developed for students who have a documented impairment which substantially limits their ability to perform a major life activity.

- **Step 5: IEP Implementation** – The student is to receive services, as listed on the IEP, as soon as possible after IEP development. Each of the student's service providers is to have access to a copy of the IEP and be informed of their specific responsibilities, accommodations, modifications, and supports for the student.
- **Step 6: Progress Monitoring** – The student's IEP is to include information on how the parent/guardian is to be informed of the student's progress toward meeting their annual goals. The parent/guardian is to receive the progress reports as often as a parent/guardian of a nondisabled child is informed of their child's progress.

- **Step 7: Annual Review** – The IEP team is to review the student’s IEP at least annually to decide whether the student is achieving their annual goals and to revise the student’s IEP, as appropriate.
- **Step 8: Reevaluation** – Reevaluation aims to determine the student’s educational and developmental needs, whether the student continues to require special education services, and whether modifications to special education services are needed.

Special Education Dispute Resolution

The [MCPS Special Education Compliance Manual section Resolving Special Education Disputes](#) describes the process by which a parent/guardian may challenge a decision by the IEP team.

IDEA requires that school systems have both formal and informal methods of dispute resolution to address special education complaints and disagreements. If a parent/guardian does not agree with a decision that has been made by an IEP team concerning the identification, evaluation, placement, or the provision of Free Appropriate Public Education for a student with disabilities, four types of dispute resolution procedures are available.

- Administrative Review
- Mediation
- Due Process Hearing
- State Complaint

In addition, a parent/guardian who alleges that MCPS has discriminated against their child on the basis of disability may file a complaint under Section 504 of the Rehabilitation Act of 1973 with the Office for Civil Rights (OCR) in the U.S. Department of Education.

The Resolution and Compliance Unit (RACU) is responsible for coordinating Administrative Reviews, mediations, due process hearings, resolution meetings, and state special education complaints. RACU may also assist with OCR complaints alleging discrimination against a student with a disability which are handled by the MCPS Office of the General Counsel (OGC). OGC is also involved in mediation/resolution sessions when attorneys are involved and represent MCPS during the due process hearing.

III. SPECIAL EDUCATION COMPENSATORY SERVICES

Compensatory services are required when students do not receive evaluations or services to which they were entitled through their IEP. Services can be missed for a variety of reasons; the COVID-19 pandemic resulted in an extensive backlog of special education services that are required to be provided to students as compensatory services. Compensatory services must be provided outside of the school day.

MCPS provided the information below on compensatory services in response to a prior request from the E&C Committee. MCPS’s response was originally included in the packet for the E&C Committee’s FY24 Operating Budget worksession on May 4, 2023.

“The Office of Special Education has two staff members whose work is primarily focused on the provision of compensatory services related to the COVID-19 pandemic closures. This department manages and assigns special education teachers who are employed as tutors to provide the services and related services providers. There were approximately 6,400 students determined eligible for compensatory services as a result of the COVID-19 closures, and over half have completed services. We continue to work with families to schedule compensatory services on an ongoing basis and offer services at students’ local schools during the week as well as at regional sites throughout the county during the week and on weekends.”

	FY 2023 Actuals + Projected	FY 2024 Projected
Local	\$1,151,783	\$1,100,000
ESSER II	\$3,413,372	
ESSER III	\$2,270,033	\$5,246,220
TOTAL	\$6,835,188	\$6,246,220

IV. DISCUSSION

MCPS leadership will provide an overview presentation focusing on the process elements of special education services. In addition, the Committee may want to discuss whether the challenges with hiring and retaining staff particularly in special education services impact the system’s ability to effectively implement these special education service processes.

Attachments:

Letter from Deputy Superintendent Murphy
 Presentation to the E&C Committee, June 22, 2023

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MONTGOMERY COUNTY PUBLIC SCHOOLS

Expanding Opportunity and Unleashing Potential

OFFICE OF THE DEPUTY SUPERINTENDENT

June 21, 2023

The Honorable Will Jawando, Chair
and Members of the Education and Culture Committee
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Chair Jawando and Members of the Education and Culture Committee:

The Montgomery County Council Education and Culture Committee asked the following questions seeking responses for the June 22, 2023, work session. The following topics will be discussed:

- Update: 2023 Summer School Program
- Overview: Special Education Processes and Compensatory Services

Question

Update: 2023 Summer School Program

- What is being offered for summer school this year?
- Please provide data on the number of classes and programs offered, enrollment, and staffing. Please also compare these data to last year's offerings and participation.
- What funding source is supporting summer school in 2023 (General funds or ESSER)? What is the total cost for 2023 summer school? Please provide a cost breakdown, including staff costs, transportation, and supplies.
- Have there been any significant changes in offering, eligibility, or outreach for 2023 compared to past summers? If so, please describe.

Response

The summer programs offered this year are Local Summer Programs (LSP) for rising 1st – 12th graders, Central Summer High School Program (CHSSP) for current high school students taking online credit courses, Extended Learning Opportunity (ELO SAIL) for elementary Title I schools, Extended School Year (ESY) for students with disabilities who qualify for additional services to their Individualized Education Program (IEP) over the summer, and Early Childhood Summer Program for currently enrolled Prekindergarten and Head Start students in non-Title I school for the upcoming kindergarten year. Each program holds its own set of data around classes, staffing, funding sources, and breakdown of costs, which can be found in the [2022–2023 Summer School Update](#).

Question

Overview: Special Education Processes and Compensatory Services

The Committee is interested in understanding the processes to establish services, monitor compliance, and resolve conflicts regarding special education. Please provide an overview of these processes, including the following:

- What are the differences between IEP and 504 processes?
- How do parents appeal special education placement and other decisions? How can differences be resolved?
- What obstacles may arise to providing required special education services?
- When are compensatory services required, how are they determined, and how are they provided?

Response

Students who receive services through an IEP or Section 504 Plan are considered to be students with disabilities. Special education is governed by the [Individuals with Disabilities Education Act \(IDEA\)](#), reauthorized in 2004. Special education is defined as specially designed instruction, at no cost to parents/guardians, to meet the unique needs of students with disabilities, including— instruction conducted in the classroom, in the home, in hospitals and institutions, and other settings, and physical education.

Special education can include speech-language pathology services or any related service, including travel training and vocational education. Students eligible for special education and related services must have a disability that falls into one or more of the following 14 disability categories: Autism, deaf-blindness, deafness, developmental delay, emotional disability, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, speech or language impairment, traumatic brain injury, specific learning disability or visual impairment.

IDEA is grounded in the landmark Supreme Court Decision *Brown vs. The Board of Education of Topeka, Kansas*, in which the court held that separate schools based on race were inherently unequal. As a result, after other court cases laid the foundation for deinstitutionalizing individuals with disabilities, school systems began developing programming and providing services to students with disabilities to the maximum extent possible in public school settings.

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a civil rights law for individuals with disabilities, which states, “No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Section 504 applies to public schools. It requires schools to make “reasonable accommodations” for students with disabilities to allow them to participate in school

and school-related activities if they have a disability that substantially limits a major life activity. 29 U.S.C. § 794. Students eligible under Section 504 receive accommodations through a Section 504 Plan.¹

Question

What are the differences between IEP and Section 504 processes?

Response

Identification and Eligibility

Students with IEPs

IDEA requires school districts to locate, identify, and evaluate all students suspected of having a disability from birth to age 21. This "child find" obligation can be initiated by the school district or the parent/guardian of a student who resides in or attends a school in the district. To be eligible for special education services, a student must have a disability that falls in one or more of the 14 qualifying conditions, and the disability must adversely impact the student's educational performance.

Students with Section 504 Plans

Section 504 requires school districts to identify and evaluate all students suspected of having a disability. This "child find" obligation can be initiated by the school district or the parent/guardian of a student who resides in or attends a school in the district for a child who has or has had a physical or mental impairment that substantially limits a major life activity, such as walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks. Identification and eligibility for a Section 504 Plan do not require that a child need special education or related services.

Evaluation

Students with IEPs

IDEA requires:

- The use of various assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s)/guardian(s) using nondiscriminatory assessment tools administered in the student's native language;
- A comprehensive evaluation by a multidisciplinary team;
- Informed and written parent/guardian consent;
- A reevaluation of the child at least once every three years, or more frequently if conditions

¹ Children, C. for E. (2023). *Understanding the Differences Between IDEA and Section 504*. LD Online. <https://www.ldonline.org/ld-topics/special-education/understanding-differences-between-idea-and-section-504>

warrant a reevaluation or if the child's parent/guardian or teacher requests a reevaluation sooner; and

- The provisions of an independent evaluation at the district's expense if parents/guardians disagree with the first evaluation

Students with Section 504 Plans require:

- An evaluation that draws on information from a variety of documented sources;
- Decisions about the student, evaluation data, and placement options must be determined by individuals knowledgeable about the student;
- Parents/guardians must receive notification of decisions made by the 504 teams; and
- "Periodic" reevaluation to determine if continued eligibility is required. Montgomery County Public Schools (MCPS) utilizes a 3-year reevaluation cycle.

Free and Appropriate Public Education (FAPE)

Students with an IEP

- IDEA requires that students eligible for an IEP receive FAPE and that the IEP be based on students' individual needs.
- "Appropriate" education means a program designed to provide "educational benefit" for a person with disabilities and provides related services if required. Related services may include speech and language therapy, occupational therapy, physical therapy, counseling services, psychological services, social services, and transportation.
- Placement may be provided through a continuum of service delivery models starting in the general education classroom.
- IDEA requires that students with disabilities be educated in the least restrictive environment with their nondisabled peers to the maximum extent possible.

Students with a Section 504 Plan

- Section 504 requires students to receive a FAPE and that the IEP be based on students' individual needs.
- "Appropriate" means an education comparable to the education provided to students who are not disabled.
- Children can receive specialized instruction, related services, or accommodations within the general education classroom.
- Section 504 plan accommodations may be required to ensure students can access all educational settings, including field trips and extracurricular activities.

Plan Reviews

Students with IEPs

Initial and annual review IEPs are effective one year from the meeting date on which the IEP was drafted. **Periodic reviews or amendment** meetings may be held throughout the year to consider

new information, discuss student progress, and make appropriate revisions to ensure students receive FAPE or upon request by parents/guardians or school team members.

Students with Section 504 Plans

Section 504 plans are reviewed and revised annually with the school team and parent/guardian participation.²

Question

How do parents appeal special education placement and other decisions? How can differences be resolved?

Response

Parents/guardians of students with IEPs or 504 Plans can contact the [MCPS Resolution and Compliance Unit](#) (RACU) to resolve disputes regarding the identification, evaluation, educational placement, or provision of FAPE for a student with a disability or suspected of having a disability under IDEA or Section 504.

IDEA has a statutory and regulatory schema that provides due process rights to students and parents/guardians and requires school districts to inform parents of their rights to any of the following processes:

- Mediation
- Due Process
- Filing of a State Complaint with the Maryland State Department of Education

Complaints filed as a result of a dispute related to a Section 504 Plan may be filed with the U. S. Department of Education, Office of Civil Rights.

Additionally, MCPS has implemented its dispute resolution process by which parents/guardians may file a request for Administrative Review. In an Administrative Review, staff members from RACU will investigate complaints related to special education or Section 504 and make recommendations on how to resolve matters. MCPS advocates for dispute resolution at the lowest level and encourages parents/guardians to first attempt to resolve matters at the school level. If this is unsuccessful, parents/guardians may seek assistance from central office special education supervisors, the special education liaison, RACU, or the Parent Resource Center.³

Question

What obstacles may arise to providing required special education services?

Response

Obstacles to the provision of special education services may arise when:

- Students are repeatedly absent from school and are therefore unable to avail themselves of

² [\(Children, 2023\)](#)

³ [\(Children, 2023\)](#)

the specially designed instruction and related services available.

- School systems face special education teacher and related service provider shortages.
- Special education teachers, related service providers, and paraeducators have high turnover rates.

Question

When are compensatory services required, how are they determined, and how are they provided?


Response

A compensatory education services discussion is required when it is found that a student did not receive FAPE. This discussion is held during an IEP team meeting with the support of RACU. Compensatory services are determined by thoroughly analyzing relevant data, including attendance, academic performance, health, and progress on IEP goals. Data is reviewed from all team members, including teachers, special educators, paraeducators, school psychologists, professional school counselors, related service providers, and parents/guardians.

After a data review, the IEP team determines whether the denial of FAPE negatively impacted the student and what should be provided to address the impact. Generally, compensatory services are provided through tutoring and focus on the services that were not implemented or were missed. MCPS employs its teachers and paraeducators to provide compensatory services, which must be delivered outside the regular school day.

For questions regarding summer school, please contact Ms. Niki T. Hazel, associate superintendent of curriculum and instructional programs, Office of the Chief Academic Officer, via email or 240-740-3970. For questions regarding special education, please contact Ms. Diana K. Wyles, associate superintendent of special education, Office of the Chief Academic Officer, via email or 240-740-3042.

Sincerely,



Patrick K. Murphy, Ed.D.
Deputy Superintendent

PKM:PAP

Copy to:

Members of the Montgomery County Council
Members of the Board of Education
Executive Staff
Ms. Webb

Presentation to the Education and Culture Committee

Special Education Processes and Compensatory Services

Ms. Diana K. Wyles, Associate Superintendent, Office of Special Education (OSE)
Thursday, June 22, 2023

Introduction

Students who receive services through an Individualized Education Program (IEP) or a 504 Plan are considered to be students with disabilities.

Legal Definition of Special Education

Individuals with Disabilities Education Act (IDEA)

- specially designed instruction
- at no cost to the parents/guardians
- the provision of Free Appropriate Public Education (FAPE)

Legal Definition of Special Education

- Includes Related Services
- Requires Transition Services
- Requires students to be determined eligible under one or more of the disability categories
- Students must have a disability that has an adverse educational impact

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 (Section 504)

“No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Section 504 of the Rehabilitation Act of 1973

- “reasonable accommodations” for students with disabilities
- disability must substantially limits a major life activity.
- The provision of a Free Appropriate Public Education (FAPE)

IDEA v. Section 504

IDEA

- Specially Designed Instruction
- Least Restrictive Environment
- Individualized Education Program

Section 504

- Reasonable Accommodations
- Section 504 Plan

IDEA & 504

- Civil Rights Laws
- Must Provide FAPE

IDEA: Identification and Eligibility

- School districts must locate, identify, and evaluate all children suspected of having a disability from birth to age 21
- “Child Find” can be initiated by the school district or the parent/guardian of a student who resides in or attends a school located in the district

Section 504: Identification and Eligibility

- School districts must identify and evaluate all children suspected of having a disability.
- “Child Find” obligation can be initiated by the school district or the parent/guardian of a student who resides in or attends a school located in the district for a child who has or has had a physical or mental impairment that substantially limits a major life activity, such as walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks. Identification and eligibility for a 504 Plan does not require that a child need special education or related services.

Understanding the Differences Between IDEA and Section 504 - Idonline.org

IDEA v. Section 504: Eligibility

IDEA

- At least 1 of the 14 federally identified disabilities
- Adverse educational impact
 - Could include behavior, academics, vocational, or related services

Section 504

- Any disabling condition
- Substantially limiting a major life activity
 - Ex. walking, talking standing, reading, learning, seeing, etc.

IDEA: Evaluation

- Must use a variety of nondiscriminatory assessment tools in the students native language
- Must consider information provided by parents/guardians
- Must evaluate in all areas of suspected disability
- Requires reevaluation to determine continued eligibility at least once every three years

Section 504: Evaluation

- Evaluation using a variety of documented sources
- Decisions about the child, evaluation data, and placement options must be determined by individuals knowledgeable about the student
- “Periodic” reevaluation to determine continued eligibility are required. MCPS utilizes a 3-year reevaluation cycle.

IDEA v. Section 504: Evaluation

IDEA & Section 504

- Must use multiple sources of information; formal/informal data and evaluations
- Must be nondiscriminatory
- Must include school staff that are knowledgeable about the student and are qualified to interpret data

Free Appropriate Public Education (FAPE)

- Based on students' individual needs
- "Appropriate" = "educational benefit" for a person with disabilities and provides related services, if required
- Continuum of service delivery models starting in the general education classroom

Free Appropriate Public Education (FAPE)

- IDEA requires least restrictive environment (LRE)
- Section 504 accommodations may be required for field trips and extracurricular activities.

IDEA v. Section 504: Reviews

IDEA & Section 504

- IEPs required to be reviewed and revised annually
- 504 Plans—law does not specifically state annual review, but courts have interpreted annual reviews as being appropriate
- Review meeting can occur more frequently than annually

Formal Dispute Resolution

Required by state/federal law:

- Voluntary Mediation
- Due Process Complaint
- State Complaint

Informal Dispute Resolution

- Administrative Review (MCPS Process)
- Informal dispute resolution—referral from schools to Central Office for support
- Special Education Liaison
- Parent Resource Center

Obstacles to IEP Service Provision

- Students absences
- Staffing shortages
- Staffing turnover rates

Compensatory Services

- Provided when there is a violation of FAPE
- Must be a negative impact
- Intended to make a student whole if services are inappropriate or missed

Questions

Thank you!

