



July 24, 2017

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

RE: XXXXX
Reference: #17-150

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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.

ALLEGATION:

On May 25, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, 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 student. The MSDE investigated the allegation that the AACPS has not ensured that the educational placement is in the Least Restrictive Environment (LRE) in which the Individualized Education Program (IEP) can be implemented, since January 2017, in accordance with 34 CFR §300.114.

INVESTIGATIVE PROCEDURES:

1. On May 26, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Bobbi Pedrick, Executive Director of Special Education, AACPS.
2. On June 5, 2017, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated.

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3. On June 12, 2017, the MSDE sent correspondence to the complainant that identified the allegation subject to this investigation. On the same date, the MSDE notified the AACPS of the allegation and requested that the AACPS review the alleged violation.
4. On June 6, 22 and 26, 2017, the complainant provided documents to the MSDE.
5. On June 19, 2017, and July 20, 2017, the AACPS provided the MSDE with documentation.
6. On June 26 and 30, 2017, and July 19, 2017, the MSDE requested the AACPS to provide additional documentation for consideration.
7. On June 30, 2017, Ms. Austin and Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a site visit at the AACPS Central Office to review the student's educational record, and interviewed Ms. Clare Brady, Case Manager - Nonpublic Office, AACPS. Ms. Alison Barmat, Program Manager, Compliance and Legal Issues, AACPS, participated in the site visit as a representative of the AACPS and to provide information on the school system's policies and procedures, as needed.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated December 7, 2016;
 - b. IEP Team Meeting Report and Prior Written Notice for the IEP meeting convened on March 21, 2017;
 - c. Electronic mail (email) communications between the complainant, the student's father, the school system staff, and the XXXXXXXX staff, dated March 2017 to June 2017; and
 - d. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on May 25, 2017.

BACKGROUND:

The student is twelve (12) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services. He attends XXXXXX XXXXXX, a nonpublic, separate, special education school where he was placed by the AACPS (Doc. a).

During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Doc. b).

FINDINGS OF FACTS:

1. The IEP states that the student “requires behavioral and social skills supports not offered within the county continuum.” It reflects that the Least Restrictive Environment (LRE) for the student is a nonpublic, separate, special education school, but the IEP team agreed to develop a plan for transitioning the student to a less restrictive environment (Doc. a).
2. On March 21, 2017, the IEP team convened to consider the complainant’s request that the student attend XXXXXXXXXXXXXXXXXXXXXXXXXX (XXX) at the start of the 2017 – 2018 school year. The complainant also shared with the team the student’s continued desire to attend a school with larger class sizes to provide him more opportunities for social interactions with peers, and her “strong desire” for the student to attend the XXX (Doc. b).
3. Students attending XXX receive instruction in the general education setting, and are challenged to their “maximum academic and social capacity” through a curriculum that is “rigorous and technologically-integrated” with an emphasis on science, math and technology. Students at XXX are described as “fiercely academic” and “boldly competitive,” and are expected to succeed and excel in the learning process (Doc. b and the XXX website:<http://myXXX.org/>).
4. The prior written notice dated March 21, 2017, documents that the IEP team discussed the student’s progress and current performance, including the following information:
 - He “willingly” interacts with preferred staff and peers when he interested in interaction. He responds to prompts for social language.
 - He is making progress in addressing his anxiety and has not had a “melt down” since November 2016.
 - His behaviors are more manageable in the classroom and he independently requests breaks.
 - He independently requests a quiet space to complete work when there is too much sensory input.
 - He is completing classwork and is independently initiating work within a “few moments” of request, including nonpreferred work (Doc. b).
5. With the participation of the XX school staff, the IEP team discussed the environment at XX. The XXX staff explained that there is a “heavy” homework requirement, up to two (2) hours each night, class sizes average twenty-five (25) students, and classes are eighty-three (83) minutes long. They discussed that the student is in small class sizes of five to eight (5 - 8) students, with two to three (2 - 3) adult staff, and that he utilizes breaks “frequently” when work is challenging. The IEP team also discussed the student’s difficulty with completing homework, and that homework is 10% of the grading system at XXX. Based on this information, the IEP team determined that, while the student is making progress, XXX is not an appropriate setting (Doc. b).

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6. Based on the data, the IEP team determined that the IEP could not be implemented in the setting requested by the complainant. However, the IEP team decided to recommend that the IEP be implemented at the XXXXXXXXXXXXXXXXXXXX (XXX). The IEP team discussed that, in this placement, the student could receive special education instruction from staff from the XXXXXXXXXXXXXXX, a nonpublic separate special education school, which operates a program at XXXX through a public/private partnership, but also have opportunities to transition him to interactions with nondisabled peers (Doc. b).
7. The IEP team discussed that referral to the program would be made upon receipt of consent from the complainant. To date, there is no documentation that the complainant has provided consent or that a referral has been made (Doc. b and review of the student's educational records).

DISCUSSION/CONCLUSIONS:

When determining the educational placement of a student with a disability, the IEP team decision must be made in conformity with the Least Restrictive Environment (LRE) provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR §300.116 and COMAR 13A.05.01.10(C)(1)).

The IDEA requires that the public agency ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled. Further, the IDEA requires that special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved (34 CFR §§300.114 - .116).

In selecting the LRE, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs. A student with a disability is not removed from education in an age-appropriate regular classroom setting solely because of needed modifications in the general curriculum (34 CFR §300.116 and COMAR 13A.05.01.10(C) (1)).

Based on Findings of Facts #1 - #6, the MSDE finds that the IEP team considered the data regarding the student's current performance and the complainant's request that the student attend XXX. Based on the Finding of Fact #6, the MSDE finds that, while the IEP team determined that the student's IEP cannot be implemented at XXX, they determined that the IEP can be implemented in a nonpublic separate special education school that is located within a public school setting. Therefore, the MSDE finds that the AACPS followed proper procedures when determining the student's educational placement for the 2017-2018 school year and does not find a violation.

ADDITIONAL ISSUE IDENTIFIED DURING THE INVESTIGATION:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101).

Based on the Findings of Facts #6 and #7, that MSDE finds that the AACPS has not implemented the student's IEP in the agreed upon setting. Therefore, this office finds a violation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the AACPS to provide documentation by September 15, 2017, that the IEP is being implemented in accordance with the IEP team's March 2017 decision in a manner that does not require parental consent.

The AACPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant and the AACPS maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the IEP team's decisions.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the AACPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement as reported in this Letter of Findings.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. 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. 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 Special Education/
Early Intervention Services

MEF/sa

c: George Arlotto
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