



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

May 14, 2018

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

RE: XXXXX
Reference: #18-099

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:

The MSDE investigated a complaint received from Dr. and Mr. XXXXXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants 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 student has been offered a Free Appropriate Public Education (FAPE), since June 1, 2017, in accordance with 34 CFR §300.101, .320 and .324.

BACKGROUND:

The student is twelve (12) years old and in the seventh (7th) grade. She attends XXXXXXXX XXXXXX, a nonpublic, separate, special education school, where she is parentally placed. She is identified as a student with Multiple Disabilities under the IDEA, including Autism and an Emotional Disability.

FINDINGS OF FACTS:

1. The student has been attending XXXXXXXXXXXX since November 2015, when the complainants withdrew her from the AACPS and parentally placed her there. At that time, the student was identified by the AACPS as a student with Multiple Disabilities under the IDEA, including Autism and an Other Health Impairment related to Attention Deficit Hyperactivity Disorder (ADHD), and had an IEP requiring the provision of special education services in a public school placement.
2. In June 2017, the complainants requested that the AACPS place the student at XXXXXXXXXXXX, at public expense. In response, the school staff scheduled an IEP meeting to develop an IEP for the student.
3. On August 3, 2017, the IEP team convened. The team reviewed the student's educational records from XXXXXXXXXXXXXXXX (XX Records) that were received from the complainants. The HS Records included an IEP developed by XXXXXXXXXXXXXXXX (XX IEP) that reflects annual goals to address the student's needs in the identified areas of written language, social skills, occupational therapy skills, math problem solving and computation, learning behavior and counseling. In addition to requiring thirty-one (31) hours per week of specialized instruction to address the goals, the XX IEP also requires twenty-five (25) supplementary aids and supports, twelve (12) instructional and testing accommodations, and related services of counseling and occupational therapy.
4. The XX Records document information about the student's functioning and needs, including the following:
 - She "is very good at engaging in conversations with peers," but "sometimes struggles to engage appropriately with peers and recognize the impact of her comments and behavior on others.
 - She attempts preferred tasks, follows routine class procedures and finishes class and homework assignments, but "continues to struggle" with independently attempting challenging assignments and attempting non-preferred tasks.
 - She is "receptive" to constructive feedback and being respectful of personal space, uses appropriate turn-taking strategies during peer conversations, but has difficulty respecting opinions of peers, appropriately accepting redirection in social situations, and taking a break when frustrated in social situations.
 - She is "working on being aware of using kind words and being respectful of others feelings. [She] is working on accepting responsibility for her words, and the impact they have on her peers."
 - "With teacher redirection and discussion, [she] is more willing to see situations from another's point of view."
 - She was absent thirty-seven (37) days during the 2016 - 2017 school year.

XXX

Ms. Bobbi Pedrick

May 14, 2018

Page 3

- “Excessive absences have limited the student’s progress.” While her efforts in all classes are reported to be “satisfactory,” she has “incomplete” grades in all courses.
5. The IEP team considered input from the complainants, including reports that the student has difficulty coping with “the stress of attempting to keep up,” has behaviors that may include throwing items, crying and “temper tantrums,” and is “monitored extremely closely” at XXXXXXXXXXXX for inappropriate peer interactions. The complainants reported that the student continues to express concern “at a concerning high frequency,” both at home and with XXXXXXXXXXXXXXXX staff, about difficult peer relations when she was in the public school setting.
 6. However, the complainants reported that the student’s functioning had improved since attending XXXXXXXXXXXX in a “nurturing,” “more individualized, less challenging and complex school environment.” They explained that the student now has friendships with a small group of peers, has begun to “blossom” particularly in the areas of self-confidence and sense of self, is able to verbalize her opinions and wants at home in an “eloquent and mature” manner, is beginning to “balance a still persistent, overwhelming fear of negative response and isolationism” from her peers, and is making “some progress towards the development of foundational social, emotional and behavioral skills.”
 7. The IEP team decided that they needed to consult with the XXXXXXXXXXXX staff and observe the student in her current school environment, and the complainants provided written consent. On September 13, 2017, the school system staff observed the student at XXXXXXXXXXXXXXXX.
 8. On September 29, 2017, the IEP team reconvened and the school system staff shared information obtained through consultation with XXXXXXXXXXXX staff, and from observations of the student at XXXXXXXXXXXXXXXX. They reported that the student’s ability to complete her work was above that of her peers, and that she was able to complete work independently but often needed prompts and reminders to stay on task. The school system staff further reported that while the student was able to easily follow classroom routines, she was also observed making “somewhat negative” comments about her peers and several off-task behaviors, such as calling out to teachers and peers.
 9. The complainants expressed concerns about the level of support that is required in order to address the student’s “mental health needs” and closely monitor the inappropriate behaviors she uses to respond to social situations. In addition, the complainants expressed concern about the number of transitions in public school, and concern that the student may be “singled out [in public school] because of her social deficits.” The complainants shared their uncertainty as to whether the student’s “social and emotional needs can be met [in a public school setting] in the same way they are at” XXXXXXXXXXXXXXXX.

XXX

Ms. Bobbi Pedrick

May 14, 2018

Page 4

10. The complainants requested that the AACPS place the student at XXXXXXXXXXXX at public expense. The school staff reviewed the IEP process with the complainants, explaining that a determination of placement cannot be made before the development of an IEP identifying the specific needs, supports and special education services that the student requires.
11. The IEP team updated the student's present levels of academic achievement and functional performance in math, written expression, reading, cognitive and learning behaviors.
12. On October 6, 2017, the IEP team reconvened to continue the September 29, 2017 IEP meeting. The complainants shared the student's report of suicidal ideation if she could not continue attending XXXXXXXXXXXX, and expressed their belief that the student's social, emotional, and behavioral needs could not be met in a public school setting.
13. The IEP team completed the development of an IEP for the student. The proposed IEP includes one (1) math goal and one (1) learning behavior goal requiring the student to complete non-preferred tasks in a given time frame. The IEP also includes two (2) goals to address social and social and emotional skills, requiring the student to use learned coping strategies to manage negative emotions and feelings of anxiety to actively participate in learning activities, and requiring the student to demonstrate appropriate social skills when interacting with peers and adults by initiating conversations in a positive manner.
14. Based on insufficient data to document a regression over breaks from school and the student's ability to recoup skills, the IEP team deferred the decision of whether the student qualifies for Extended School Year (ESY) services until more data was obtained.
15. The IEP team determined that the student requires ten (10) hours per week of specialized instruction in the general education classroom, provided by a general educator and a special educator, to address the student's academic and social emotional and behavioral skills needs. They also determined that the student requires thirty (30) minutes per week of counseling by a school psychologist.
16. The IEP team determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a general education classroom with the provision of supplementary aid and services, including daily support for social interactions in the classroom, additional adult support throughout the day, behavioral support including deescalation, wait time, and access to a quiet or private space in the classroom, encouragement and reinforcement of appropriate behavior in academic and non-academic setting, and a pass for the student to visit a school psychologist or school counselor.

XXX

Ms. Bobbi Pedrick

May 14, 2018

Page 5

17. The complainants disagreed with the special education services and the placement decision. The Prior Written Notice (PWN) of the decisions made at the October 2017 IEP team meeting reflects that the complainants did “not feel that this is the right time” for the student to return to a public school environment, and that they “intend to keep her at the XXXXXXXX at this time” to receive the necessary supports.
18. On October 11, 2017, the complainants sent an electronic mail (email) to the school system staff requesting an “independent evaluation” of the student’s psychological and cognitive functioning. The school system staff explained that the IEP team could convene for the purpose of planning a reevaluation, but that there was no reevaluation to disagree with at that time.
19. On October 19, 2017, the complainants requested a reevaluation in order to obtain additional information about the student’s cognitive, psychological, and academic functioning.
20. On November 3, 2017, the IEP team convened. The IEP team reviewed existing data and the complainants’ reports of the student’s behavior, and suspected that the student may have an Emotional Disability. The IEP team decided to conduct assessments of the student’s cognitive ability, psychological processing skills, attention and executive functioning skills, academic performance, and social, emotional and behavioral skills. The IEP team also recommended a Functional Behavior Assessment. The complainants provided written consent for the recommended assessments on November 4, 2017.
21. On December 21, 2017 the IEP team convened to review the assessment results and the complainants participated by telephone. The team discussed that the student’s scores on the academic assessment indicate that she is performing in the “average” range in written expression and math, and in the “above average” range in reading.
22. The IEP team also reviewed the results of the psychological assessment. The team discussed that the results of the cognitive testing indicate that the student has “average” visual spatial skills and processing speed, strengths in verbal comprehension and fluid reasoning, weaknesses in working memory, and a full scale IQ score of 117.
23. The psychological assessment report includes ratings of the student’s social, emotional and behavioral functioning by the student, the complainants, and two (2) of the student’s teachers from XXXXXXXX that reflect the following:
 - The student reported “at-risk” ratings in the areas of depression, social stress, interpersonal relations, internalizing problems and relations with parent, and “clinically significant” ratings in the areas of locus of control and somatization.

XXX

Ms. Bobbi Pedrick

May 14, 2018

Page 6

- The complainants reported “at-risk” ratings in the areas of attention problems, social skills and leadership, and “clinically significant” ratings in areas including hyperactivity, conduct problems, anxiety, depression, somatization, withdrawal, adaptability, externalizing and internalizing problems.
 - The ratings of the XXXXXXXXXXXX staff “are inconsistent with each other and indicate that [the student] is experiencing significant emotional difficulties in school (especially in the areas of anxiety, depression, somatization, and atypicality) according to one rater, and minimal social, emotional and behavioral difficulties in school according to her other teacher.”
24. The psychological assessment documents reports from a XXXXXXXXXXXX staff that the student wants the attention of a teacher alone and away from other, isolates herself during class and does not want to interact with peers or even sit near them, while also documenting reports by another XXXXXXXXXXXX staff that the student is willing to self-advocate at times and express herself, and is generally able to quickly return to a task following redirection or disappointment.
 25. The evaluator of the psychological assessment determined that the student demonstrates an inability to maintain satisfactory interpersonal relationships, inappropriate types of behavior or feelings under normal circumstances, a general pervasive mood of unhappiness or depression, and a tendency to develop physical symptoms or fears associated with personal or school problems.
 26. There is no documentation that the IEP team reviewed the FBA that was also recommended by the team as part of the reevaluation. However, based on the results of the psychological assessment, the IEP team determined that the student is a student with Autism and an Emotional Disability. No revisions were made to the educational program and the assessment data did not contain recommendations for additional services.
 27. On January 24, 2018, the complainants sent an email to the school system staff inquiring about revisions to the IEP based on the most recent assessment results, and on February 6, 2018, the complainants requested an IEE.
 28. On February 9, 2018, the IEP team convened. Based on the results of the most recent assessments, the team revised the IEP to reflect updated present levels of academic achievement and functional performance, the use of a calculator was added as an accommodation, and encouraging the student to remain in the classroom during difficult peer interaction was added as a supplementary support.

XXX

Ms. Bobbi Pedrick

May 14, 2018

Page 7

29. The IEP team discussed that, based on the data received from XXXXXXXXXXXX, the student has not demonstrated any regression, and decided that the student does not require ESY services. The documentation reflects that the IEP team agreed to reconvene to consider whether there is data that demonstrates regression in the future.
30. The IEP team again determined that AACPS can implement the services required by the IEP. The complainants disagreed, noting concerns about the number of students in a general education classroom, the school staff's ability to recognize the student's internalizing behaviors, and their belief that the student requires more supports than AACPS can provide.
31. In response, the IEP team discussed the level of service required to meet the student's needs. The school staff explained that, based on the results of the most recent assessments, the student's needs can be met in the general education classroom, through specialized instruction by a special educator and a general educator, along with counseling services provided by a psychologist.
32. On February 12, 2018, the school system staff sent an email requesting that the complainants identify the assessments with which they disagreed. The complainant responded, explaining concern about whether the AACPS assessments were sufficient to identify the student as a student with an Emotional Disability.
33. On February 13, 2018, the school system staff agreed to fund an IEE for a psychological evaluation. The complainants were asked to inform the school system staff of the identity of their intended independent evaluator, and the school system staff agreed to send the complainant information about the criteria for funding an IEE for a psychological evaluation.

DISCUSSION/CONCLUSIONS:

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals. In order to ensure that all of the needs are appropriately identified, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101, .320, and .324).

XXX

Ms. Bobbi Pedrick

May 14, 2018

Page 8

The public agency must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are nondisabled. The removal of a student with a disability from the regular educational environment may occur only if the nature and 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).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program and placement under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the IEP to ensure that it addresses the needs identified in the data. The SEA may not, however, overturn an IEP team's decisions when proper procedures have been followed and there is data to support the team's decisions. The OSEP indicates that parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

Based on the Findings of Facts #1 - #31, the MSDE finds that the IEP team considered all of the data, and that while there is conflicting information about the student's needs, there is data to support the decisions made by the IEP team regarding the educational program, in accordance with 34 CFR §§300.324.

Based on the Findings of Facts #2, #9, #10, #16, #17, #20 and #31, the MSDE finds that the IEP team considered the complainants' request for a more restrictive placement and determined that the IEP can be implemented in a less restrictive placement with the provision of supplementary aids and services, in accordance with 34 CFR §§300.114 and .324.

Based on these Findings of Facts, this office finds that a FAPE has been offered through the development of an IEP that addresses the needs identified in the data, in accordance with 34 CFR §§300.320 and .324.

Based on the Findings of Facts #29, #30 and #31, the MSDE further finds that the school system has agreed to continue to consider the complainants' concerns and any additional data that is made available in the future. Therefore, this office does not find that a violation occurred.

XXX
Ms. Bobbi Pedrick
May 14, 2018
Page 9

TIMELINE:

Please be advised that both the complainants 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.

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 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/ksa

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