



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

July 18, 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: #18-164

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.

ALLEGATIONS:

On May 22, 2018, the MSDE investigated a complaint received from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 following allegations:

1. The AACPS did not ensure that the student was consistently provided with the additional adult support required by the Individualized Education Program (IEP), in January 2018, in accordance with 34 CFR §§300.101 and .323;
2. The AACPS did not ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324; and
3. The AACPS did not ensure that a reevaluation has occurred at least every three (3) years, in accordance with 34 CFR §300.303 and COMAR 13A.05.01.06.

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with Autism under the IDEA. She has an IEP that requires the provision of special education and related services. During the 2017 - 2018 school year the student was in the ninth (9th) grade and attended the XXXXXXXXXXXXXXXXXXXX.

**ALLEGATIONS #1 AND #2 IEP IMPLEMENTATION OF ADULT SUPPORT
DURING JANUARY 2018 AND ANNUAL REVIEW
OF THE STUDENT'S IEP**

FINDINGS OF FACTS:

1. The IEP in effect in January 2018 was developed on April 21, 2017 and amended on December 22, 2017.¹ The IEP requires specialized instruction by both a general educator and a special educator, and in addition, requires that the student be provided with “adult support” on a daily basis from an instructional assistant.
2. The IEP clarifies that the adult support is “needed throughout the day” to help the student navigate social interactions and because she “requires significant prompting and guided questioning to access curriculum and complete assignments.” The adult support is also required to assist the student with processing peer interactions because she “sometimes” interprets the words and actions of her peers “in a negative way unintended by peers.” The IEP states that “when a perceived or actual negative peer interaction occurs, [the student] can perseverate on the issue or have an emotional meltdown when an adult is not immediately available to help her process the situation.”
3. The IEP states that the student “requires constant reassurance that either her actions or responses are appropriate. These weaknesses adversely impact her ability to perform tasks independently in the classroom and also make it difficult for her to demonstrate her knowledge without support.”
4. There is documentation that, in January 2018, the school staff member who had been providing adult support to the student was no longer able to work an entire school day and was no longer working with the student.
5. There is no documentation that, in January 2018, the student was provided with adult support throughout the school day.
6. The school staff scheduled an IEP team meeting on March 26, 2018 to conduct the annual review of the IEP. This meeting was cancelled because the school staff did not provide the complainant with documents intended for discussion at the meeting at least five (5) business days prior to the meeting date.

¹ The December 22, 2017 IEP was amended to require specialized instruction in math in a general education classroom rather than a separate special education classroom.

7. On May 25, 2018 the IEP team convened and conducted an annual review of the student's educational program. The IEP team revised the IEP to reflect that the adult support can be provided by the classroom teachers or an instructional assistant. The IEP clarifies that the adult support to the student will be provided "to help her with transitioning between classes when needed and to facilitate on-task behavior and attentiveness to tasks, as well as to assist with implementing learned coping strategies for managing feelings of anger or frustration."
8. The IEP was also revised to include the periodic provision of additional social and behavioral supplementary supports, primarily by a special educator, including the following:
 - address the student in a calm, neutral tone of voice when she is frustrated or upset;
 - provide verbal and/or nonverbal prompts for the student to use learned coping strategies when frustrated or upset;
 - provide advance notice, when possible, of changes in schedule or routine; and
 - periodic review of the student's grades to reduce her anxiety over school performance.

Daily reinforcement of positive behavior through nonverbal/verbal communication was also added, to be provided primarily by a special educator.

9. At the May 25, 2018 meeting, the IEP team also determined that periodic consultations by a school psychologist are required "to monitor [the student's] use of learned coping strategies for managing her anxiety and perception of peer interactions." In addition, the IEP team determined that the student requires thirty (30) minutes per month of direct counseling services, to be provided primarily by a school psychologist.
10. The report of a psychological assessment, conducted in June 2018, documents reports by the student's teachers that, while she was enthusiastic about school and had a strong work ethic, the student "periodically responded to stress through emotional breakdowns," "had meltdowns when she was mad or upset," "struggled to perform in a fast-paced environment," "tended" to be off-topic and distracted in class, "occasionally" required prompting to remain on topic and follow directions, "resisted playing academic games" because she was anxious about winning or losing, had difficulty remembering and following directions, and "some difficulty with peer interactions, especially with age-appropriate social skills."
11. The reports of the student's progress developed by the school staff in January 2018, April 2018 and May 2018 document that the student was making sufficient progress towards mastery of all of the annual IEP goals.
12. The student earned four (4) As, two (2) Bs and one (1) C as her final grades for the first (1st) quarter of the 2017 - 2018 school year. She earned three (3) As, three (3) Bs and one (1) C her final grades for the second (2nd) semester of the 2017 - 2018 school year.

DISCUSSION/CONCLUSIONS:

Allegation #1 Provision of Adult Support

In this case, the complainant alleges that the student was not provided with adult support during January 2018. Based on the Findings of Facts #1 - #5, the MSDE finds that there is no documentation that the student was provided with the adult support required by the IEP in January 2018, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation.

Allegation #2 IEP Annual Review

Based on the Findings of Facts #1 and #6 - #9, the MSDE finds that the school system did not ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

ALLEGATION #3 REEVALUATION

13. On April 9, 2015, the IEP team conducted a reevaluation of the student. The IEP team reviewed existing data, and decided that no additional data was needed at that time to determine the student's continued eligibility under the IDEA. The IEP team documented that "the existing data is appropriate to enable the team to identify [the student's] present levels of performance, needed accommodations, and supplementary aids and services to enable [her] to participate, as appropriate in the general curriculum."
14. On March 23, 2018, the complainant sent an electronic mail (email) to the school staff inquiring about a reevaluation of the student.
15. On May 25, 2018, the IEP team convened and determined that additional data was needed to determine the student's levels of functioning. On the same date, the complainant consented to the IEP team's recommendations for assessments of the student's cognitive, academic, and social, emotional and behavioral functioning.
16. On June 25, 2018, the IEP team convened and reviewed the results of the assessments that were recommended at the May 2018 IEP meeting. Based on the data, the IEP team determined that the student continues to be eligible for special education services as a student with Multiple Disabilities under the IDEA, including Autism and a Specific Learning Disability (SLD).
17. The IEP team is scheduled to convene on July 19, 2018, to review and revise the IEP, as appropriate, based on the new assessment data.

CONCLUSION:

Based on the Findings of Facts #13 - #17, the MSDE finds that the school system did not ensure that a reevaluation of the student was completed at least every three (3) years, in accordance with

XXX
Ms. Bobbi Pedrick
July 18, 2018
Page 5

34 CFR §300.303 and COMAR 13A.05.01.06. Therefore, this office finds a violation with regard to this allegation.

CORRECTION ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the AACPS to provide documentation by the start of the 2018 - 2019 school year that the IEP team has completed the review and revision of the student's IEP, as appropriate, based on the results of the reevaluation reviewed by the IEP team in June 2018.

The AACPS must also provide documentation by October 1, 2018, that the IEP team has convened and determined whether the violations identified in this Letter of Findings had a negative impact on the student's ability to benefit from the education program.

If the IEP team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violations and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings. If the IEP team determines no negative impact, it must also determine, based on the data, whether the student continues to require adult support.

School-Based

The MSDE requires the AACPS to provide documentation by October 1, 2018, of the steps it has taken, including training, to ensure that the XXXXXXXXXX staff comply with the requirements for conducting a review of a student's IEP at least annually, conducting a reevaluation at least once every three (3) years, and IEP implementation. The documentation must include a description of how the AACPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does not recur.

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.

XXX
Ms. Bobbi Pedrick
July 18, 2018
Page 6

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 requirements as reported in this Letter of Findings.

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/ksa

c: George Arlotto
Alison Barmat
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