



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

October 28, 2019

Ashley S. VanCleaf, Esq.
Law Office of Brian K. Gruber, P.C.
6110 Executive Boulevard, Suite 220
Rockville, Maryland 20852

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

RE: [REDACTED]
Reference: 20-023

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and Special Education Services (MSDE), 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 September 3, 2019, the MSDE received a complaint from Ashley S. VanCleaf, Esq., hereafter the “complainant,” on behalf of the above-referenced student and her mother, Ms. [REDACTED]. 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 allegation that the AACPS has not ensured that the Individualized Education Program (IEP) includes the research-based reading intervention program that the student requires as part of the special education services, since September 3, 2018, in accordance with 34 CFR §§300.101 and .320.

BACKGROUND:

The student is ten (10) years old and has an IEP that requires the provision of special education and related services. At the start of the investigation period, the student was identified as a

student with Multiple Disabilities under the IEP, including a Specific Learning Disability (SLD) and an Other Health Impairment (OHI) related to Attention Deficit Hyperactivity Disorder (ADHD).

In May 2019, the IEP team determined that the student continued to be a student with a disability with Multiple Disabilities under the IDEA, and based this determination on an Intellectual Disability and an OHI.

During the 2018 - 2019 school year, the student attended [REDACTED] School. She currently attends [REDACTED] School as a result of a change in educational placement.

FINDINGS OF FACTS:

1. The AACPS provides struggling learners, both disabled and nondisabled, with instruction through evidence-based interventions in the general education program (<https://www.aacps.org> and info@scilearn.com).
2. The IEP in effect in effect at the start of the investigation period was developed on December 20, 2017. The IEP identified needs in the area of reading, included annual goals for the student to improve her reading skills, and included special education instruction to assist in achieving the reading goals.
3. There is documentation that the student was participating in an evidence-based reading intervention during the 2018 - 2019 school year. There is no documentation from September 9, 2018 until March 20, 2019, that any member of the IEP team requested that the IEP require that the student participate in an evidence-based reading intervention.
4. On March 20, 2019, the IEP team convened to review the student's progress, review the results of a Functional Behavior Assessment (FBA), and revise the IEP, if appropriate. Based on the results of the FBA, the IEP team decided to develop a Behavior Intervention Plan (BIP).
5. At the March 2019 IEP meeting, the parent expressed concern about the regression in the student's reading skills¹ and reports she received that the student was not making sufficient progress towards mastery of the IEP reading goals. The IEP team decided that the student requires two (2) hours per week of specialized instruction in reading in a separate special education classroom.
6. Also at the March 2019 IEP meeting, the parent requested specific information about the amount of instruction that the student was receiving in the current evidence-based reading intervention. In addition, the parent requested that the IEP team consider whether the

¹ There is documentation that, over the course of the 2018 - 2019 school year, the student's reading skills regressed from Level L, the "middle of second grade" instructional level, to Level K, the "end of first/beginning of second grade" instructional level.

student requires a specific reading intervention to improve her reading skills. There is no documentation that the IEP team considered the parent's requests.

7. On April 16, 2019, the IEP team convened to review the student's progress, review and revise the student's IEP, if appropriate, and develop a BIP for the student.
8. At the April 2019 meeting, the IEP team discussed that the student was participating in the Leveled Literacy Intervention (LLI) reading intervention. The parent requested that the IEP team consider the student's participation in a different reading intervention, specifically, the Wilson Reading Program. The parent also expressed concern that the school system has a practice of not including a student's participation in an evidenced-based reading intervention on the IEP. There is no documentation that the IEP team addressed the parent's concern or considered her request.
9. On April 25, 2019, the school staff notified the parent that the LLI reading intervention that the student was participating in is scheduled to meet for twenty (20) minutes, four (4) days per week. The school staff also informed the parent that the student was being assessed to determine the appropriateness of using a different reading intervention.
10. On June 24, 2019, the IEP team convened to conduct the annual review of the student's education program. A review of the audio recording of the meeting documents the IEP team's determination that the student needs to participate in an evidenced-based reading intervention in order to improve the reading skills that are addressed in the IEP goals. However the IEP team did not include this on the IEP as part of the student's education program.
11. A review of the audio recording of the June 2019 IEP meeting also documents that the complainant requested that the student's evidence-based reading intervention be reflected in the IEP as specialized instruction. The complainant also requested that the IEP team identify the specific instructional provider for the evidence-based reading intervention, including whether a special education teacher was the required provider. There is no documentation that the IEP team considered those requests.

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the IEP team has not considered the requests made for the IEP to include a reading intervention.

Based on the Findings of Facts #1 - #8, the MSDE finds that the AACPS did not ensure that the IEP team considered the requests made at the March 20, 2019 and April 16, 2019 IEP team

meetings for the student to participate in a specific reading intervention program in order to improve her reading skills, in accordance with 34 CFR 300.324.

Based on the Finding of Fact # 10, the MSDE further finds that the AACPS has not ensured that the IEP includes the requirement that the student participate in a reading intervention program consistent with the IEP team's June 24, 2019 decision that the intervention is needed to assist the student with improving the skills addressed in the annual IEP goals, in accordance 34 CFR 300.320.

Based on the Finding of Fact #11, the MSDE also finds that the AACPS did not ensure that the IEP team considered the request made on June 24, 2019 for the reading intervention to be reflected as specialized instruction on the IEP and that a specific provider be required to implement the reading intervention program, in accordance with 34 CFR 300.324. Therefore, this office finds that violations occurred.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner.² This office will follow up with the public agency to support it in working toward completion of required actions.

If the public agency anticipates that any of the timeframes below may not be met, it should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Dr. Birenbaum can be reached at (410) 767-7770.

² The United States Department of Education, Office of Special Education Programs (OSEP) requires that the public agency correct noncompliance in a timely manner, which is as soon as possible within one (1) year from the date of identification of the noncompliance, unless providing additional time is appropriate, such as for example when it is appropriate to provide compensatory services to a student over a period of more than one (1) year. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

³ The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

Student Specific

The AACPS must provide documentation by January 1, 2020 that the IEP team has revised the IEP to include the requirement that the student participate in an evidence-based reading intervention, consistent with the decision made on June 24, 2019 that the student requires participation to improve the reading skills addressed in the IEP goals. The IEP team must also determine whether the student's participation in an evidence-based reading intervention constitutes specially designed instruction or other support for the student, and determine the type of provider needed to implement the intervention.

School/System Based

The AACPS must provide documentation by March 1, 2020, that steps have been taken to ensure that IEP teams consider requests for the inclusion of evidence-based interventions on the IEP and make individualized determinations for each student consistent with the data for the student.

The AACPS must also provide documentation by March 1, 2020, that steps have been taken to ensure that each student's IEP includes the services that the IEP team determines is needed to assist the student with improving skills addressed by the annual IEP goals and to progress through the general curriculum.

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.

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 parent and the AACPS 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

Ashley S. VanCleaf, Esq.

Ms. Bobbi Pedrick

October 28, 2019

Page 6

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 and Special Education Services

MEF/ksa

c:


George Arlotto

Alison Barmat


Dori Wilson

Anita Mandis

K. Sabrina Austin

Nancy Birenbaum