



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

October 28, 2019

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Law for Parents, LLC
122 East Patrick Street #125
Frederick, Maryland 21701

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

RE: [REDACTED]
Reference: 20-026

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.

ALLEGATIONS:

On September 9, 2019, the MSDE received a complaint from Ashley S. VanCleaf, Esq., hereafter the “complainant,” on behalf of the above-referenced student and his parents, Mr. [REDACTED] and 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 following allegations:

1. The AACPS has not ensured that the Individualized Education Program (IEP) includes the research-based reading and math intervention programs that the student requires as part of the special education services, since September 9, 2018, in accordance with 34 CFR §§300.101 and .320.
2. The AACPS has not ensured that the IEP includes the speech/language services necessary, in accordance with 34 CFR §§300.320 and .324.
3. The AACPS did not provide Prior Written Notice (PWN) of the IEP team’s rejection of a request for referral to a Central Office IEP team, in accordance with 34 CFR §300.503.

BACKGROUND:

The student is twelve (12) years old and currently attends [REDACTED] School. During the 2018-2019 school year, he attended [REDACTED] School.

The student is identified as a student with Multiple Disabilities under the IDEA (Specific Learning Disability related to Dyslexia, Dysgraphia and Dyscalculia and Other Health Impairment related to Attention-Deficit/Hyperactivity Disorder) under the IDEA and has an IEP that requires the provision of special education services.

ALLEGATION #1: IEP DEVELOPMENT – RESEARCHED BASED INTERVENTIONS

Finding 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. At an IEP team meeting held on June 11 and 18, 2019, the IEP team identified the student with needs in the areas of mathematics and reading skills, and included goals in the IEP for the student to improve these skills, and special education instruction to assist in achieving the goals.
3. The student’s parent expressed concern that the student was participating in evidence-based interventions that were not reflected on the IEP as special education instruction. The parent further expressed concern that the interventions were provided by a general education teacher and not a special education teacher. The parent also expressed the belief that the student’s mathematics skills had regressed, and requested that the IEP team identify the specific research-based interventions to be used during the 2019-2020 school year.
4. There is no documentation that the IEP team considered whether the student requires participation in evidence based interventions in order to achieve the annual IEP goals and support his progress through the general education curriculum. Additionally, there is no documentation that the IEP team considered specific evidence-based interventions recommended in an independent assessment provided by the complainant, or considered the appropriate provider for any evidence based interventions deemed necessary.

Discussion/Conclusion:

In this case, the complainant alleges that the IEP team has not properly considered the requests made for the IEP to include evidence-based interventions.

Based on the Finding of Facts #1-#4, the MSDE finds that the IEP team did not consider whether the student requires evidence-based interventions in order to achieve the annual IEP goals and support his progress through the general education curriculum. Additionally, the MSDE finds that the IEP team did not consider the parents' requests for specific interventions to be implemented by specific providers, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #2: IEP DEVELOPMENT – SPEECH/LANGUAGE SERVICES

Finding of Facts:

5. On April 3, 2019, the student's parent provided the school staff with a copy of a report of a private psychoeducational assessment that contained a recommendation for a speech/language assessment.
6. On April 4, 2019, the AACPS requested, and was provided, consent from the parent to conduct assessments, including a speech/language assessment of the student's receptive and expressive language skills.
7. On June 11 and 18, 2019, the IEP team reviewed results of the assessments and revised the IEP. The report of the results of the speech/language assessment reflects that the student is performing in the "average" range in all areas, although the student demonstrated "marginal/borderline" scores on some subtests within receptive and expressive language.
8. The general education teacher reported that the student responds to direct questions and follows oral directions, but does not demonstrate the ability to use new vocabulary or to use vocabulary to define and describe, elaborate a response upon request, understand figurative language, or make explanations about relationships using graphs and charts. However, the teacher reported that this reflected a "low average" performance among same age peers.
9. The teacher also reported that the student recognizes and demonstrates appropriate responses for actions such as greetings, requesting information, speaking about an appropriate topic in different settings, providing information, requesting help and clarification, and expressing regret. She reported that the student demonstrated appropriate conversational turn-taking, that he was able to evaluate nonverbal cues, and could behave appropriately with authority, but does not adjust his conversation according to the listener (peer versus adult).
10. Based on the data, the team determined that the student's academic achievement and functional performance were not impacted in the areas of receptive, expressive, and pragmatic language. The goal to improve the student's social/emotional skills was

revised to include a short-term objective for the student to remain on topic or shift the topic when required with a group task.

Discussion/Conclusion:

In this case, the complainant alleges that the student requires speech/language services that are not included in the IEP.

Based on the Findings of Facts #5-#10, the MSDE finds that the IEP team considered the strengths of the student, the concerns of the parents, the results of recent assessments and the academic, developmental and functional needs of the student, in accordance with 34 CFR §300.324. Based on those Findings of Fact, the MSDE finds that there was sufficient data to support the team's decision that the student doesn't require speech/language services in accordance with 34 CFR §300.324. Therefore, this office does not find a violation with respect to this allegation.

ALLEGATION #3: PRIOR WRITTEN NOTICE (PWN) OF PARENTS' REQUEST FOR A CENTRAL OFFICE IEP MEETING

Findings of Facts:

11. The complainant provided an audio recording of a portion of the IEP team meeting that occurred in June 2019. The audio recording reflects that, at the start of the IEP review, the complainant and the student's mother expressed concern about the student's placement for the 2019-2020 school year. However, no proposals were made at that time for the team to consider because the review and revision of the program had not yet been completed.

12. The documentation of the IEP team meeting on June 16, 2019, states that the complainant and the student's mother disagreed with the IEP team's decisions regarding the program and placement, but there is no documentation that they requested a Central Office IEP team meeting to reconsider those decisions.

Discussions/Conclusions:

In this case, the complainant alleges that the PWN of the IEP team's rejection of her request for referral to a Central Office IEP team meeting was not provided.

Based on the Finding of Facts #11 - #12, the MSDE finds that there could be no rejection to a request for a Central Office IEP meeting because there is no documentation that such a request was made. Therefore, this office does not find that a violation occurred with respect to this allegation.

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.¹ 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.² Dr. Birenbaum can be reached at (410) 767-7770.

The AACPS must provide documentation by January 1, 2020 that the IEP team has done the following:

- a. Determine whether the student requires participation in evidence-based reading and math interventions in order to improve the skills addressed by the IEP and progress through the general curriculum;
- b. If participation is required, determine whether the student's participation in evidence-based interventions constitutes specially designed instruction or other support for the student, whether specifically named interventions are needed, and the service provider to implement the interventions; and
- c. Revise the IEP to be consistent with the decisions made.

¹ 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.

² 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.

Through a previous State complaint investigation in State complaint #20-023, the AACPS was required to 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. Therefore, no additional corrective is required.

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 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.

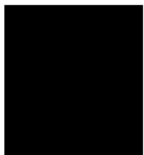
Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

MEF:dee

c:

George Arlotto
Alison Barmat



Dori Wilson
Anita Mandis
Diane Eisenstadt
Nancy Birenbaum