




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

October 21, 2020



Ms. Bobbi Pedrick
Director of Special Education,
Director of Birth-5 Programs,
Special Services and Nonpublic Placement
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401


Ms. Diane McGowan
Director, Specially Designed Instruction
and Compliance
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: 
Reference: #21-008

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/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 August 26, 2020, the MSDE received a complaint from Mr.  hereafter, “the complainant,” on behalf of his 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 above-referenced student.

The MSDE investigated the allegation that the AACPS has not offered an educational placement where the student's Individualized Education Program (IEP) can be implemented since August 4, 2020, in accordance with 34 CFR §300.116 and COMAR 13A.05.01.10.

BACKGROUND:

The student is nine (9) years old and is identified as a student with Autism under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

The student is enrolled at [REDACTED] School, where he attended school until a March 16, 2020 Statewide closure of all school buildings as a result of the national COVID-19 pandemic.

FINDINGS OF FACTS:

1. The AACPS reports that the complainant and the student's mother both serve as parents under the IDEA.
2. On November 12, 2019, the IEP team convened to review the student's IEP and to conduct a reevaluation. The complainant expressed concern about the student's developmental, safety, and communication skills. The school-based members of the team reported that the student "sometimes was reluctant to complete tasks when frustrated," and that he requires increased wait-time when given directions and additional adult support because he may wander away from classroom or groups. They also reported that the student requires assistance with completing tasks and meeting behavioral expectations. Based on this information, the team recommended psychological, academic, and communication assessments. The complainant provided consent for the assessments at the meeting.
3. On January 7 and 28, 2020, the IEP team convened to review the assessment results and revise the IEP, as appropriate. The team reviewed the student's present level of performance in the areas of expressive/receptive/pragmatic language, cognitive/intellectual, adaptive skills, reading, written expression, math, and sensorimotor skills. Based on the data, the team determined that the student continues to be a student with a disability under the IDEA and revised the IEP. The team also decided that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a nonpublic, special education school. The documentation reflects that the student's parents were in agreement with the decisions.
4. The documentation reflects that, since February 2020, the AACPS sent the student's educational record to six (6) different nonpublic schools in an attempt to place the student in the LRE that would be able to implement his IEP.
5. There is documentation that, on March 2, 2020, one (1) of the nonpublic schools which the student's educational record was provided for review returned the record to AACPS

because the complainant canceled the scheduled school visit and indicated that he had no interest in having the student attend the program.

6. There is documentation that, on March 11, 2020, one (1) of the nonpublic schools determined that the student's IEP could not be implemented in the program, and therefore, declined his acceptance.
7. The documentation reflects that, during the Statewide closure of school buildings, the nonpublic schools have delayed conducting family interviews normally conducted for placement at the schools. The documentation also reflects that the student has remained enrolled at [REDACTED] School during the closure of school buildings, and that he is provided with virtual instruction.
8. There is documentation that, on July 30, 2020, the AACPS received a formal acceptance letter from one (1) of the nonpublic schools where the student's application had been sent. The documentation reflects that the AACPS determined that the student's IEP could be implemented in this nonpublic school, and that he could begin attending on August 24, 2020.
9. On July 30, 2020, the AACPS contacted the student's parents by electronic mail (email) to inform them that the student was accepted by a nonpublic school and indicated the scheduled start date for educational services. However, the complainant responded by email indicating that the student would not attend the school because the complainant believed the placement, and the other schools recommended by AACPS, were "simply unsatisfactory." The documentation reflects that the student's mother accepted the nonpublic placement for him, but subsequently rescinded that acceptance based on the complainant's concerns.
10. On August 19, 2020, the AACPS contacted the staff at the nonpublic school in which the student was accepted, to inform them that, because the student was determined to "require a private separate-day program and was accepted to their program, AACPS intended to have [the student] attend at the start of the fall session," but because the complainant disagreed with the placement, the student "may not attend immediately."
11. There is documentation indicating that, at the start of the 2020 - 2021 school year, the student continued to be enrolled at [REDACTED] School.
12. On September 16, 2020, the IEP team convened. The team discussed that applications had been made to a "wide range of schools," but that only one (1) of the schools had accepted the student. The parents requested consideration of additional nonpublic schools and the team agreed to send additional referrals if the parents both agreed to placement at the schools. The documentation reflects that the student's mother indicated that, if the student is not accepted to any of these other schools, she will agree to placement at the nonpublic school that accepted the student in July 2020.

13. There is documentation that AACPS submitted applications for two (2) additional nonpublic schools and, on September 24, 2020, one (1) of the nonpublic schools informed the AACPS that the student's IEP could not be implemented in their program, and therefore, declined his acceptance. There is no documentation of a response from the other nonpublic school which an application was sent for the student.

CONCLUSION:

Based on the Findings of Facts #1 - #13, the MSDE finds that the AACPS has offered an educational placement where the student's IEP can be implemented since August 4, 2020, in accordance with 34 CFR §300.116 and COMAR 13A.05.01.10, but the complainant has refused the placement offer. Based on those Findings of Facts, the MSDE further finds that the AACPS has considered the complainant's concerns about the school that has accepted the student, and has continued to make applications to other nonpublic schools for the student. Therefore, this office does not find that a violation occurred with respect to the allegation.

TIMELINE:

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.

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/Special Education Services

MEF:ac

c: George Arlotto
Alison Barmat
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Dori Wilson

Anita Mandis
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