



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

March 26, 2021



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Ms. Diane McGowan
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RE: [REDACTED]
Reference: #21-054

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 January 26, 2021, the MSDE received a State complaint from Mr. [REDACTED] and Mrs. [REDACTED] hereafter, “the complainants,” on behalf of their son, 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 their son.

The MSDE investigated the following allegations:

1. The AACPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified learning behavior needs since January 26, 2020, in accordance with 34 CFR §300.324.

2. The AACPS has not ensured that the student has been provided with the supplementary aids and supports required by the IEP since January 26, 2020, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with Multiple Disabilities, including Autism and Emotional Disability under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

The student attended the [REDACTED] School, until the March 16, 2020 Statewide closure of school buildings and initiation of virtual learning as a result of the COVID-19 pandemic.

FINDINGS OF FACTS:

1. The IEP in effect on January 26, 2020 was developed on July 16, 2019. The IEP states that the student does not always understand academic expectations or routines, which creates performance anxiety and work avoidance behavior, including absenteeism and lack of task completion. It identifies the need for the student to improve organization skills and self-advocacy. The IEP included a goal for the student to apply coping strategies to manage his anxiety with adult support. It also included a goal for the student to apply learned strategies to organize materials and record and complete assignments in a timely manner. This goal required the student to use a “to do list” to record assignments, work with an adult to plan long term projects, and use a folder system to organize his papers.
2. The IEP required the provision of one (1) hour of special education instruction per week and thirty (30) minutes of counseling per month to assist him with achieving the annual goals. It also required supplementary aids and services daily, including a “check in” with an adult at the beginning and end of each school day and a daily “to do list.” It further required periodic supports of instruction in a small group setting, pairing verbal and visual information, chunking of assignments, graphic organizers with questions, provision of incremental deadlines for tasks needed to complete projects, access to a quiet space to complete work, checklists for tasks to be completed, and study guides.
3. The IEP included a Behavioral Intervention Plan (BIP) to target the behavior of escape and avoidance, such as refusing to enter the classroom or remain in the classroom. The BIP required that the student be provided with “check ins” with a trusted adult and use of a quiet location when he became anxious. The student was to utilize a specific numeric level to identify the severity of his anxiety when he experienced it. Based upon the that level, he was to seek out and be provided with supports that reflected his need; these included offering hallway intervention, counseling or office support, the opportunity to speak quietly with a teacher, or accessing a quiet location.

4. On February 27, 2020, the IEP team met in response to parental concern that the IEP and BIP were not addressing the student's work avoidance behaviors and that the student was not completing assignments. At the time of the February 27, 2020 IEP team meeting, reports had been made on January 29, 2020 reflecting that the student was making sufficient progress to achieve the annual IEP goals. The reports further reflect that the student was successfully using his "to do list" to complete assignments. The student's mother expressed her disagreement with the progress reports, and also reported that the student was not being provided with the required study guides and sufficient information about due dates for task completion. She requested that the IEP be revised to require that the student be taught how to independently apply learned strategies to organize materials and record and complete assignments in a timely manner without the adult support currently required in the IEP goal.
5. At the February 27, 2020 IEP team meeting, the team denied the mother's requests for revisions to the IEP goal and the BIP based on the progress reports. However, it decided to revise the IEP to require that counseling services be changed from one (1) thirty (30) minute session per month to two (2) fifteen (15) minute sessions per month to respond to the student's expressed preference for shorter sessions. The team also agreed to ensure that the student is provided with specific information about due dates for task completion.
6. Following the transition to virtual learning as a result of the COVID-19 pandemic, the IEP team met virtually on May 19, 2020, October 15, 2020, December 15, 2020, and February 11, 2021 to address parental concerns that the student was not benefitting from virtual learning.
7. The team discussed that, while the student was logging on to participate in virtual learning, he was not logging on for the provision of additional support from his teachers in small group breakout sessions and for one-on-one support, nor was he logging in to receive support from the counseling services provider. The team also discussed that the student was not responding to the teacher and service provider requests for him to contact them.
8. The IEP team has revised the learning behavior goals and added special education instruction to assist him in achieving the goals, discontinued the BIP as it was designed to address behavior in the school building, and decided to trial new procedures for meeting with the student. The team has also requested that the complainants have someone at home join the student in initial sessions to acclimate him to the online supports. However, there is no evidence that the complainants have agreed to do so.
9. There is documentation in the form of emails that the school staff responsible for implementing the student's IEP received copies of the student's IEP on September 4, 2020, and that special education staff communicated with the student's teachers on several occasions to review and clarify the supports required by the IEP.

10. There is documentation in the form of work samples, assignments, video tutorials and slide show presentations, work samples, Prior Written Notice (PWN), and classroom observations that the supports required by the IEP were offered to the student.
11. There is documentation that all of the social/behavioral supports, including “check in” and “check out” system, adult support and individualized “to-do” list template to monitor assignments, were provided to the student. While in the school building, there is email documentation that assignment organizers were provided in hard copy through a folder system. During virtual learning, these organizers were provided digitally. The organizers were adapted during the course of virtual learning to better meet the needs of the student. The “check in” and “check out” system” and adult supports were provided through virtual sessions, with schedules and links provided to the student. There is documentation that individualized checklists were provided to the student with virtual links to those assignments.

DISCUSSION/CONCLUSIONS:


Allegation #1

The Federal and State guidance has been that the impact of the COVID-19 pandemic does not relieve school districts from providing a Free and Appropriate Public School Education (FAPE), to students with disabilities, to the greatest extent possible.

However, in light of the unique circumstances created by the need for virtual at-home instruction, parents, including the parents of a disabled student, have been expected to arrange for a responsible person to make the student available for instruction and to provide any necessary supervision during the virtual school day. This responsibility includes, but may not be limited to, assisting the student with logging onto the computer and redirecting the child back to instruction when needed. These expectations are analogous to other longstanding parental expectations such as arranging for their child to be safely accompanied to and from the bus stop for transportation when traveling to and from the school building.

In this case, the complainants allege that the student’s IEP does not address the areas impacted by the student’s disability, namely avoidance behaviors, executive functioning deficits and anxiety. The AACPS has shown that supports and services are in place to address those issues, which were accessed during in-school learning, but which the student is not accessing during virtual learning.

Based on the Findings of Facts #1 - #8, the MSDE finds that the AACPS has developed an IEP that addresses the student’s identified learning behavior needs since January 26, 2020. Further, based upon these same Findings of Facts, the MSDE also finds that the IEP team continues to meet to address the student’s work refusal and to convince the complainants to assist the school staff with obtaining access to the student to enable them to address those interfering behaviors, in accordance with 34 CFR §300.324. Therefore, this office finds that there is no violation with respect to this allegation.


Ms. Bobbi Pedrick
Ms. Diane McGowan
March 26, 2021
Page 5

Allegation #2

Based on the Findings of Facts #9 - #11, the MSDE finds that the student has been offered the supplementary aids and supports required by the IEP since January 26, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that there is no violation with respect to this allegation.

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 school system and the complainants 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 Early Intervention/Special Education Services

MEF:dee

c:

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