




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

September 27, 2019




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

RE: 
Reference: 20-008

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 August 5, 2019, the MSDE received a complaint from Mr. , hereafter the “complainant,” on behalf of his 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 above-referenced student.

The MSDE investigated the following allegations:

1. The AACPS did not provide accessible copies of each assessment, report, data chart, draft Individualized Education Plan (IEP), or other documents that the IEP team planned to discuss at the student’s April 11, 2019 IEP team meeting at least five (5) business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
2. The AACPS has not developed an IEP that addresses the student’s identified functional needs, since April 12, 2019, in accordance with 34 CFR§300.324. It is asserted that the student requires the use of a private restroom.

3. The AACPS did not provide Prior Written Notice (PWN) of the decisions made at the April 11, 2019 IEP team meeting, in accordance with 34 CFR §300.503.

BACKGROUND:

The student is ten (10) years old and attends the [REDACTED] School. She is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education services.

ALLEGATION #1: PROVISION OF DOCUMENTS PRIOR TO THE APRIL 11, 2019 TEAM MEETING

Finding of Facts:

1. The complainant was provided with a proposed draft IEP prior to the April 11, 2019 IEP team meeting in which it was considered. However, there is no documentation that it was provided at least five (5) business days before the meeting.
2. While the school has established a procedure for ensuring that such documents are provided to parents within five (5) days prior to the meeting, there is no documentation that the established procedure was followed in this case.

Discussions/Conclusion:

In this case, the complainant alleges that he was not provided with all of the proposed revisions to the IEP, that were considered by the team on April 11, 2019, prior to the meeting, and that the proposed revisions that were provided were not provided within the required timelines.

Based on the Findings of Fact #1 and #2, the MSDE finds that the AACPS did not provide accessible copies of each assessment, report, data chart, draft IEP, or other documents that the IEP team planned to discuss at the student's April 11, 2019 IEP team meeting at least five (5) business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.

Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #2: ADDRESSING FUNCTIONAL NEEDS

Finding of Facts:

3. The IEP that was being reviewed at the April 11, 2019 IEP team meeting stated that the student was permitted to use the student restroom or the health room restroom.
4. At the April 11, IEP team meeting, there is documentation that the IEP team discussed the discontinuation of student's access to the health room restroom because the student

was spending too much time in the health room and, as a result, was missing instructional time.

5. There are electronic mail (email) messages between the student's mother and the school staff documenting that the student's mother indicated that the student is able to use either the student restroom or the health room restroom; school staff also indicated that the student had been independently choosing to use the more public hallway restroom.
6. When the student's access to the health room restroom was discontinued at the IEP team meeting on April 11, 2019, there was no data that the student required the use of the health room restroom. The IEP team documented that if such data was provided, the student would be permitted to use the health room restroom.

Discussion/Conclusion:

In this case, the complainant alleges that the IEP revised on April 11, 2019 does not address the student's need to use the health room restroom.

Based on the Findings of Facts #3-#6, the MSDE finds that the IEP team's April 11, 2019 decision to discontinue the student's use of the health room restroom was consistent with the data, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #3: PRIOR WRITTEN NOTICE (PWN) OF THE DECISIONS THE IEP TEAM MADE ON APRIL 11, 2019

Findings of Facts:

7. The school staff generated a PWN document following the April 11, 2019 IEP team meeting but there is no documentation of when it was provided to the complainant.
8. The PWN from the IEP meeting held on April 11, 2019, states that the student's use of the health room restroom was being discontinued because the student was spending too much time in the health room and was missing instructional time.
9. On April 12, 2019, the student was denied the use of the health room restroom.
10. There is documentation that the AACPS has a practice of implementing IEP team decisions immediately following IEP team meetings without ensuring that PWN is provided to parents before the implementation of those decisions.

Discussions/Conclusions

In this case, the complainant alleges that the school staff implemented the decision to discontinue the student's use of the health room restroom prior to providing him with written notice of the decision.

Based on the Findings of Facts #7 - #10, the MSDE finds that there is no documentation that the complainant was provided with the written notice of the IEP team's decision to discontinue use of the health room restroom prior to the implementation of the decision (PWN), in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific:

The MSDE requires that, if the complainant requests an IEP team meeting by November 1, 2019, the AACPS will reconvene the IEP team to consider any concerns the complainant has relative to the decisions made on April 11, 2019.

School Based:

The MSDE requires that the AACPS provide documentation by November 1, 2019 of the steps taken to ensure that [REDACTED] School staff properly implement their established procedures for ensuring that documents are provided at least five (5) business days before an IEP team meeting.

Systemic:

The MSDE requires that the AACPS provide documentation by February 1, 2020 of the steps taken to ensure that proper PWN is provided to parents, within a reasonable time period, prior to implementation of the IEP.

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

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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 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
[REDACTED]
Dori Wilson
Anita Mandis
Diane Eisenstadt
Nancy Birenbaum