




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

April 7, 2021



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


Ms. Diane McGowan
Co-Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: 
Reference: #21-055

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.

ALLEGATION:

On February 8, 2021, 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 Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the AACPS has not ensured that the Individualized Education Program (IEP) transition services address the student’s academic, social interaction, independent life skills, and employment needs since February 2020 in accordance with 34 CFR §300.320 and federal and State guidance.

BACKGROUND:

The student is twenty (20) years old and is identified as a student with an Intellectual Disability under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

The student resides with his mother in [REDACTED] six (6) months out of the year and in Maryland with the complainant the remaining six (6) months out of the year. The student's parents have an agreement which allows for the student to reside with each parent every other month.

The AACPS has accepted this agreement and has developed an IEP to be implemented on the alternate months when the student resides with the complainant in Maryland. While living in Maryland with the complainant, the student attended [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 student has continued to live with either his mother, in [REDACTED] or the complainant, in Maryland, on alternate months throughout the calendar year. According to the AACPS, this has been the student's living arrangement since before the COVID-19 pandemic. It is reported that when the student is with his mother in [REDACTED] he does not receive educational services.
2. The IEP in effect on February 8, 2020, developed on September 27, 2019, included measurable goals to improve the student's functional academics, social and expressive pragmatic communication, independent life skills and employment training skills needed to assist the student in reaching post-secondary goals. It required special education instruction, related speech/language services, transition activities, accommodations and supplementary aids and supports.
3. On April 1, 2020, the IEP was amended to address virtual learning after a meeting between the special education teacher and the complainant. The amendment required the continuation of goals and services to address academic and speech/language skills. However, the IEP was amended to no longer address the student's remaining needs.
4. There is documentation that the complainant has refused to accept any virtual learning for the student and, there is no documentation the IEP team attempted to address the student's resulting lack of access to virtual learning.
5. On September 15 and 24, 2020, the IEP team met and revised the IEP to include transition goals, activities, and services to address the student's functional life skills needs, but decided that the IEP cannot be implemented through virtual learning. The

team did not document the basis for the decision and did not identify any supports that were considered or attempted to assist the student with accessing virtual learning.

6. There is email documentation between the complainant and the school staff that, on March 8, 2021, the student began receiving in-person instruction.

DISCUSSION/CONCLUSIONS:

In order to offer a Free Appropriate Public Education (FAPE), the public agency must develop an IEP that is designed to address all of the needs that arise out of a student's disability. The IEP must include measurable annual IEP goals to be achieved during the year and special education and related services to be provided to assist the student with achieving the goals. The public agency must ensure that the IEP is reviewed and revised, as appropriate, at least annually to determine whether the annual goals are being achieved. Additionally, the public agency must ensure that the IEP team reviews and revises the IEP to address any lack of expected progress towards achievement of the annual goals or to address the student's anticipated needs (34 CFR §§300.101, .320, and .324).

In order to accept an offer of a FAPE, parents must make students available for the provision of the IEP services. During the COVID-19 pandemic, parents have been expected to arrange for a responsible person to make the student available for instruction and to provide 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 student back to instruction when needed. These expectations are analogous to other longstanding parental expectations such as arranging for the student to be safely accompanied to and from the bus stop for transportation when traveling to and from the school building.

If a student is not accessing virtual learning due to lack of appropriate adult supervision, the public agency must consider whether the family requires assistance and support, such as parent coaching and training, and assistance with internet services, in order to offer a FAPE. If the difficulty with accessing virtual learning is not due to the inability to log onto a computer, the IEP team must consider adding supports, including low and no tech supports, and offer different options, such as recorded lessons and printed materials, 'break-out' sessions, and one-to-one time with teachers to supplement instruction.

Based on the Findings of Facts #1 - #6, the MSDE finds that the IEP team has not addressed the student's lack of access to IEP services since February 2020. This time period includes before the pandemic, as a result of his absence from the State, and since the pandemic, as a result of his absences and the lack of participation in virtual learning when he is present in the State, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation has occurred and resulted, in a denial of a FAPE.

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.¹

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they 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 and nancy.birenbaum@maryland.gov.

Student-Specific:

The MSDE requires the AACPS to provide documentation that the IEP team has addressed the student's lack of regular access to IEP services. If the complainant is not willing to make the student available for the receipt of IEP services throughout the school year, then the IEP team must review and revise the IEP, as appropriate, to ensure that it is designed to offer a FAPE based on the amount of access to the student that the complainant is willing to provide.

In addition, the MSDE requires the AACPS to also provide documentation that the IEP team has determined the compensatory services or other remedy for the violation identified through this investigation.

School-Based:

The MSDE requires the AACPS to provide documentation of the steps taken at [REDACTED] School to ensure that IEP teams address any lack of student access to IEP services.

¹ The Office of Special Education Programs (OSEP) states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. 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 Directors of Special Education of any corrective action that has not been completed within the required timelines.

Mr. Robert Jack Lunsford
Ms. Bobbi Pedrick
Ms. Diane McGowan
April 7, 2021
Page 5


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.

Sincerely,

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

MEF/sf

c: George Arlotto
Alison Barmat

Dori Wilson
Anita Mandis
Sharon Floyd
Nancy Birenbaum