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September 23, 2016

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Ms. Trinell Bowman
Director of Special Education
Prince George's County Public Schools
John Carroll Elementary School
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #17-014

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 July 26, 2016, the MSDE received a complaint from Mrs. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Prince George’s County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. With respect to the February 23, 2016 Individualized Education Program (IEP) team meeting, the PGCPS did not provide the complainant with the following:
 - a. Written notice of the IEP team’s decisions following the IEP team meeting, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12; and
 - b. A copy of the IEP document within five (5) business days after the IEP team meeting, in accordance with Md. Code Ann., Educ., §8-405(d) and COMAR 13A.05.01.07.

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2. The PGCPS did not ensure that proper procedures were followed in response to the complainant's request, in February 2016, for a reevaluation of the student, in accordance with 34 CFR §§300.304, .305, .306 and COMAR 13A.05.01.06.
3. The PGCPS did not ensure that the student was provided with specialized instruction by a special education teacher, as required by the IEP, during April 2016, in accordance with 34 CFR §300.101.
4. The PGCPS did not provide the complainant with the proposed IEP at least five (5) business days prior to the May 3, 2016 IEP team meeting, in accordance with COMAR 13A.05.01.07
5. The PGCPS did not provide the complainant with the report of a psychological assessment that the IEP team planned to discuss at least five (5) business days prior to the July 6, 2016 IEP team meeting, in accordance with COMAR 13A.05.01.07.
6. The PGCPS did not provide the complainant with proper written notice of the IEP team's decisions, at the February, May and July 2016 IEP team meetings, of the refusal of her requests for the provision of additional supports to the student, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12.

INVESTIGATIVE PROCEDURES:

1. On July 28, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS.
2. On August 8, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On August 15, 2016, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the PGCPS of the allegations and requested that the PGCPS review the alleged violations.
4. On August 16, 2016 and September 7, 2016, the complainant provided documentation to the MSDE for consideration.
5. On September 7, 2016, Ms. Austin and Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Special Education Teacher;
 - b. Ms. XXXXXXXX, Special Education Clerk Typist;

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- c. Ms. XXXXXXXX, Psychologist;
- d. Mr. XXXXXXX, Principal;
- d. Ms. XXXXXXXX, Occupational Therapist; and
- e. Ms. XXXXXXXXXXXX, Occupational Therapist.

Ms. Jodi Kaseff, Special Education Instructional Specialist, PGCPs, participated in the site visit as a representative of the PGCPs and to provide information on the school system's policies and procedures, as needed. The PGCPs provided documentation to the MSDE for consideration at the site visit.

- 6. On September 22, 2016, the PGCPs provided with the MSDE with documentation for consideration.
- 7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Amended IEPs, dated October 6, 2016, February 29, 2016, and August 23, 2016, and IEP, dated May 3, 2016;
 - b. Sign-in sheets of participants at the February 23, 2016, April 18, 2016, May 3, 2016 and July 6, 2016 IEP team meetings;
 - c. Notices of IEP team meetings scheduled for February 23, 2016, April 18, 2016, May 3, 2016, and July 6, 2016;
 - d. Prior Written Notices, dated February 26, 2016, April 25, 2016, May 9, 2016, and July 14, 2016;
 - e. Occupational Therapy Assessment, dated June 8, 2016, and log notes of the occupational therapist, from September 2015 to May 2016;
 - f. Electronic mail (email) correspondences between the complainant and the school staff, dated February 29, 2016, March 2 and 3, 2016, April 7, 8, 19 and 28, 2016, May 3, 2016, and June 29, 2016;
 - g. Reports of the student's progress towards mastery of the annual IEP goals, dated January 21 and 22, 2016, and June 20, 2016;
 - h. Correspondence authorizing the school staff's leave under the Family and Medical Leave Act, dated February 19, 2016; and
 - i. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on July 26, 2016.

BACKGROUND:

The student is eight (8) years old, is identified as a student with Multiple Disabilities under the IDEA, including an Intellectual Disability and an Other Health Impairment, and has an IEP that requires the provision of special education and related services (Doc. a).

The student attended XXXXXXXXXXXXXXXX school during the period covered by the investigation, but currently attends XXXXXXXXXXXXXXXXXXXX (Doc. a).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. a).

**ALLEGATION #1: PROVISION OF THE COMPLETED IEP AND PRIOR
WRITTEN NOTICE FOLLOWING THE
FEBRUARY 23, 2016 IEP TEAM MEETING**

FINDINGS OF FACTS:

1. On February 23, 2016, the IEP team convened (Docs. a - d).
2. There is documentation that the school staff prepared a Prior Written Notice document of the meeting, dated February 26, 2016 (Doc. d).
3. There is documentation that the school staff prepared an amended IEP, dated February 29, 2016, following the February 23, 2016 IEP team meeting (Doc. a).
4. On March 3, 2016, the complainant sent an electronic mail (email) to the school staff stating that she had not received a copy of the updated IEP or the Prior Written Notice for the February 23, 2016 IEP team meeting (Doc. f).
5. On March 4, 2016, the school staff sent an email to the complainant that included a Prior Written Notice document and an IEP as attachments. The email documents that the school staff were unable to send the documents to the complainant in electronic form prior to this date due to technical difficulty. The school staff further report to the MSDE that they were unable to send the paper copies of the IEP and the Prior Written Notice documents to the complaint via the student because he had been absent from school. There is documentation that the student did not attend school from February 29, 2016 through March 4, 2016 due to illness (Doc. f and interview with the school staff).
6. On April 7, 2016, the complainant sent an email to the school staff indicating that she had not received the Prior Written Notice document following the February 23, 2016 IEP team meeting (Doc. f).
7. On April 8, 2016, via email, the school staff provided the complainant with Prior Written Notice of the February 23, 2016 IEP team meeting (Doc. f).

DISCUSSION/CONCLUSION:

Prior Written Notice

Written notice must be provided to parents within a reasonable amount of time when the public agency proposes or refuses to initiate or change the identification, evaluation, or educational

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placement of a student or the provision of a Free Appropriate Public Education (FAPE) to the student. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

Based on the Findings of Facts #1 - #7, the MSDE finds that there is documentation that the complainant has been provided with the Prior Written Notice of the February 23, 2016 IEP team meeting. Therefore, the MSDE does not find a violation occurred with respect to this aspect of the allegation.

Completed IEP

The public agency must ensure that parents are provided with a copy of the IEP within five (5) business days of the date of an IEP team meeting. If the IEP has not been finalized, a draft IEP must be provided. However, a violation of this requirement does not constitute a denial of a FAPE (COMAR 13A.05.01.07).

Based on the Findings of Facts #1 - #5, the MSDE finds that the complainant was not provided with a copy of the IEP within five (5) business days following the February 23, 2016 IEP team meeting. Therefore, this office finds a violation occurred with respect to this aspect of the allegation. Notwithstanding the violation, based on the Finding of Fact #5, the IEP was subsequently provided to the complainant and as a result, the MSDE does not require student-specific corrective action to address this violation.

ALLEGATION #2: REQUEST FOR REEVALUATION

8. On February 29, 2016, the complainant sent an email to the school staff requesting a reevaluation of the student. The complainant requested that assessments of the student be conducted and completed in order for the IEP team to convene to consider the results in April 2016 (Doc. f).
9. On March 2, 2016, in its email response to the complainant, the school staff described the reevaluation process, and explained the requirement for the IEP team to convene in order to determine the areas in which additional data, if any, is needed about the student, and the requirement that the complainant provide consent for formal assessments (Doc. f).
10. On April 7, 2016, the complainant sent an email to the school staff as a “follow up” to her request for reevaluation of the student. In its email response on the same date, the school staff reported that the complainant’s request would be considered at the upcoming May 3, 2016 IEP team meeting to conduct the IEP annual review. The school staff also noted that the complainant could provide consent for assessments at the upcoming meeting if additional information is determined to be needed at that time (Doc. f).

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11. On April 19, 2016, the school staff sent the complainant an invitation to an IEP team meeting scheduled for May 3, 2016 (Doc. c).
12. On May 3, 2016, the IEP team, including the complainant, convened to conduct reevaluation planning for the student. The IEP team agreed to conduct an educational assessment and a speech/language assessment, as well as assessments of the student's fine motor skills and adaptive behavior functioning, in order to determine the student's current levels of performance (Docs. b - d).
13. On July 6, 2016, the IEP team convened to review the results of assessments recommended at the May 3, 2016 IEP team meeting. The Prior Written Notice of the July 6, 2016 IEP team meeting documents that the complainant expressed concern with the length of time taken to complete the student's reevaluation from the time her "initial request for assessments [was] made on February 29, 2016." The IEP team agreed to reconvene on August 18, 2016 to revise the student's IEP based on the assessment data (Doc. d).
14. On August 18, 2016, the IEP team convened and revised the student's IEP, including revisions to the annual goals. The IEP team also determined additional supplementary supports, increased specialized instruction, and a change in placement (Doc. a).

DISCUSSION/CONCLUSIONS:

When conducting a reevaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the reevaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team in determining whether the student is a student with a disability and in determining the content of the student's IEP (34 CFR §300.304).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

If additional data is needed to determine a student's needs, the public agency must promptly request parental consent to assess and if obtained, ensure that assessment procedures are conducted and that the results of the assessment are considered by the IEP team, and that the student's IEP is revised, as appropriate, within ninety (90) days (COMAR 13A.05.01.06).

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Based on the Finding of Fact #12, the MSDE finds that the IEP team convened on May 3, 2016 in order to conduct reevaluation planning, and determined that additional information was needed in order to determine the student's present levels of performance. However, based on the Findings of Facts #12 - #14, the MSDE finds that the PGCPS did not ensure that the reevaluation was conducted within the required timeline because it was not completed within ninety (90) days. Therefore, the MSDE finds that the PGCPS did not follow proper procedures when conducting a reevaluation of the student, and finds that a violation occurred.

ADDDITIONAL VIOLATION

The public agency or the parent may request that an IEP team meeting be convened at any time to review a student's program, determine the appropriate services, and discuss the provision of services. If the parent requests a meeting, the public agency must either convene an IEP team meeting or provide the parent with written notice, within a reasonable time, to explain why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE (34 CFR §§300.324 and 503).

Based on the Findings of Facts #8 - #12, the MSDE finds that, while the complainant requested reevaluation of the student on February 29, 2016, the PGCPS did not convene an IEP team meeting until May 3, 2016. Based on the same Findings of Facts, the MSDE finds that the PGCPS did not convene an IEP team meeting within a reasonable amount of time. Therefore, the MSDE finds an additional violation occurred.

ALLEGATION #3: PROVISION OF SPECIALIZED INSTRUCTION BY A SPECIAL EDUCATION TEACHER IN APRIL 2016

15. The school system staff acknowledge that the student was not provided with instruction by a special education teacher from April 5, 2016 through April 25, 2016 (Doc. h and interview with the school system staff).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that each student with a disability is provided with the special education instruction, accommodations and supplementary supports required by the student's IEP (34 CFR §§300.101 and .103).

Based on the Finding of Fact #15, the MSDE concurs with the PGCPS's acknowledgement, and therefore finds a violation occurred.

ALLEGATION #4: PROVISION OF DRAFT IEP PRIOR TO THE MAY 3, 2016 IEP TEAM MEETING

16. On May 3, 2016, the IEP team convened (Docs. a - d).

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17. There is documentation that, on April 28, 2016, three (3) business days prior to the meeting, the school staff sent the complainant a draft IEP intended for discussion at the meeting (Doc. f).

DISCUSSION/CONCLUSIONS:

The public agency must provide parents with a copy of each assessment, report, data chart, draft IEP, or other documents that the IEP team plans to discuss at the meeting at least five (5) business days before the meeting. However, a violation of this requirement does not constitute a denial of a FAPE (COMAR 13A.05.01.07D).

Based on the Findings of Facts #16 and #17, the MSDE finds that the draft IEP developed by the school staff for consideration at the May 3, 2016 IEP team meeting was not provided to the complainant five (5) business days before the meeting. Therefore, this office finds that a violation occurred. Notwithstanding the violation, based on the Finding of Fact #17, the MSDE does not require student-specific corrective action.

**ALLEGATION #5 PROVISION OF PSYCHOLOGICAL ASSESSMENT PRIOR
TO THE JULY 6, 2016 IEP TEAM MEETING**

18. On July 6, 2016, the IEP team convened, and at the meeting, the IEP team discussed the report of a recent psychological assessment (Docs. b - d).
19. There is documentation that, on June 29, 2016, four (4) business days prior to the meeting, the school staff sent the complainant the draft of the report of a psychological assessment via electronic mail (Doc. f).

DISCUSSION/CONCLUSIONS:

The public agency must provide parents with a copy of each assessment, report, data chart, draft IEP, or other documents that the IEP team plans to discuss at the meeting at least five (5) business days before the meeting. However, a violation of this requirement does not constitute a denial of a FAPE (COMAR 13A.05.01.07D).

Based on the Findings of Facts #18 and #19, the MSDE finds that the complainant was not provided with the psychological assessment five (5) business days before the July 6, 2016 IEP meeting. Therefore, this office finds that a violation occurred. Notwithstanding the violation, based on the Finding of Fact #19, the MSDE does not require student-specific corrective action.

**ALLEGATION #6 PRIOR WRITTEN NOTICE OF THE REFUSAL TO
PROVIDE REQUESTED SUPPORTS**

20. On February 23, 2016, the IEP team convened to review the student's progress. The IEP team considered that the student was not making sufficient progress towards mastery of his IEP goals, including the fine motor goal requiring him to trace the letters of his first

name with decreasing physical prompts. The complainant requested additional occupational therapy services for the student to assist him with learning to independently write his name. The IEP team discussed that the student must develop pre-writing skills in order to learn to write, and revised the student's fine motor goal. The IEP team also determined that the student will be provided with the supplementary support of a monthly occupational therapy consultation to support the student's fine motor/visual motor skills in the classroom (Docs. a and d).

21. On April 18, 2016, the IEP team convened. The complainant requested increased occupational therapy services for the student due to her concern about his progress. The complainant specifically noted that the student is more successful when given "more individual time to learn something." The IEP team, considered the student's progress, observations and work samples from the occupational therapist, and parental input. The IEP team determined that the current occupational therapy services remained appropriate, but did not document the basis of this decision or the decision not to increase the student's occupational therapy services (Doc. e).
22. On May 3, 2016, the IEP team convened. The complainant expressed her continued concern about the student's "minimal progress," and specifically, his inability to pull his pants up, properly grasp a pencil to write his name, and turn a doorknob due to his poor muscle strength. She indicated that the student requires more than one (1) hour per month of occupational therapy services, and reported that he does better with direct one-to-one (1-1) interaction. In addition, the complainant reported that, at home, the student "responds well" to using a tablet as a reward for working continuously for five (5) minutes. The IEP team agreed to conduct an occupational therapy assessment of the student fine motor skills in order to determine his present levels of performance in this area (Docs. d and e).
23. On July 6, 2016, the IEP team convened. The IEP team reviewed the occupational therapy assessment which reflects that the student has difficulty with fine motor skills and participating in self-care. The report documents that the student has "significant" cognitive impairments and visual attention difficulties that "significantly" impact his "ability to master concepts ... and his functional performance in the classroom." The complainant renewed her request for an increase in direct occupational therapy services for the student. Because the student's occupational therapist was not a participant at the meeting, the complainant requested that the IEP team address her request when the IEP team reconvenes on August 18, 2016 (Docs. b – d).
24. On August 18, 2016, the IEP team reconvened. There is no documentation of the decisions made by the IEP team at the August 18, 2016 IEP team meeting. However, the amended IEP dated August 23, 2016 reflects that the IEP team did not increase the student's occupational therapy services (Doc. a).

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25. There is no documentation that the complainant specifically requested the use of a tablet or music with the student in the classroom. However, there is documentation that the school staff used music in the classroom to support instruction to the student in phonics and the letters of the alphabet, as required by the early literacy IEP goal. There is also documentation that music was used in occupational therapy sessions with the student in an effort to sustain his attention (Docs. e and g).

DISCUSSION/CONCLUSIONS:

Written notice must be provided to parents within a reasonable amount of time when the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a FAPE to the student. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

In this case, the complainant alleges that the IEP team refused to provide the student with the use of an *iPad* to assist in his communication, the use of music to assist in his learning, and one to one (1-1) direct therapy to address his fine motor skills needs, and did not provide a basis for these decisions.

Based on the Findings of Facts #20 - #24, the MSDE finds that the PGCPS has not provided the complainant with Prior Written Notice of its refusal of the complainant's request for additional occupational therapy services for the student. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

However, based on the Finding of Fact #25, the MSDE finds that the facts do not support the allegation concerning the complainant's reported request for the use of an *iPad* and music with the student. Therefore, the MSDE does not find a violation occurred with respect to these aspects of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the PGCPS to provide documentation by December 1, 2016 that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the violation related to the lack of the provision of special education instruction to the student in April 2016, and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings. The MSDE also requires the PGCPS to provide documentation, within one year of the date of this Letter of Findings, that the compensatory services have been provided.

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The MSDE also requires the PGCPS to provide documentation by December 1, 2016, that the IEP team has convened to review the student's current occupational therapy needs, and has determined whether the violation related to the delay in convening an IEP team meeting to conduct reevaluation planning for the student had a negative impact on the student's ability to benefit from the educational program.

If the IEP team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress these violations, and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings. If compensatory services are determined, the MSDE also requires the PGCPS to provide documentation, within one (1) year of the date of this Letter of Findings, that the compensatory services have been provided.

The PGCPS must ensure that the complainant is provided with proper written notice of the IEP team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the IEP team's decisions.

School-Based

The MSDE requires the PGCPS to provide documentation by December 1, 2016 of the steps it has taken to ensure that the XXXXXX Elementary School staff comply with the requirements to ensure the following:

1. A copy of the IEP is provided to the parent within five (5) business days of the date of an IEP team meeting, in accordance with COMAR 13A.05.01.07.
2. Each assessment, report, data chart, draft IEP, or other document that the IEP team plans to discuss at an IEP team meeting is provided to the parent at least five (5) business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
3. Reevaluation of a student is completed within ninety (90) days, in accordance with COMAR 13A.05.01.06.
4. Prior Written Notice is provided to the parent that includes a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided, in accordance with 34 CFR §300.503.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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Please be advised that both the complainant and the PGCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. 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 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 Special Education/
Early Intervention Services

c: Kevin Maxwell
Gwendolyn Mason
LaRhonda Owens
Kerry Morrison
Jodi Kaseff
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Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum