



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

January 7, 2020

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

RE: [REDACTED]
Reference: #20-059

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 November 15, 2019, the MSDE received a complaint from Wayne D. Steedman, Esq. hereafter, “the complainant,” on behalf of Ms. [REDACTED] and her 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.

This office is investigating the following allegations:

1. The AACPS did not ensure that the student’s parent was provided with the opportunity to participate in an Individualized Education Program (IEP) team meeting held on December 18, 2018, in accordance with 34 CFR §300.322.

The AACPS did not ensure that proper procedures were followed when disciplinarily removing the student from school during the 2019-2020 school year, in accordance with COMAR 13A.08.01.11.

BACKGROUND:

The student is six (6) years old, was identified as a student with an Other Health Impairment due to Attention Deficit with Hyperactivity Disorder (ADHD) and had an IEP that required the provision of special education and related services, and while in [REDACTED]

At the start of the 2018-2019 school year, the student transferred to the AACPS from [REDACTED] and began attending [REDACTED] Elementary School.

FINDINGS OF FACTS:

2018-2019 School Year

1. On September 11, 2018 the student enrolled in the AACPS with an IEP from [REDACTED] which identified him as a student with an Other Health Impairment under the IDEA.
2. On September 18, 2018, the IEP team reviewed the [REDACTED] IEP and decided to conduct an initial evaluation to determine his eligibility in Maryland. The IEP team also determined comparable services to be provided during the pendency of the evaluation. Because those services could not be provided in the school in which the student was placed, the IEP team discussed that the student would need to be transferred to a different school. However, the parent disagreed with a change in educational placement. Therefore, the IEP team decided to provide the services to the extent that they were available in the student's current placement until an IDEA evaluation was completed.
3. On October 25, 2018, the IEP team reconvened and determined that the student meets the criteria for identification as a student with a disability under the IDEA in Maryland. There is documentation that the parent disagreed with the category of disability proposed as the student's primary disability, which was an Emotional Disability. The team decided to obtain additional information from the student's previous school system in [REDACTED] and to revisit the decision.
4. On December 4, 2018, the IEP team reconvened and considered information that the [REDACTED] IEP team had also expressed concerns about the student's social, emotional functioning and had agreed to provide the parent with an Independent Educational Evaluation (IEE). Based on this information, the IEP team proposed identifying the student with Multiple Disabilities, including an Other Health Impairment and an Emotional Disability. The student's parent disagreed with the inclusion of an Emotional Disability. The school-based members of the team proposed conducting additional assessments to resolve the disagreement, but the parent refused to provide consent for the assessments to be conducted.

5. The school staff offered the parent several dates for another IEP team meeting in December, including December 17, 18, and 19, 2018 along with a request for dates and times if none of those fit into her schedule. These attempts were made to find a mutually convenient date to reconvene to develop a proposed IEP, but the parent indicated that she was not available until January 2, 2019.
6. On December 17, 2018, the school staff informed the parent that they could not delay convening the development of the IEP until January 2019 because the student was not currently being provided with a Free Appropriate Public Education (FAPE).
7. The school staff offered for the student's parent to participate in the meeting by telephone, which she declined. Therefore, the IEP team convened without the parent's participation on December 18, 2018 and developed the proposed IEP. The proposed IEP includes academics, significant behavioral supports than were available in the student's current placement, including crisis intervention, adult support, a safety plan and counseling.
8. Between December 18, 2018 and January 16, 2019, additional IEP team meetings were scheduled to seek parent input regarding the IEP and then were cancelled when the parent did not attend.
9. On January 16, 2019, the IEP team meeting convened with the parent in attendance, however she refused to consent to services.

2019-2020 School Year

10. On November 5, 2019, the student was disciplinarily removed from school for two (2) days for a physical assault on another student.
11. There is documentation that, prior to removing the student, the school principal consulted with the school counselor and determined that the student's behavior posed an imminent threat of serious harm to other students that could not be reduced or eliminated using interventions and supports currently in place for the student without an IEP.
12. Since January 2019, the IEP team has continued to attempt to encourage the parent to participate in the IEP team process. Five (5) IEP team meetings have been scheduled and four (4) IEP team meetings have been held with the parent in attendance. To date, the student's parent has not provided consent for the implementation of the proposed IEP.

DISCUSSION/CONCLUSION:

Allegation #1 Parent Participation in the IEP Team Meeting

The public agency is required to take steps to ensure parents have the opportunity to participate in IEP team meetings, which include "[n]otifying parents of [a] meeting early enough to ensure that

they will have an opportunity to attend,” and “[s]cheduling the meeting at a mutually convenient place and time” (34 CFR §300.322). The United States Department of Education, Office of Special Education Programs (OSEP) has indicated that this means providing the parent with notice of the meeting early enough so that the parent has adequate time to make the necessary arrangements to attend the meeting (*Letter to Constantian*, 17 IDELR 118, 1990).

If a parent cannot attend an IEP team meeting in person, the public agency must use other methods to ensure parent participation such as by telephone. The IEP team meeting may be held without the parents in attendance if the public agency is unable to “convince” the parents to attend (34 CFR §300.322).

While the parents are equal participants in the IEP process, the school system has the ultimate responsibility for “crafting the IEP” (*Letter to Simon*, 211 EHLR 436, 1987). Accordingly, the school system may not be bound solely by the parent’s wishes with regards to scheduling an IEP team meeting.

The Courts have acknowledged that there may be circumstances in which accommodating a parent’s schedule would do more harm to the student than proceeding without the parent’s presence at the meeting. The public agency is expected to engage in a balancing act between ensuring parent participation and making sure that a student is afforded a FAPE (*A.M. v. Monrovia*, 55 IDELR 215 (9th Cir. 2010)).

Based on the Findings of Facts #1 - #9, the MSDE finds that the parent’s lack of availability impacted the ability of the AACPS to offer the student a FAPE. Therefore, the MSDE determines that the AACPS followed the requirements of 34 CFR §300.322 when convening the IEP team meeting on December 18, 2018. Further, based on the Finding of Fact #12, the MSDE also finds that the AACPS has continued to make diligent efforts to seek the parent’s input and consent so that an appropriate IEP can be developed and implemented. As a result of these findings, the MSDE does not find that a violation occurred with respect to this allegation.

Allegation #2 Disciplinary Removal

In this case, the complainant alleges that there is no documentation that the principal met with a mental health professional and determined that the student’s behavior posed an imminent threat of serious harm to other students that could not be reduced or eliminated using interventions and supports currently in place for the student without an IEP, as required by COMAR 13A.08.01.11.

Based on the Findings of Facts #10 and #11, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred.

TIMEFRAME:

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

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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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainant maintains 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
and Special Education Services

MEF/sf

c:


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