



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

February 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: XXXXX  
Reference: #20-076

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/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 December 17, 2019, the MSDE received a complaint from Mr. XXXXXXXXX and Mrs. XXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter, 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 the above-referenced student.

The MSDE investigated the allegation that the AACPS did not ensure that the complainants had the opportunity to participate in the Individualized Education Program (IEP) team meeting held on October 21, 2019, in accordance with 34 CFR §§300.322 and COMAR 13A.05.01.07.

**BACKGROUND:**

The student is eleven (11) years old and attended XXXXXXXXXXXXXXXX at the time the complaint was filed. She is identified as a student with Multiple Disabilities, including Intellectual Disability and Other Health Impairment under the IDEA, and has an IEP that requires the provision of special education instruction and related services.

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### **FINDINGS OF FACTS:**

1. On October 4, 2019, the IEP team, including the complainants, met for the purpose of conducting the annual IEP review. The team discussed that, due to the lack of progress, the school-based IEP team members would be recommending a change in educational placement for the student. The school-based members of the team reported that a change in educational placement would require another IEP team meeting with participation from staff from the AACPS Central Office.
2. The school-based members of the team also reported that, before this meeting could occur, the school-based IEP team would still need to conduct the annual review of the IEP. A review of the audio recording of the meeting reflects that the complainants expressed frustration with having to convene two (2) more times before a change in educational placement could occur. In response, rather than conducting the annual IEP in an IEP team meeting, the school-based members of the team suggested sending a proposed IEP to the complainants and obtaining their input in writing, to which the complainants agreed.
3. On October 21, 2019, the school staff met and developed a draft IEP, which was sent to the complainants on October 23, 2019 for their review and written input. The school staff requested that the complainants provide their input by November 5, 2019.
4. On November 4, 2019, the complainants provided the school staff with their written input into the document drafted by the school staff. This input included that the complainants agreed with the proposed goals, had questions about the proposed amount of special education instruction, had concerns about one of the proposed supplementary aids, and requested additional related services.
5. On November 7, 2019, the school staff responded to the complainants' input by explaining the proposed amount of special education instruction. However, there is no documentation that the school staff included or considered the complainants' concerns about the proposed supplementary aids and their request for additional related services.
6. On December 20, 2020, the IEP team met, including the parents, with participation from AACPS Central Office staff to consider the recommended change in educational placement. At that time, the student's mother expressed her concern that she had not had input into the development of the program prior to consideration of the student's educational placement. The IEP team offered to reconvene in order to give her the opportunity to do so. In response, the student's mother requested that the team move forward with the IEP as written, in a new placement, and to reconvene in sixty (60) days to review the IEP, and the team agreed.

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### **DISCUSSION/CONCLUSION:**

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually. In making changes to a student's IEP *after the annual IEP team meeting* [emphasis added] for a school year, the complainants and the public agency may agree not to convene an IEP team meeting for the purpose of making those changes, and may instead develop a written document to amend or modify the IEP (34 CFR §300.324).

If an IEP team meeting is required, the public agency must ensure that the complainants are present at the meeting or are afforded the opportunity to participate in the meeting, including notifying them of the meeting early enough for them to have an opportunity to attend (34 CFR §300.322). In Maryland, this notice must be in writing, and must be provided at least ten (10) days prior to the date of the meeting (COMAR 13A.05.01.07).

Based on the Findings of Facts #1, #2 and #3, the MSDE finds that there was no IEP team meeting held on October 21, 2019. Therefore, this office does not find that a violation occurred with respect to the allegation.

However, based on the Findings of Facts #1 - #5, the MSDE finds that the AACPS did not ensure that the annual IEP review was conducted through an IEP team meeting with the opportunity for parent participation in accordance with 34 CFR §300.24. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #6, the MSDE finds that the complainants were subsequently provided with the opportunity to participate in an IEP team meeting to conduct the annual IEP review. Therefore, no student-specific corrective action is required.

### **TIMELINE:**

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.

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The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party 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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770.

### **School Based**

The MSDE requires the AACPS provide documentation by April 1, 2020 of the steps taken to ensure that the XXXXXX Elementary School staff conduct annual IEP reviews through an IEP team meeting.

Technical assistance is also available to the parties by contacting Dr. Nancy Birenbaum. 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 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 (FAPE) for the student, including issues subject to this State complaint investigation,

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency 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.

<sup>2</sup> The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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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: George Arlotto  
Alison Barmat  
XXXXXX  
Dori Wilson  
Anita Mandis  
Diane Eisenstadt  
Nancy Birenbaum