



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

April 19, 2019

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Ms. Joeleen Smith
Supervisor of Special Education
Queen Anne's County Public Schools
202 Chesterfield Avenue
Centreville, Maryland 21617

RE: XXXXX
Reference: #19-088

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:

The MSDE received a complaint from Ms. XXXXXXXX, hereafter "the complainant," on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Queen Anne's County Public Schools (QACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The QACPS has not ensured that the student's Individualized Education Program (IEP) has been implemented since the start of the 2018 – 2019 school year, in accordance with 34 CFR §§300.101, .103, and .323.
2. The QACPS did not ensure that a reevaluation was conducted in a timely manner in September 2018, in accordance with COMAR 13A.05.01.06.

3. The QACPS has not ensured that the IEP addresses the student's social, emotional and behavioral needs, since the start of the 2018- 2019 school year, in accordance with 34 CFR §§300.101 and .324.
4. The QACPS did not ensure that the parent was provided with a copy of all of the documents that the IEP team planned to discuss at the December 13 and 20, 2018 IEP team meetings, at least five (5) business days prior to the scheduled meetings, in accordance with COMAR 13A.05.01.07.
5. The QACPS did not ensure that the parent was provided a written invitation notice at least ten (10) days in advance of the December 13 and 20, 2018 IEP team meetings, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
6. The QACPS has not ensured that proper procedures have been followed when responding to a request in December 2018 to amend the student's educational record, in accordance with 34 CFR §§300.618 - .621.
7. The QACPS did not ensure that proper procedures were followed when using exclusion with the student in December 2018, in accordance with COMAR 13A.08.04.
8. The QACPS did not ensure that the parent was provided with Prior Written Notice (PWN) of the decisions made at the September 2018 IEP team meeting, in accordance with 34 CFR §300.503.¹
9. The QACPS did not ensure that the parent was provided with a copy of the IEP document within five (5) business days after the IEP team meeting convened in September 2018, in accordance with COMAR 13A.05.01.07.¹

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with Multiple Disabilities under the IDEA, including an Emotional Disability (ED) and a Specific Learning Disability (SLD). He has an IEP that requires the provision of special education and related services.

The student is in the seventh (7th) grade and attends the XXXXXXXXXXXXXXXXXXXX (XXXXXX MS). He transferred from the Anne Arundel County Public Schools (AACPS) to the QACPS at the start of the 2018 - 2019 school year as a result of the family's relocation.

¹ The complainant raised this allegation during the course of the investigation, and on February 28, 2019 it was included.

**ALLEGATIONS #1 - #3 IEP IMPLEMENTATION, REEVALUATION, AND
ADDRESSING THE STUDENT’S SOCIAL, EMOTIONAL
AND BEHAVIORAL NEEDS**

FINDINGS OF FACTS:

1. On August 29, 2018 the complainant completed the QACPS registration form to enroll the student in the XXXXXX MS. The complainant documented on the registration form that the student has an IEP and that he previously attended school in the AACPS.
2. There is documentation that the school staff requested the student’s educational record from the AACPS on August 29, 2018 and September 4 and 6, 2018.
3. On September 5, 2018, the student began attending the XXXXXX MS.
4. On September 6, 2018, the AACPS staff mailed the student’s educational record to the XXXXXX MS.²
5. The AACPS IEP reflects that the student was identified as having Multiple Disabilities, including ED and an Other Health Impairment (OHI) relating to Attention Deficit Hyperactivity Disorder (ADHD). It states that his OHI impacts his ability to be available for learning, organize materials and remain on task, and that his “multiple disabilities and complex profile impact all areas of his education.” The AACPS IEP identifies needs in the areas of reading, math, written expression, and social, emotional and behavioral skills and includes annual goals to address each of these areas.
6. There is a statement in the behavioral present levels of performance of the AACPS IEP indicating that the student was in the “ED program” due to his behavior.
7. The AACPS IEP requires several accommodations for instruction and assessment, including clarification of directions, small group testing, monitoring test responses and extended time. The AACPS also documents that the student requires the accommodation of frequent breaks “because he often needs to get up and move around.”
8. The AACPS IEP requires several supplementary supports, including daily checks for understanding, organizational aids, and repetition of directions.
9. The AACPS IEP requires the use of a home-school communication system as supplementary support. In clarifying the support, which is required periodically, the AACPS IEP states that the student “requires the social/emotional support of home/school communication in order to continue to keep the expectations consistent between home and school.”

² On September 7 and 13, 2018, the QACPS staff documented receipt of educational records from the AACPS. The documentation does not identify the specific records that were received, but the QACPS staff report that these documents included the student’s IEP.

10. The AACPS IEP requires daily “implementation of a behavior contract” as a supplementary support to assist the student with his focus. It clarifies that the student “requires a behavior contract to help keep him focused on what he is expected to do during the school day.”
11. The AACPS IEP requires daily reinforcement of positive behavior through non-verbal and verbal communication. It clarifies that the student requires this supplementary support “because addressing his off task behavior verbally is not always effective.”
12. The AACPS IEP requires frequent changes in activities and opportunities for movement as a period supplementary support. In clarifying this support, it states that the student has difficulty with focus when sitting for long periods of time. It also clarifies that “providing [the student with] frequent changes in activity and adult support will allow him time to take a break if he is over stimulated or overwhelmed by the classroom environment,” and is required periodically.
13. The AACPS IEP requires eleven and one-half (11.5) hours per week of specialized instruction in math, language arts and “strategies for success” in a separate special education classroom. It also requires five (5) hours per week of specialized instruction in science and social studies in a general education classroom to address the student’s reading, writing and “learning behavior goals.”
14. The AACPS IEP requires fifteen (15) minute sessions of counseling services three (3) times per week to address the student’s social and emotional skills.
15. The AACPS IEP documents that the student requires a BIP (AACPS BIP) “to provide positive behavioral interventions and supports, and other strategies to help him be successful in the classroom,” and that was implemented in April 2017.
16. The AACPS BIP identifies that the student struggles with organization, attention, frequently makes comments under his breath, and “acts impulsively.” The AACPS BIP includes four (4) goals that require the student to complete 70% of assigned tasks, demonstrate positive social skills, refrain from making inappropriate comments under his breath, and arrive to class on time.³
17. The AACPS BIP requires numerous interventions, which include the following:
 - Homework folder for staff to collect and send home incomplete work each week;
 - Daily point sheet targeting appropriate social skills;
 - Positive reinforcement for demonstrating appropriate social skills during peer and adult interactions;
 - Direction for the student to take a break in the “regulation room” if disruptive behavior persists;
 - Reminders for the student to “talk inside his head” and stay focused on work; and
 - Deduct points from the daily point sheet when the student is tardy to class.
18. All of the AACPS BIP goals are required to be evaluated by the use of a “daily point

³ These goals are in addition to the IEP behavior goals.

- sheet” and observations. The point sheets were designed to enable the student to earn the right to receive instruction in the general education classroom and rewards as incentives for appropriate behavior.
19. On September 6, 2018, the student’s second (2nd) day attending the XXXXXX MS, the IEP team convened. The complainant participated by telephone. The IEP team reviewed the AACPS IEP and adopted it in all areas, but decided that the IEP can be implemented in a general education classroom with two (2) hours of specialized instruction per day.
 20. The written summary of the September 2018 IEP meeting documents the IEP team’s agreement to continue implementing the AACPS BIP despite the fact that earning points would no longer enable the student to receive instruction in a less restrictive environment and earn rewards as incentives for appropriate behavior, and there was no replacement reward identified.
 21. At the time of the September 2018 IEP meeting, the IEP team decided that additional information was needed about the student and recommended assessments of the student’s academics, cognitive functioning, executive functioning, and social and emotional behavior. On September 18, 2018, the complainant provided written consent for the recommended assessments.
 22. On September 19, 2018, the complainant sent an email to the school staff requesting an “OT assessment” to look at ways to assist the student with strategies to maintain focus and movement to release energy. The school staff stated that an occupational therapist would conduct an informal observation of the student.
 23. On September 28, 2018, the complainant sent an email to the school staff reporting that the homework folder was not being used.
 24. On November 15, 2018, the complainant sent an email to the school staff expressing her belief that the IEP and BIP were not being implemented. The school staff agreed to schedule an IEP meeting to address the complainant’s concerns.
 25. On November 29, 2018, the IEP team convened. The team reviewed the results of the educational and psychological assessments that were recommended in September 2018, but did not consider the recommendations contained in the assessment reports.
 26. At the November 2018 meeting, the IEP team discussed the occupational therapist’s informal observations of the student. The complainant expressed concerns about the student’s sensory needs and the IEP team agreed to conduct an assessment of his sensory processing.
 27. The written summary of the November 2018 meeting documents that the IEP team would reconvene on December 13, 2018, to amend the IEP based on the results of the assessments.
 28. The IEP team documented that the Functional Behavior Assessment (FBA) recommended in September 2018 was not complete at the time of the November 2018 meeting.
 29. The written summary of the November 2018 IEP team meeting does not document the

team's consideration of the complainant's reported concern that the IEP and BIP were not being implemented. After the meeting the complainant informed the school staff that the meeting summary did not document her concerns expressed at the meeting that the student's grades "had suffered" due to his behavior, her belief that the BIP was not being implemented, and that the student was not being provided with occupational therapy supports. The complainant noted specific concerns that the school staff was not implementing movement breaks, fidgets, a homework folder, weekly progress emails, and daily behavior goal sheet.

30. On December 14, 2018, in response to the school staff's request, the AACPS staff provided the school staff with the point sheet used when the student was in that school system. The AACPS point sheet includes four (4) behavior goals which are different from the BIP goals.⁴ The AACPS point sheet allows the student to achieve up to two (2) points per goal in each class, per day, if the behavior is achieved.
31. On December 18, 2018, the school staff sent an email to the AACPS staff requesting clarification of the "behavior contract" that is required as a supplementary support in the IEP. The AACPS staff explained that the behavior contract refers to the requirement for students in their ED program to earn a certain number of points in order to earn incentives in their ED program.
32. Also on December 18, 2018, the school staff sent an email to the complainant noting "some confusion" in the use of the terms "behavior chart" and "point sheet." The school staff explained that they had been using a behavior chart since the beginning of the school year to collect data on the IEP goals and the BIP goals. The school staff stated that "the point sheet is a "new form" that was introduced after receiving a copy of the AACPS form and explained that the teachers would complete the form to indicate the student's performance in each class.
33. On January 22, 2019, the IEP team convened and reviewed the results of the sensory assessment.⁵ The IEP team agreed to add a periodic consultation by an occupational therapist as a supplementary support to the IEP based on the assessment results.
34. On February 8, 2019, the IEP team convened and reviewed the FBA and a revised BIP containing newly developed interventions. The IEP team revised the IEP on this date.
35. There is documentation that, in some classes, the student was provided with some of the accommodations and supplementary supports required by the IEP. However, there is no documentation that the student was provided with all of the supplementary supports and accommodations required by the IEP on a consistent basis and in each of his classes.
36. The IEP does not require weekly progress emails or fidgets.⁶ The IEP also did not require OT support prior to February 2019.

⁴ The AACPS point sheet goals require the student to begin work with no more than two (2) prompts, remain on task for ten (10) minutes with one (1) reminder, remain in a designated area, and display appropriate peer interactions.

⁵ While the assessment was recommended in November 2018, the complainant did not provide written consent until January 7, 2019.

⁶ There is documentation that, on occasion, the student was provided with fidgets.

37. There is no documentation that all of the interventions required by the BIP have been provided since the start of the 2018 - 2019 school year. There is no documentation of the use of a daily point sheet with the student before January 2019.
38. A review of the counseling log documents that the student was provided with the counseling services required by the IEP.
39. The November 2018 and February 2019 progress reports document that the student was making sufficient progress towards mastery of all of the IEP goals.
40. The student earned one (1) D, three (3) Cs and one (1) B on his first (1st) quarter report card for the 2018 - 2019 school year. He earned two (2) Ds, two (2) Cs and two (2) Bs on his second (2nd) quarter report card, and he earned one (1) E, one (1) C, one (1) B and two (2) As on his third quarter report card.

CONCLUSIONS:

Allegation #1 IEP Implementation

Based on the Findings of Facts #7 - #12 and #14 - #17, #23, #24, #29 - #32, and #35 - #38, the MSDE finds that there is no documentation that the student's IEP was implemented, as written, from September 2018 to February 2019, in accordance with 34 CFR §§300.101, .103, and .323.

In addition, based on the Findings of Facts #17 - #20, the MSDE finds that the BIP, as written, could not be implemented once the student's educational placement was revised, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds a violation.

Allegation #2 Reevaluation

Based on the Findings of Facts #21 and 25, the MSDE finds that, while on November 29, 2019, the IEP team reviewed the results of the psychological and educational assessments, there is no documentation that the IEP team considered the recommendations in the reports of these assessments, as required by 34 CFR §§300.324. Further, based on the Findings of Facts #19, #21, #25, #28 and #34, the MSDE finds that the IEP did not complete the reevaluation that began on September 6, 2018 within the required timelines, in accordance with COMAR 13A.05.01.06. Therefore, the MSDE finds that violations occurred.

Allegation #3 Addressing the Student's Social, Emotional and Behavioral Needs

Based on the Findings of Facts #5 - #20, the MSDE finds that the IEP adopted by the QACPS in September 2018 included annual goals and supports to address the student's social, emotional and behavioral needs that the IEP team decided could be implemented in a general education classroom.

However, based on Findings of Facts #21, #28 and #34, the MSDE finds that because the team did not complete the reevaluation within the required timelines, there was a delay in addressing the student's needs, in accordance with 34 CFR §§300.101 and .324. Therefore, the MSDE finds a violation occurred.

ALLEGATIONS #4 AND #5

**WRITTEN NOTICE OF, AND PROVISION OF
DOCUMENTS FOR, THE DECEMBER 2018 IEP
TEAM MEETINGS**

FINDINGS OF FACTS:

41. On November 29, 2018, the school staff developed an invitation notice for an IEP team meeting scheduled for December 13, 2018. However, there is no documentation that the school staff provided this notice to the complainant.
42. On December 5, 2018, six (6) business days prior to the meeting scheduled for December 13, 2018, the school staff sent an invitation notice home with the student.
43. On December 13, 2018, the complainant sent an email to the school staff stating that she was unavailable to attend the meeting that day due to work demands and requesting that the meeting be rescheduled for another date.
44. The IEP team did not convene on December 13, 2018 and the meeting was rescheduled at the complainant's request.
45. On December 13, 2018, the school staff developed an invitation notice for an IEP team meeting scheduled for December 20, 2018, which is five (5) business days later. However, there is no documentation that the school staff provided this notice to the complainant.
46. On December 18, 2018, the complainant sent an email to the school staff requesting a postponement of the December 20, 2018 IEP meeting because she had not received the documents that she believed the IEP expected to review prior to the meeting.
47. The IEP team did not convene on December 20, 2018 and the meeting was rescheduled for January 22, 2019.

CONCLUSIONS:

Allegation #4 Provision of Documents Prior to IEP Meeting

Based on the Findings of Facts #45 - #47 the MSDE finds that the IEP meeting scheduled for December 20, 2018 did not occur because the complainant reported that she did not receive documents that she believed were going to be reviewed at the meeting, in accordance with COMAR 13A.05.01.07. Therefore, based on the Finding of Fact #47, the IEP meeting scheduled for December 20, 2018 did not occur and, as a result, the MSDE does not find a violation.

Allegation #5 Written Notice of IEP Meeting

Based on the Findings of Facts #41 and #42, the MSDE finds that the complainant did not receive written notice ten (10) days in advance of the meeting schedule for December 13, 2018, in accordance with CFR §300.322 and COMAR 13A.05.01.07. However, based on the Findings of Facts #43 and #44, the MSDE finds that the meeting did not occur and the meeting was

rescheduled at a mutually convenient date on January 22, 2019. Therefore this office does not find a violation.

ALLEGATION #6 REQUEST TO AMEND EDUCATIONAL RECORD

FINDINGS OF FACTS:

48. On December 18, 2018, the complainant sent an email to the school staff reporting that the written summary of the November 29, 2018 IEP meeting was inaccurate and incomplete, and requesting an amendment of the student's educational record.
49. On January 3, 2019, the school system staff replied to the complainant's email, stating that "none of the information reported in your email was purposefully omitted from the PWN." The school system staff did not agree to amend the meeting summary, and did not inform the complainant of the right to request a hearing to address the refusal to amend the record.

CONCLUSION:

Based on the Findings of Facts #48 and #49, the MSDE finds that the QACPS did not follow proper procedures in response to the complainant's request to amend the student's educational record because it did not inform the complainant of the right to request a hearing, in accordance with 34 CFR §§300.618 - .621. Therefore, this office finds a violation occurred.

ALLEGATION #7 USE OF EXCLUSION

FINDINGS OF FACTS:

50. On December 12, 2018, the student made an inappropriate statement that caused concern that it could be a possible bomb threat to the school. The school staff did not allow the student to return to class and, because he was upset, requested that the complainant pick him up from school rather than riding the bus.
51. The school staff documented that adult support was provided for the student while he waited for the complainant to pick him up from school.

CONCLUSION:

Based on the Findings of Facts #50 and #51, the MSDE finds that there is documentation that adult support was provided when the student was removed from class on December 12, 2018, in accordance with COMAR 13A.08.04. Therefore this office does not find a violation.

ALLEGATIONS #8 AND #9

PRIOR WRITTEN NOTICE (PWN) AND IEP DOCUMENT FOLLOWING THE SEPTEMBER 2018 IEP TEAM MEETING

FINDINGS OF FACTS:

52. The IEP team convened on September 6, 2018, made decisions regarding the student's education program, and developed an IEP for the student.
53. There is no documentation that the school staff provided the complainant with the PWN or the IEP following the September 6, 2018 IEP team meeting.

CONCLUSIONS:

Allegation #8 Provision of IEP

Based on the Findings of Facts #52 and #53, the MSDE finds that the QACPS did not ensure that the complainant was provided with the completed IEP following the September 6, 2018 IEP meeting, in accordance with COMAR 13A.05.01.07. Therefore, the MSDE finds a violation occurred with respect to the allegation.

Allegation #9 Provision of Prior Written Notice

Based on the Findings of Facts #52 and #53, the MSDE finds that the QACPS did not ensure that the complainant was provided with written notice of the decision made at the September 6, 2018 IEP meeting, in accordance with 34 CFR §300.503. Therefore, the MSDE finds a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the QACPS to provide documentation by May 15, 2019, that the complainant has been provided with the IEP and written notice of the decisions made on September 6, 2018, and information on how to obtain a school system hearing to contest the educational record.

The MSDE also requires the QACPS to provide documentation, by the end of the 2018 - 2019 school year, that the IEP team has determined the amount and nature of compensatory services or other remedy to redress the violations identified through this investigation and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the QACPS to provide documentation by the end of the 2018 - 2019 school year of the steps it has taken, including training, to ensure that the XXXXXX MS staff, including school administration, staff, comply with the IDEA and related State requirements relating to the violations identified in this Letter of Findings.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur.

XXX
Ms. Joeleen Smith
April 19, 2019
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Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

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 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainants 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, 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

MEF/ksa

c: XXXXXXXX
 XXXXXXXX
 Dori Wilson
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 K. Sabrina Austin
 Nancy Birenbaum