




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

December 20, 2019




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

RE: 
Reference: #20-048

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 October 23, 2019, the MSDE received a complaint from Mr.  hereafter, “the complainant,” on behalf of his daughter, 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.

The MSDE investigated the following allegations:

1. The AACPS has not ensured that the student has been provided with adult support as required by the IEP since October 1, 2019,¹ in accordance with 34 CFR §§ 300.101 and .323.

¹ While the timeframe was initially identified as, since the start of the 2019 - 2020 school year, on November 21, 2019, the complainant clarified with the MSDE that the alleged allegation began on October 1, 2019, and not at the start of the 2019 - 2020 school year.

2. The AACPS did not ensure that the student's Individualized Education Program (IEP) was implemented from October 1, 2019 to October 17, 2019, in accordance with 34 CFR §§ 300.101 and .323. Specifically, it was alleged that the student's "fade plan" and advanced notice of schedule changes were not provided to the student.
3. The AACPS did not ensure that prior written notice was provided when the student's "fade plan" was changed by school staff, in accordance with 34 CFR §300.503.

BACKGROUND:

The student is nine (9) years old and attends ██████████ Elementary School. She is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: ADULT SUPPORT

FINDINGS OF FACTS:

1. On April 11, 2019, the IEP team convened to review and revise the student's IEP, as appropriate. The team discussed the student's behavior in school and the need to fade adult support to increase her independence. While the team determined that a "fade plan" would be developed, the team also determined that the student would continue to have support during lunch and recess.
2. The student's IEP in effect on October 1, 2019, requires that she be provided with adult support daily, during "scheduled breaks, lunch, recess, cultural arts, science, social studies, and language arts, to promote communication, reduce anxiety, and for academic tasks." In addition, the IEP states that "adult support is shared" among school staff.
3. The documented schedules of the school staff for the 2019 - 2020 school year, reflects that adult support has been assigned to the student during the school day, in the areas required by the IEP.

CONCLUSION:

The complainant alleges that when he visited the school, he did not witness adult support sitting with the student while she was in the lunchroom. He asserts that the support staff was "walking around the lunchroom and not present with his daughter."

Based on the Findings of Facts #1 - #3, the MSDE finds that the IEP does not require adult support to be seated next to the student, and that adult support has been assigned to the student to support her in the areas required by the IEP, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATIONS #2 AND #3: IMPLEMENTATION OF THE “FADE PLAN” AND
PROVISION OF PRIOR WRITTEN NOTICE**

FINDINGS OF FACTS:

4. On April 11, 2019, the IEP team determined that a “fade plan” for the student would “being in the fourth marking period and into the fourth grade school year,” and that the “fading of the support will include proximity fading as well as moving from verbal to visual prompts.”
5. On May 6, 2019, the complainant and the school staff met outside of an IEP team meeting to develop a “fade plan” for the student. The draft “fade plan” that was developed reflects that data will be collected in four (4) different behavior target areas starting with the student’s science class, and that once the student achieved an 80% success rate in all four (4) areas, an additional day would be added.
6. On May 17, 2019, the complainant contacted the school staff by electronic mail (email), to question why the finalized “fade plan,” which he received by email on May 16, 2019, reflected an implementation date of October 1, 2019, rather than the date determined by the IEP team. In response, the school staff indicated that due to the limited school days left in the 2018 - 2019 school year, it was not feasible to collect meaningful data during this short period of time.
7. There is no documentation that the complainant objected to the revised start date of the “fade plan.”
8. There is no documentation that the student’s “fade plan” was implemented during any period of time.
9. On October 17, 2019, the IEP team convened to review the student’s IEP. The meeting summary reflects that the school staff determined that the “fade plan” was not appropriate for the student, based on her current needs. However, it was determined that she would continue to receive adult support as required by the IEP.

DISCUSSION/CONCLUSIONS:

Allegation #2: Implementation of the “Fade Plan”

Based on the Findings of Facts #4 - #9, the MSDE finds that there is no documentation that the AACPS implemented the student’s “fade plan” from October 1, 2019 to October 17, 2019, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation during this time period.

Notwithstanding the violation, based on the Findings of Facts #8 and #9, the MSDE finds that the “fade plan” was not implemented and later, deemed inappropriate for the student, and that the student continued to receive adult support in the areas required by the IEP. Therefore, this office finds that the violation did not negatively impact the student’s ability to benefit from the education program and does not require corrective action.

Allegation #3: Provision of Prior Written Notice

In this case, the complainant alleges that he was not provided with prior written notice when the “fade plan” was amended to reflect an implementation date of October 1, 2019, rather than “the fourth marking period and into the fourth grade school year,” as documented in the IEP.

In making changes to a student's IEP after the annual IEP team meeting, the parent of a student with a disability and the public agency may agree to amend the IEP outside of an IEP team meeting (34 CFR §300.324).

Based on the Findings of Facts #5 - #7, the MSDE finds that the parties developed a “fade plan” for the student through the amendment process outside of an IEP team meeting, and therefore, prior written notice was not required, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

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.

The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.² 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

² 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.

implementation of the action.³ Dr. Birenbaum can be reached at (410) 767-7770.

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, 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:ac

c: George Arlotto
Alison Barmat
[REDACTED]
Dori Wilson
Anita Mandis
Albert Chichester
Nancy Birenbaum

³ 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.