



Jack R. Smith, Ph.D.
Interim State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

November 24, 2015

XXX
XXX
XXX

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

RE: XXXXX
Reference: #16-027

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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.

ALLEGATION:

On September 29, 2015, the MSDE received a complaint from Mr. XXXXXXXXXX, 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 allegation that the AACPS had not ensured that the Individualized Education Program (IEP) addresses the student’s transportation needs since the start of the 2015-2016 school year, in accordance with 34 CFR §§300.34(c)(16) and COMAR 13A.05.01.10.

XXX

Ms. Bobbi Pedrick
November 24, 2015
Page 2

INVESTIGATIVE PROCEDURES:

1. On September 30, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Bobbi Pedrick, Director of Special Education, AACPS; and Ms. Alison Barmat, Supervisor of Equity Assurance and Compliance Unit, AACPS.
2. On October 1, 2015, Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a telephone interview with the complainant about the allegation to be investigated.
3. On October 1, and 7, 2015 and November 2, 4, and 5, 2015, the AACPS sent documents to the MSDE to be considered during the investigation.
4. On October 7, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation, copying Ms. Pedrick and requesting that her office review the allegation.
5. On October 27, 2015, Ms. Floyd conducted a site visit to AACPS Office of Nonpublic and Interagency Placements to review the student's educational record and interviewed Ms. Barmat and Ms. Linda Donahue, Coordinator, Nonpublic and Interagency Placements, AACPS.
6. On November 11, 2015, Ms. Floyd, and Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a site visit to the AACPS Central Office and interviewed the following AACPS staff:
 - a. Ms. XXXXXXXXXX, Central Individualized Education Plan (CIEP) and Transportation Technician;
 - b. Ms. XXXXXXXXXX, Coordinator, Nonpublic and Interagency Placements;
 - c. Mr. XXXXXX, Supervisor of Transportation;
 - d. Ms. XXXXXXXX, XXXXX, Admissions, Compliance and Transition, XXXXX XXXXXX (XXXX), XXXXXXXXXX;
 - e. Ms. XXXXX, Behavior Resource Coordinator, XXXX, XXXXXXXX; and
 - f. Ms. XXXXXXXXXX, Program Manager, School Health Service, Anne Arundel County Health Department.

Ms. Barmat attended the site visit as a representative of the AACPS and to provide information on the school system's policies and procedures, as needed.

7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

XXX

Ms. Bobbi Pedrick
November 24, 2015
Page 3

- a. Notice of the procedural safeguards, provided to the complainant on October 1, 2015;
- b. IEP dated July 30, 2014;
- c. IEP dated April 22, 2015 and progress report on IEP goals;
- d. IEP dated April 22, 2015, amended May 13, 2015 and progress report on IEP goals;
- e. IEP dated April 22, 2015, amended October 1, 2015 and progress report on IEP goals;
- f. Invitation to the October 1, 2015 IEP team meeting and written summary of the meeting;
- g. The AACPS approval for financial assistance for the student to attend a non-public, separate, day school placement for the 2015-2016 school year;
- h. Action plan for medical needs, XXXXXXXXXXXXXXXX, dated August 26, 2015;
- i. Electronic mail (email) correspondence of the seizure protocol for the student, the AACPS, dated August 31, 2015;
- j. Student route sheets for transportation, the AACPS, dated August 21, 2015 and October 5, 2015;
- k. Cardiopulmonary resuscitation course certification cards, for the student's bus driver, aide, and substitute bus driver/aide dated October 2015;
- l. Report of Functional Behavioral Assessment (FBA) revised March 18, 2015 and Behavioral Intervention Plan (BIP) revised April 22, 2015;
- m. School bus behavior reports on the student from September 17 and 21, 2015;
- n. Reports of the comprehensive evaluation review, dated July 30, 2015, the physical therapy assessment, the psychological assessment, the academic assessment, and the occupational therapy assessment dated February 28, 2013, and the communication assessment, dated July 7, 2014;
- o. Regulation of transportation of students with disabilities, the AACPS, Policy EAC, dated February 6, 2013;
- p. Parent handbook for special education, the AACPS, transportation procedures and guidelines;
- q. Superintendent's recommended FY2016 operating and capital budgets for transportation, the AACPS;
- r. Email correspondence between the AACPS staff and XXXXXXXXXXXXXXXX, dated August 26, 2015 through November 2, 2015;
- s. Email correspondence between the AACPS staff and the MSDE;
- t. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on September 29, 2015;
- u. Timeline of transportation requests and actions documented by the AACPS staff; and
- v. AACPS bus driver and attendant trainings.

BACKGROUND:

The student is eight (8) years old. She has been identified as a student with an Other Health Impairment under the IDEA, related to right hemiplegic cerebral palsy, seizures and a diagnosis of

Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education instruction and related services (Doc. e).

During the 2014-2015 school year, the student attended XXXXXXXXXXXXXXXXXXXXXXXX, a non-public, separate, special education school where she was placed by AACPS (Doc. b).

Since the start of the 2015-2016 school year, the AACPS has placed the student at XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX (XXXX), a non-public, separate, special education school (Docs. e, f, g, and j).

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

FINDINGS OF FACTS:

1. The IEP in effect for the 2015-2016 school year requires that the student receive special education instruction in a non-public, separate, special education school. When considering the Least Restrictive Environment (LRE) for the student, the IEP team states that “due to the nature, frequency, and or duration of services required for the student to benefit from her educational program, the IEP cannot be implemented in the general education environment”. The IEP requires that the student receive transportation as a related service (Docs. c, d, e, h and interview with school staff).
2. The student’s Behavior Intervention Plan (BIP), in effect for the 2015-2016 school year, requires a plan to address the student’s aggression, eloping, and defiant behaviors, such as “touching, yelling, running, and throwing items, and it is to be implemented “across environments (home, school, work, community).” There is documentation that the student is “noncompliant when given directions.” It is also documented that she does not follow directions without disruption when she is corrected, redirected, when limits are set and when she does not get her way. As an example, staff report that “she will become defiant doing exactly the opposite of what is requested. She has difficulty across all settings during the school day. Her disruptive behaviors intensify during the unstructured times of the day and increases towards the end of the day.” The BIP indicates when the problem behavior occurs, staff is to redirect and refocus the student to follow directions. It also states that positive behavioral incentives, good work tickets, and impromptu sensory breaks are effective for the student (Doc. l).

XXX

Ms. Bobbi Pedrick
November 24, 2015
Page 5

3. On September 17, 2015, the student's behavior was documented in a bus report. This report indicated that the student "refused to remain in her seat, stated that she did not have to listen to bus personnel, and then kicked the bus attendant several times." The bus driver informed the student's school-based therapist about the incident and a meeting was held with the student to discuss "bus behavior expectations" (Docs. m and s).
4. On September 21, 2015, it was documented that the student again "refused to stay seated. She refused to sit down even though she was repeatedly asked to do so." The transportation staff documented the concerns about the student's behavior being "a safety issue for all concerned" on the referral (Docs. m and s).
5. On September 24, 2015, the complainant called the Behavior Resource Coordinator, XXXX XXXXXXXXXXXX requesting a seat belt or safety equipment for the student. The Behavior Resource Coordinator contacted the AACPS Central Individualized Education Plan (CIEP) transportation technician to discuss the process for obtaining a safety seat for the student. Also on September 24, 2015, the CIEP transportation technician requested that the student be observed on the bus (Docs. m, o, p, r and s).
6. On September 28, 2015, the AACPS bus specialist rode the student's bus and observed the student's behaviors while on the bus to determine if the student's needs could be met with a lesser restrictive measure than a safety vest (Docs. o, p, and s).
7. On October 1, 2015, the AACPS convened an IEP team and the team determined that the student would begin to utilize a bus safety seat "based upon the fact that she is frequently out her seat." The complainant and the student's mother expressed concern about the student potentially being able to get out of the safety seat but agreed with the IEP team to utilize the "less restrictive child safety seat rather than a more restrictive vest". However, there was no discussion regarding how the student's BIP would be implemented on the bus (Docs. e, i, k, and l).
8. At the October 1, 2015 IEP meeting, the team was provided with a medical protocol developed by the student's mother, dated August 26, 2015. The complainant and the student's mother were informed that transportation staff would be trained in Cardiopulmonary Resuscitation (CPR). However, there was no discussion at the IEP team meeting regarding how the transportation staff would be informed of the medical protocol for the student, which included how to respond if the student had a seizure (Docs. e, i, k, and l).

DISCUSSION AND CONCLUSIONS:

The IDEA requires that a Free Appropriate Public Education (FAPE) be provided to students with disabilities. This is achieved through the development and implementation of an IEP that requires the provision of special education and related services that are designed to meet the needs that result from each student's disability (34 CFR §§300.101, .103, .320, and .323).

XXX

Ms. Bobbi Pedrick
November 24, 2015
Page 6

Related services includes the provision of transportation and such developmental, corrective, and other supportive services, if they are determined to be necessary, by the IEP team to assist a student to benefit from special education (34 CFR §300.34). Therefore, each local education agency must provide or arrange for the transportation of each student with a disability who is placed in a nonpublic school through a decision of the IEP team (Md. Educ. Code Ann. §8-410).

In order to ensure the provision of the services, each public agency must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. This is done to ensure that each teacher and provider is informed of, and understands, his or her specific responsibilities related to implementing the student's IEP and of the accommodations, modifications, and supports that must be provided to the student in accordance with the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the bus staff are unaware of the IEP requirements related to the student's individualized transportation needs.

Based on the Findings of Facts #1 - #7, the MSDE finds that while the IEP team addressed the student's refusal to stay seated on the bus through the use of a safety seat, they did not address the behavioral issues identified through the BIP, nor did they discuss its implementation on the bus while the student is being transported.

Further, based on the Finding of Fact #8, the MSDE finds that although school staff report that all bus staff is trained in first-aid and that the parent provided a "medical protocol" that she developed, there is no documentation that the IEP team considered the student's individual medical needs should they arise on the bus. While school staff report that the transportation staff is provided with information about the student, there is no documentation that bus drivers and assistants are implementing the student's IEP as required. Therefore, MSDE finds a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the AACPS to provide documentation by January 1, 2015, that the IEP team has convened and considered the student's medical and behavioral needs on the bus and has reviewed and revised the IEP consistent with the data and determined whether the violation had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

XXX

Ms. Bobbi Pedrick
November 24, 2015
Page 7

In addition, the AACPS must ensure that the complainant is provided with written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations.

System Based

The MSDE requires the AACPS to provide documentation by March 1, 2016 of the steps taken to determine whether the violation is unique to this case or if it represents a pattern of noncompliance within the school system.

Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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. Please be advised that the AACPS and the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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 within the timelines reported in this Letter of Findings.

XXX

Ms. Bobbi Pedrick
November 24, 2015
Page 8

Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. The complainant and the school system 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 a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:sf

c: George Arlotto
Alison Barmat
XXXXXXX
Dori Wilson
Anita Mandis
Sarah Spross
Cynthia Amirault
Bonnie Preis