



June 3, 2016

David M. Briglia, Esq.
4800 Hampden Lane Suite 200
Bethesda, Maryland 20814

Ms. Nancy Fitzgerald
Executive Director of Special Education
and Student Services
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #16-100

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:

On April 6, 2016, the MSDE received a complaint from Mr. David M. Briglia, hereafter, “the complainant,” on behalf of the above-referenced student and his parent, Ms. XXXXXX. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegations listed below.

1. The HCPS has not followed proper procedures when developing the Individualized Education Program (IEP), in accordance with 34 CFR §§300.320 and .324. Specifically, the IEP does not contain a statement of measureable annual goals designed to meet the student’s needs that result from all of the areas of his disabilities to enable him to be involved in and make progress in the general education curriculum, since April 6, 2015.

2. The HCPS has not ensured that the IEP team considered the results of an Independent Educational Evaluation (IEE) obtained at private expense that was provided on June 10, 2015, in accordance with 34 CFR §300.502.
3. The HCPS has not followed proper procedures when responding to the parent's July 2, 2015 request for an IEE at public expense in the areas of receptive, expressive and pragmatic language, in accordance with 34 CFR §300.502.

INVESTIGATIVE PROCEDURES:

1. On April 6, 2016, the complainant provided documentation to the MSDE for consideration.
2. On April 7, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education and Student Services, HCPS, and Ms. Judith Pattik, Coordinator of Special Education, HCPS.
3. On April 13 and 15, 2016, Ms. Sharon Floyd, Education Program Specialist, MSDE, contacted the complainant and the student's mother, respectively, by telephone to clarify the allegations.
4. On April 22, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the HCPS of the allegations and requested that the school system staff review the alleged violations.
5. On May 4, 2016, Ms. Janet Zimmerman, Instructional Facilitator for Compliance, HCPS, contacted Ms. Floyd by telephone to discuss the allegations to be investigated.
6. On May 23, 2016, Ms. Floyd and Ms. Nicole Green, Dispute Resolution and Data Specialist, MSDE, conducted a site visit to XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following HCPS staff:
 - a. Ms. XXXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXX, School Psychologist; and
 - c. Ms. DXXXXXXXXX, Alternative Education Teacher.

Ms. Zimmerman and Ms. XXXXXXXX, Instructional Facilitator, HCPS, attended the site visit as representatives of the HCPS 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:
 - a. Notice of procedural safeguards, signed and dated on April 16, 2015;
 - b. IEPs and IEPs-in-a-Flash, dated March 23, 2015, April 16, 2015; May 28, 2015, and July 23, 2015, and IEP progress reports, dated June 10, 2015;
 - c. The student's grade 5 report card, dated June 17, 2015;
 - d. Reports of the HCPS psychological assessments, dated July 10, 2011, May 28, 2013 and February 11, 2015;
 - e. Letter from **Laurence Pezor, MD**, to the parent, dated December 17, 2012;
 - f. Supplemental team summary reports, dated February 11 and 27, 2015;
 - g. Prior written notices, dated December 17, 2014, April 16, 2015, May 28, 2015, June 10, 2015, and July 2, 13, and 22, 2015;
 - h. Report of an educational assessment, dated February 2, 2015;
 - i. Report of a Functional Behavior Assessment (FBA), dated February 27, 2015, Behavior Intervention Plan (BIP), dated March 23, 2015, and a sample of the student's behavioral data sheet and reminder chart;
 - j. Report of a Speech/Language Assessment, dated June 14, 2013;
 - k. Report of a private Speech/Language Assessment, dated February 26, 2015;
 - l. Letter from the student's mother requesting an IEE, dated July 13, 2015;
 - m. Letter of response to the parent's request for an IEE, dated July 24, 2015;
 - n. Letter from the student's mother informing the school system of the intent to place the student in a private school, dated August 6, 2015;
 - o. Report of a private neuropsychological assessment, dated July 22, 2015;
 - p. Report of a review of the IEE, dated July 22, 2015;
 - q. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on April 6, 2016; and
 - r. Electronic mail (email) correspondence between the HCPS and the MSDE, dated May 4-20, 2016 and June 2, 2016.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with an Other Health Impairment related to Attention Deficit Hyperactive Disorder (ADHD) and a Specific Learning Disability under the IDEA. From April 6, 2015 until the end of the 2014-2015 school year, the student attended XXXXXXXXXXXXXXXXXXXXXXXX (Docs. b, d, e, f and g).

Since the start of the 2015-2016 school year, the student has been parentally-placed at The Auburn School, a private school, which is located in Baltimore County, Maryland (Docs. n and q).

FINDINGS OF FACTS:

1. The IEP in effect on April 6, 2015 was developed on March 23, 2015. The IEP identifies the student's needs related to organization, sustaining his attention and concentration during most school tasks, including play activities, and regulating his temper. The IEP indicates that the student exhibits "a significant pattern of oppositional and defiant behavior," difficulties with peer interactions and non-compliance when he does not get his way (Doc. b).
2. The IEP also identifies needs related to written expression, when the student is required to write more than a five (5) word sentence or phrase and his refusal to write or use the resources put in place for him. The IEP reflects that the student will not add details to support his writing, does not use punctuation or transition words, and that his spelling is inconsistent (Doc. b).
3. The IEP includes an annual goal for the student to write by using spelling and proofreading checklists, word banks, chunking, using a scribe, frequent breaks and reduced distractions to himself and others for 80% of the time. The goal includes objectives that the student will complete a graphic organizer, draft a complete paragraph, and use spelling and editing resources 80% of the time (Doc. b).
4. The IEP also includes an annual goal for the student to regulate his behavior 80% of the time by engaging in the daily activities of the classroom with the provision of behavioral strategies. The IEP further includes a goal for the student to follow classroom rules, routines and academic tasks with minimal prompting with 80% accuracy. The goal includes objectives that the student will use strategies, seek permission to leave the classroom, request assistance, and identify triggers 80% of the time (Doc. b).
5. The IEP requires the following supplementary supports on a daily basis:
 - adult support for transitions between classes;
 - sensory activities to promote listening and focusing skills;
 - organizational support; and
 - preferential locker location (Doc. b).
6. The IEP requires the provision of special education instruction and psychological services to assist the student with achieving the goals. It requires adult support, sensory breaks and movement activities, in addition to time for organization of his materials, and adult support for transitions during the school day (Doc. b).

7. The Behavior Intervention Plan (BIP), in effect since April 6, 2015, was developed on March 23, 2015 and identifies targeted behaviors of physical aggression, such as pushing, kicking, hitting and punching, non-compliant behaviors, such as not following directions, ignoring or verbal refusal and disruptive behaviors, such as yelling, bothering peers, lying on the floor, and not remaining in his assigned seat or area. The BIP requires:
- teaching the student self-calming techniques;
 - identifying physical warning signs, such as elevated heart rate and sweaty palms, and providing preferential seating;
 - preparing for new instruction and changes in schedule;
 - leaving classes three (3) to five (5) minutes early for transitions;
 - modeling and reinforcing appropriate social interactions such as working well in a group, initiating interactions, and how to act appropriately with peers;
 - self-advocacy skills to get help independently, such as, using the Flash Pass,¹ and accepting assistance from adults;
 - keeping his desk clear from unnecessary items;
 - assigning a classroom job;
 - allowing the student to work with positive peer models;
 - providing structured choices;
 - chunking of non-preferred assignments;
 - having a private check-in with the student to ensure understanding of the assignments;
 - creating positive momentum by building on the student's successes and interests;
 - using consistent clear language when providing prompts or reminders of expectations;
 - using a "speak and spin" approach when prompting the student privately by providing him with the directive, turn and walk away, allowing him 2 to 3 minutes to follow the directive, then check back in, providing another prompt, if needed;
 - providing opportunities for movement while completing assignments at his seat;
 - building in breaks during instruction;
 - providing frequent Bear Bucks² when the student demonstrates expected behaviors;
 - providing immediate specific verbal praise;
 - providing opportunities to engage in preferred activities;
 - providing frequent verbal and nonverbal praise;

¹ A Flash Pass is described as a pass the student may use to get assistance and avoid inappropriate situations which would cause an interruption to classroom instruction (Interview with school staff).

² Bear Bucks are used as incentives as part of the school-wide Positive Behavior Intervention System (PBIS) for students (Interview with school staff).

- using a behavioral chart, including setting goals and time to review the chart daily; and
 - using the individualized school-wide PBIS and providing the student with additional structure needed to ensure participation in the monthly activities (Doc. i).
8. On April 16, 2015, the IEP team met to review the student's IEP with the school staff from the middle school in which the student was expected to attend the following year. The IEP team documented that the parent raised concerns that the student doesn't understand when "accidents" occur and will "physically lash out at people if he perceives they are trying to hurt him." The parent also expressed her concern about the student's "safety at the middle school because of the larger number of students and her son's difficulties with peer relationships and the need for male adult support staff who may be more likely to intercede in physical altercations." The team reiterated that the IEP already requires the student have consistent adult support throughout the entire school day. The IEP team determined the student would be provided with adult support at the end of the school day to ensure materials are packed for homework (Docs. b and g).
 9. On May 28, 2015, the IEP team convened to review the student's IEP. The parent requested that the IEP team consider a report from a private optometrist that included recommendations for accommodations to reduce visual clutter in written material. The IEP team added accommodations consistent with the optometrist's recommendations. The IEP was also revised to require the use of a word bank for extended writing, a place keeper (ruler or index card), a copy of the teacher's notes, and a reader for longer text selections along with a limited amount of required reading (Docs. b and g).
 10. On June 10, 2015, the IEP team convened and considered information provided by teachers that the student's behaviors were improving. Based on the student's progress the IEP team decided that the behavioral goals remained appropriate. The IEP team reviewed the student's progress in written expression, determining that, with support, the student was also making progress in this area, and that the goals remained appropriate (Docs. b and g).
 11. On July 2, 13, and 22, 2015, the IEP team met and conducted a review of the IEP and of the student's progress. In July 2015, the IEP team considered a report from a private neuropsychological which included the results of an assessment of the student's motor integration skills and recommendations for accommodations to reduce the amount of writing for the student. The report identified the student as having an atypical pencil grip but did not indicate whether the student's pencil grip was functional. The teachers reported that the student has weaknesses in written language and is hesitant to write. The IEP team added accommodations consistent with the report's recommendations for writing. The IEP team decided that the private assessment did not provide sufficient data to require occupational therapy services. However, based on questions raised from the

- review of the private neuropsychological assessment, and teacher reports of the student's classroom performance when writing, a consultation with the Instructional Access Team³ was recommended to determine whether additional services for written expression were required (Docs. b, g, and o).
12. In July 2015, the team also considered the neuropsychological results that indicates that the student "exhibits explosive and emotionally reactive behaviors, and has become aggressive and confrontational with peers and family members." The report indicates the student has "problems with social cues, understanding social norms and engaging in reciprocal communication." It also indicated that the student has "low frustration tolerance and aggressive behaviors across settings, intensifying during unstructured situations." The report further indicates "the student struggles with big picture thinking and has symptoms of anxiety," and "requires an Individualized Education Plan (IEP) with programming for social skills, executive functioning skills instruction, language-based special education, speech/language therapy, occupational therapy and a safe address at school" (Docs. b, g, and o).
 13. The team determined that the private neurological assessment results were not consistent with the recent assessment data and classroom performance indicating an improvement in the student's behavior. Therefore, the team rejected the parent's request and the recommendation in the report to identify Autism as the student's primary disability. However, there is documentation that the team revised the student's IEP to contain accommodations for the student's identified needs of behavior, executive functioning, and written language skills (Docs. g, o and p).
 14. In July 2015, the team also considered a report of a private speech/language assessment. However, some of the results were determined to be invalid based on the school staff's report that an out-dated assessment tool had been utilized. As a result, the team did not accept all of the assessment findings. The IEP team did accept the results of the portions of the assessment that were found to be valid which resulted in recommendations to integrate executive functioning and social language skills into daily instruction. The team decided that this was already being done through special education instruction on the social, emotional, behavioral goals (Docs. g, j and k).
 15. On July 22, 2015, the team recommended conducting another speech/language assessment to obtain additional data, but the parent refused to provide consent and requested a speech/language IEE because she did not believe the current HCPS speech/language assessment was accurate (Docs. g, j, k and l).

³ The Instructional Access Team provides consultation services for students who may need access to technology to progress through the general education curriculum. This HCPS team works collaboratively with school-based teams and assists in the assessment and review of data to ensure students can properly use the technology provided (www.hcpss.org).

16. On July 24, 2016, the HCPS staff responded to the parent's request for an IEE in the area of speech/language by informing the parent of the "school system's right to conduct an assessment first, then upon review of the assessment, if the parent disagrees with the public school system's evaluation, an IEE may be requested" (Docs. g, j, k, l and m).
17. On August 8, 2015, the parent informed the HCPS of her intent to enroll the student in a private special education school for the 2015-2016 school year (Doc. n).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. The IEP must include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. The SEA may not, however, overturn an IEP team's decisions when proper procedures have been followed and there is data to support the team's decisions. The OSEP indicates that parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

The parent of a student with a disability has the right to obtain one (1) IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. Upon request for an IEE, the public agency must, without unnecessary delay, either provide parents with information about where an IEE may be obtained and the agency criteria applicable for an IEE, or file a due process complaint to request a hearing to demonstrate that its evaluation is appropriate.

If a parent requests an IEE, the public agency may ask for the parent's reason for objecting to the public assessment. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a regarding how long after receiving the results of a student's public agency evaluation a parent can

David M. Briglia, Esq.
Ms. Nancy Fitzgerald
June 3, 2016
Page

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the HCPS by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-0255.

Please be advised that both the complainant and the HCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts 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 consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The parent 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 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:sf

c: XXXXXXXX
 Renee A. Foose
 Janet Zimmerman
 Kelly Russo

XXXXXXXXXX
Dori Wilson
Anita Mandis
Sharon Floyd