



June 14, 2016

Ms. Jessica Williams
Education Due Process Education Solutions, LLC
711 Bain Drive, Apt. 205
Hyattsville, MD 20785

Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: XXXXX
Reference: #16-113

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.

ALLEGATION:

On April 21, 2016, the MSDE received a complaint from Ms. Jessica Williams, hereafter, “the complainant,” on behalf of the above-referenced student, and Ms. XXXXXXXXX, his mother. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the CCPS did not follow proper procedures to ensure that an IDEA evaluation of the student was conducted in April 2015, in accordance with 34 CFR 300.301 and COMAR 13A.05.01.04-.06.

INVESTIGATIVE PROCEDURES:

1. On April 21, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Dr. Arden Sotomayor, Executive Director of Specialized Services, CCPS.

2. On April 28, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated.
3. On April 29, 2016, the MSDE sent correspondence to the complainant that identified the allegation subject to this investigation. On the same date, the MSDE notified the CCPS of the allegation and requested that the CCPS review the alleged violation.
4. On May 5 and 10, 2016, Ms. Austin contacted Ms. Nancy Pirner, Acting Director for Special Education Compliance, CCPS, by electronic mail to arrange a document review and site visit.
5. On May 10, 2016, Ms. Austin spoke with Ms. Lewan Hutchinson, Instructional Specialist for Compliance and Instruction, CCPS, to request documentation from the CCPS.
6. On May 10, 23 and 25, 2016, and June 2, 2016, the CCPS provided documentation to the MSDE for consideration.
7. On May 25, 2016, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXX, General Education Teacher; and
 - c. Ms. XXXXXXXX, General Education Teacher.

Ms. Pirner and Ms. Hutchison attended the site visit as representatives of the CCPS and to provide information on the school system's policies and procedures, as needed.

8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Documentation of the student's referral to the student support team (SST) on January 20, 2015;
 - b. The informal report of an occupational therapy observation, dated March 11, 2015;
 - c. The student's 2014 - 2015 kindergarten report card;
 - d. The student's articulation card from kindergarten to first (1st) grade, undated;
 - e. The student's 2015 - 2016 first (1st) grade report card;
 - f. The XXXXXXXXXXXXXXXXXXXX staff roster;

- g. Documentation of the student’s referral to the SST on February 5, 2016, and summary of the SST meeting on February 18, 2016;
- h. Electronic mail (email) communication from the student’s mother to the school staff, dated February 7, 2016;
- i. Child find referral, dated March 31, 2016;
- j. Notice of the March 31, 2016 IEP team meeting;
- k. Notice and Consent for Assessment, signed on March 31, 2016;
- l. Notice of the May 26, 2016 IEP team meeting;
- m. Notice of an IEP team meeting scheduled for June 3, 2016; and
- n. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on April 21, 2016.

BACKGROUND:

The student is seven (7) years old, and attends XXXXXXXXXXXXXXXXXXXXXXXX. At the start of the investigation period, the student was not identified as a student with a disability under the IDEA (Interview with the parties).

FINDINGS OF FACTS:

2014 – 2015 School Year

1. There is documentation that, during the 2014 - 2015 school year, while the student was in kindergarten, the school staff had concerns about his fine motor skills due to his difficulty with opening his lunch items, holding pencils and scissors, and zipping his coat. Because of these concerns, as well as concerns about his ability to follow multi-step directions and work independently, the student was referred to the Student Support Team (SST)¹ on January 20, 2015 (Doc. a).
2. On February 10, 2015, the SST considered information about the interventions used by the classroom teacher in the student’s general education program. There is documentation that the SST did not have concerns about the student’s academics because he was performing “on grade level,” with strengths noted in the areas of letter recognition and sight word reading (Docs. a and c).
3. The SST recommended the continued use of general education classroom interventions with the student and an observation by an occupational therapist to “offer suggestions.” The school staff also requested a health inventory from the student’s mother, in order to

¹ The SST is the team of school staff, parents and/or administrators that meet to discuss and develop prevention and intervention strategies to improve the outcomes of individual students who are involved in general education and need support services (See the CCPS website and CCPS Code of Student Conduct).

determine whether she had any concerns about the student's development. However, there is no documentation that the student's mother provided the requested information (Docs. a and b, and interview with the school staff).

4. The student's kindergarten report card does not identify any areas of academic concern during the 2014 - 2015 school year. The report card documents that the student was "developing" or "consistently developing" in all academic areas, and that his fine motor and gross motor skills were the only areas of weakness (Doc. c).

2015 – 2016 School Year

5. There is documentation indicating that the student began the 2015 - 2016 school year on grade level in reading and math. However, because the student continued to demonstrate difficulty following directions and completing independent work, the school staff provided him with reading and math interventions (Docs. d and g, and interview with the school staff).
6. By January 25, 2016, the end of the second marking period of the 2015 - 2016 school year, the school staff had documented that the student "needs improvement" in reading and math, and was "not showing mastery" in demonstrating organizational skills. The school staff report that the student was not demonstrating improvement in his performance in reading in math at the rate expected given the interventions that he was receiving (Doc. e and interview with the school staff).
7. On February 5, 2016, the student's first (1st) grade teacher referred him back to the SST. The referral identifies that the student was having difficulty with following verbal directions and processing information, as well as difficulties in reading comprehension and fluency, math, attention and organizational skills. The referral does not identify that the student was demonstrating any difficulties in motor skills (Doc. g).
8. In February 2016, the school staff determined that the student was not performing at the rate in order to be promoted to the next grade. This information was documented in the student's report card for the second (2nd) quarter of the 2015 - 2016 school year.² On February 7, 2016, following her receipt of the second (2nd) quarter report card, the student's mother requested an IDEA evaluation of the student (Docs. e and h).
9. On February 18, 2016, the SST also made a referral for an IDEA evaluation due to concerns about the student's weaknesses in reading comprehension and math, and his difficulty with verbal comprehension. The SST also noted that the student has "some

² The school staff report that the second quarter report cards were sent home on or around February 5, 2016 (Interview with the school staff).

fine motor weaknesses” that impact his handwriting. The SST discussed that the student is “a hard worker,” but that he is not reading at the expected level. They considered the current and previous interventions provided to the student during the 2015 - 2016 school year, which consisted of the following:

- Daily small group instruction in reading and math by a special education teacher;
- “Extra guided reading” by an instructional assistant; and
- “Literacy group” instruction by a reading recovery teacher (Doc. g).

10. On March 31, 2016, the IEP team convened to conduct an initial evaluation of the student. The IEP team reviewed existing information and reports of the student’s current performance. The teacher reported the following information about the student:

- He is reading below grade level, and his comprehension is “low.”
- He has “some” difficulty following directions and answering questions about text.
- He participates in daily reading interventions.
- He can write two (2) complete sentences, but needs to work on spacing and punctuation.
- He knows math facts, but struggles with understanding math word problems.

The student’s mother reported the following information about the student:

- He was previously diagnosed with a Developmental Delay.
- He struggles with math.
- He can answer questions about information that is obviously stated in text, but he has difficulty with inference and “put[ting] his thoughts together.” “It is a struggle to pull the information out of him.”
- He receives weekly tutoring at home.
- While he has improved, he has trouble tying his shoes.
- He has organizational difficulties, and can focus on only one (1) thing at a time.

The IEP team also discussed that the student may be retained due to his academic performance (Doc. i).

11. At the March 31, 2016 IEP team meeting, the IEP team reviewed the report of the recommendations made by a CCPS occupational therapist from the previous year, dated March 11, 2015. The occupational therapist recommended strategies for the classroom teacher to support the student’s fine motor skills in the classroom, and concluded that the student “would benefit from an assessment to determine if he would benefit from receiving [occupational therapy] to work on developing age appropriate skills in regards to his [activities of daily living].” The report of the occupational therapist did not identify

any concerns about the student's ability to access instruction in the classroom. The IEP team discussed that, while the school staff and the student's mother had concerns about the student's fine motor skills in the previous school year, there were no academic concerns at that time because the student was performing on grade level (Docs. b and i).

12. At the March 31, 2016 IEP team meeting, the IEP team concluded that additional information was needed in order to determine the student's eligibility under the IDEA. On the same date, the student's mother signed consent for assessments to be conducted in the areas of academics, expressive and receptive language, intellectual functioning, fine motor skills, and for an observation of the student's sensory functioning (Docs. j and k).
13. The complainant agrees that the IEP team convened on May 26, 2016, and that the IEP team determined that the student is a student with a disability under the IDEA (Doc. l and interview with the parties).
14. An IEP team meeting was scheduled for June 3, 2016, to develop an initial IEP for the student. However, there is no documentation of this meeting to date (Doc. m).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student with a disability residing within its jurisdiction is identified and is offered a Free Appropriate Public Education (FAPE) through an Individualized Education Plan (IEP). This Child Find obligation is required even if the student has not failed or been retained in a course or grade, and is advancing from grade to grade (34 CFR §§300.101, .111, and .320).

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR § 300.111). In order to ensure that students are not misidentified as being disabled, the IDEA mandates that a student may not be determined to be eligible under IDEA if the student does not meet the eligibility criteria (34 CFR §300.8).

Under the IDEA, a student with a disability under IDEA is defined as a student with one of the listed disabilities, and who, by reason thereof, needs special education and related services. If the team determines that a student has one of the disabilities identified in the regulations but only requires a related service and not special education, the student is not a student with a disability under IDEA (34 CFR §300.8).

Special education instruction means specially designed instruction to meet the unique needs of the student and to ensure access of the student to the general curriculum (34 CFR §300.39). Related services means transportation and such developmental, corrective, and other supportive

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services that are required to assist a student with a disability to benefit from special education instruction. This includes physical and occupational therapy services (34 CFR §300.33).

It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services. To meet this expectation, school staff may review a student's academic and behavioral performance and determine teaching strategies, modifications to instruction, and behavior management techniques, which will appropriately assist the student (34 CFR §300.111). One way in which to address a student's needs in the general education program is through the provision of an Accommodations Plan. Students who do not require special education instruction, but only accommodations and related services, may be provided with an Accommodations Plan under Section 504 of the Rehabilitation Act of 1973.

The IEP team must complete an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral (34 CFR § 300.301 and COMAR 13A.05.01.06(A)).

In this case, the complainant alleges that the school system did not conduct an IDEA evaluation in a timely manner in order to meet its Child Find obligation. She indicates that the school system was required to begin an IDEA evaluation as early as March 11, 2015 when a recommendation was made for an occupational therapy assessment.

Based on the Finding of Fact #11, the MSDE finds that, while the March 11, 2015 recommendation for an assessment of the student's occupational therapy needs indicated that he may have a need for related occupational therapy services, it did not contain information that would indicate that the student may require specialized instruction, which would trigger the need for an IDEA evaluation. Therefore, this office does not find a violation occurred with respect to this aspect of the allegation.

Further, based on the Findings of Facts #1 - #4, the MSDE finds that, prior to beginning an IDEA evaluation on March 31, 2016, there was no data that the student may require specialized instruction, which would trigger the need for an IDEA evaluation. However, based on the Findings of Facts #5 - #14, the MSDE finds that, while the IDEA evaluation was completed within sixty (60) days of date on which the complainant provided consent for the evaluation, the IDEA evaluation was not completed within ninety (90) days of the date on which the student's mother made a referral for evaluation. Therefore, this office finds a violation occurred.

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CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the CCPS to provide documentation by August 1, 2016, that the CCPS has developed and provided the student's mother with an initial IEP for the student, as an offer of FAPE.

The MSDE also requires that the CCPS provide documentation, by August 1, 2016, that the IEP team has convened and determined whether there was a negative impact on the student as a result of the violation related to the delay in the completion of the initial evaluation. If the IEP 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 one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the CCPS to provide documentation by August 1, 2016, of the steps it has taken to ensure that XXXXXXXXXX School complies with the IDEA and State provisions requiring the completion of an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral.

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 Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the CCPS 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

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request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement as 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 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 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: XXXXXXXXXX
 Kimberly Hill
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