



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

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

March 31, 2017

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

Ms. Trinell Bowman
Director of Special Education
Prince George's County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: XXXXX
Reference: #17-092

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 January 30, 2017, the MSDE received a complaint from Ms. Jessica R. Williams, hereafter, "the complainant," on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX. In that correspondence, the complainant alleged that the Prince George's County Public Schools (PGCPS) 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 PGCPS did not ensure that proper procedures were followed when conducting an evaluation of the student on November 7, 2016, in accordance with 34 CFR §§300.301, .304 - .307, .309 - .311 and .502.

INVESTIGATIVE PROCEDURES:

1. On January 30, 2017, the MSDE received the State complaint and documentation to be considered.
 2. On January 31, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Trinell Bowman, Director of Special Education, PGCPS.
 3. On February 9, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegation.
 4. On February 13, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. The MSDE also notified Mr. Bowman of the allegation to be investigated and requested that her office review the alleged violation.
 5. On March 13, 2017, Mr. Chichester and Ms. Sharon Floyd, Complaint Investigator, MSDE, conducted a site visit to XXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXX, IEP Chairperson;
 - b. Ms. XXXXXXXX, SPED Resource Teacher;
 - c. Ms. XXXXXXXXXXXX, Psychologist; and
 - d. Ms. XXXXXXXXXXXX, Occupational Therapist.
- Ms. Kerry Morrison, Compliance Specialist, PGCPS, attended the site visit as a representative of the PGCPS and to provide information on the school system's policies and procedures, as needed.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. A referral for an IDEA evaluation, dated August 2, 2016, between the student's parent and the PGCPS;
 - b. The PGCPS Child Find Referral, dated August 30, 2016;
 - c. Notice of consent for evaluation, dated August 30, 2016;
 - d. IEP team meeting summary, dated August 30, 2016;
 - e. IEP team meeting summary for the November 7, 2016 IEP team meeting;
 - f. IEP team meeting summary, dated December 22, 2016;
 - g. IEP team meeting summary, dated January 13, 2017;
 - h. Electronic mail (email), dated between November 8, 2016 and January 26, 2017, among the complainant and the school staff;
 - i. Eligibility and determination report, dated November 7, 2016;
 - j. Educational assessment, dated October 20, 2016;

- k. Speech and language assessment, dated October 25, 2016;
- l. Classroom observation report, dated October 5, 2016;
- m. Psychological assessment, dated October 4 and 10, 2016;
- n. School Instructional Team (SIT) meeting notes, dated November 24, 2015, September 14, 2016 and December 9, 2016;
- o. Independent Educational Evaluation (IEE) request, dated November 7, 2016; and;
- p. Correspondence containing allegations of violations of the IDEA, received by the MSDE on January 30, 2017.

BACKGROUND:

The student is 6 years old and attends XXXXXXXXXXXXXXXXXXXX. He has been evaluated under the IDEA and is not identified as a student with a disability (Doc. b).

During the time period covered by this investigation, the student's mother participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a - g).

FINDINGS OF FACTS:

1. On August 2, 2016, the student's mother made a referral to the PGCPS Office of Child Find for an evaluation of a student under the IDEA. The referral identified concerns about the student's listening comprehension, reading, written expression, math, attention and organization, memory, and social and emotional behaviors (Docs. a and b).
2. On August 30, 2016, the IEP team met and reviewed data regarding the student's response to interventions provided in the general education curriculum, current and previous student work samples, report cards, parental input, vision and hearing screening information, and attendance data. The school staff reported that the student was slowly but steadily responding to the reading interventions but there were concerns regarding the student's stuttering when frustrated with academic challenges. The team decided to conduct psychological, educational, speech and language, and social and emotional assessments, as well as classroom observations. The team rejected the complainant's request for an occupational therapy assessment based on the lack of information that the student demonstrated problems with fine motor skills. The complainant's consent for assessments was provided at the IEP team meeting (Docs. c ,d, n, and p).
3. On November 7, 2016, the IEP team reviewed the assessment data and decided that the student is not a student with a disability under the IDEA. However, the evaluation report does not document whether the student meets the criteria for an IDEA impairment (Docs. e, i, and j - m).

4. On November 8, 2016, the complainant requested an Independent Educational Evaluation (IEE) (Docs. h, o, and p).
5. On December 21, 2016, the complainant filed a due process complaint after the school system refused to fund independent assessments in each area requested, including areas where the school system did not conduct its own assessments (Docs. f, o, p, and a review of the due process complaint).
6. On January 26, 2017, the complainant withdrew the due process complaint. However, the parties did not resolve the dispute, and the school system has not filed a due process complaint to demonstrate that its evaluation of the student was appropriate (Docs. g and h).

DISCUSSION/CONCLUSIONS:

Comprehensive Evaluation

Upon receipt of a referral for an IDEA evaluation, the public agency must review the existing data, including evaluations, information provided by the student's parents, classroom-based assessments, and observations conducted by teachers. On the basis of that review, the public agency must determine whether additional data is needed and if so, that assessments and other evaluation measures needed to produce the data are conducted (34 CFR §§300.301 - .305 and COMAR 13A.05.01.04).

The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs. The eligibility determination must be made on an individual basis and be based on the student's specific needs. The IEP team must review the evaluation data, and based on that data, determine whether the student meets the criteria for identification as a student with a disability under the IDEA (34 CFR §§300.301 - .305 and COMAR 13A.05.01.04).

In order to meet the criteria for identification as a student with a disability under the IDEA, a student must have at least one (1) of the listed impairments, and by reason thereof, require special education and related services. The IDEA describes the elements of each of these impairments (34 CFR §300.8).

The IEP team must develop an Evaluation Report that documents whether the student meets the criteria for the suspected impairment described in the IDEA (COMAR 13A.05.01.06).

Based on the Findings of Facts #1 - #3, the MSDE finds that there is no documentation that the IEP team followed proper procedures when determining that the student does not meet the criteria for identification as a student with a disability based on the data obtained by the team. Therefore, this office finds that a violation occurred.

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IEE Request

A parent may request an IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. Upon receipt of such a request, the public agency must, without unnecessary delay, either file a Due Process complaint to request a hearing to show that its evaluation is appropriate, or ensure that the IEE is provided at public expense. This includes providing the parent with information about where an IEE may be obtained, and the agency criteria applicable for each IEE (34 CFR §300.502).

When an IDEA evaluation is conducted and a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs (United States Department Of Education Office Of Special Education And Rehabilitative Services, *Letter to Baus*, February 23, 2015).

In this case, the complainant alleges that the school system did not ensure that an IEE was conducted as requested or a due process hearing was requested to demonstrate that its evaluation was appropriate. As a result, the complainant asserts that proper procedures were not followed when conducting the evaluation because it was not sufficiently comprehensive to identify all of the student's needs arising out of his disability.

Based on the Findings of Facts #4 - #6, the MSDE finds that the school system did not follow proper procedures when responding to the request for the IEE. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the PGCPS to provide documentation that by May 1, 2017, that they have properly responded to the parent's request for an IEE by either:

1. Denying the parent's request and filing a due process complaint to show that its evaluation is appropriate; or
2. Granting the IEE request in all of the areas requested, including those in which assessments were not conducted by the school system.

If as a result of these actions, the student is identified as a student with a disability under the IDEA, the PGCPS must determine the compensatory services to remediate the delay in identifying the student.

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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 Special Education/Early Intervention Services, MSDE.

School-Based

The MSDE requires the PGCPS to provide documentation by June 15, 2017, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX.

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.

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 both the complainant and the PGCPS 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 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 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

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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:ac

c: Kevin Maxwell
Gwendolyn Mason
LaRhonda Owens
Deborah Anzelone
XXXXXXXXX
Dori Wilson
Anita Mandis
Albert Chichester
Bonnie Preis