



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

May 1, 2018

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Ms. Michelle Concepcion
Director of Instruction and Student Performance
Frederick County Public Schools
191 South East Street
Frederick, Maryland 21701

RE: XXXXX
Reference: #18-112

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 March 2, 2018, the MSDE received a complaint from Ashley VanCleaf, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and her parents. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the FCPS did not ensure that proper procedures were followed when conducting an IDEA evaluation, since the start of the 2017 – 2018 school year. Specifically, it is alleged that the student was not assessed in all areas of need, and that the Individualized Educational Program (IEP) team did not appropriately apply eligibility criteria in accordance with 34 CFR §§300.301, and .304 - .311, and COMAR 13A.05.01.04 -.06.

BACKGROUND:

The student is nine (9) years old and attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) where she is in the 3rd grade. She is not identified as a student with a disability under the IDEA.

FINDINGS OF FACTS:

1. On November 27, 2017, the parents sent an electronic mail (email) message requesting the school staff to “formally evaluate [the student’s] reading difficulties.”
2. On December 18, 2017, the IEP team convened. The parents expressed concern that the student is “having trouble reading and understanding math word problems.” They also reported concern about her ability to “keep up” with reading, and that she may need additional time to complete assessments.
3. The IEP team reviewed all existing data, including the report of a psycho-educational evaluation that the parents privately obtained in April 2016. The assessment report states that the student “demonstrates weaknesses in reading rate that are substantially and quantifiably below those expected for her age and intellectual abilities, particularly her above average verbal reasoning and listening comprehension.” The private evaluator diagnosed the student with a “Specific Learning Disorder, with impairments in reading, including reading rate, reading accuracy, and reading comprehension (dyslexia).”
4. The school staff documented that “the [private evaluation] report would be enough for the team to proceed to creating a 504 Plan. However, if the parents are interested in eligibility for special education, we would need to do updated testing at school.”
5. The IEP team did not document whether it suspected that the student has a disability under the IDEA, and if so, the additional information needed to make that determination.
6. On March 15, 2018, the parents requested an IEP team meeting to consider the student’s eligibility for an IEP and to discuss a new reading intervention program that focuses on teaching students with Dyslexia.
7. On March 29, 2018, the school staff scheduled an IEP team meeting for April 20, 2018.
8. On April 20, 2018, the IEP team convened. The parents expressed concern that the student continues to have difficulty in reading and spelling. The IEP team reviewed all existing data, including the results of educational testing privately obtained by the parents in March 2018 documenting that the student “is behind in reading.”
9. The IEP team decided that additional information was needed to determine whether the student has an educational disability in reading and writing. The team recommended psychological and educational assessments and a classroom observation in reading and writing. The parents provided written consent and the team agreed to reconvene in sixty (60) days to review the assessment results.

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DISCUSSION/CONCLUSION:

Based on the Findings of Facts #1 - #9, the MSDE finds that, while the IEP team has recently begun an IDEA evaluation, the FCPS did not ensure that proper procedures were followed when responding to the parent's November 2017 request for an IDEA evaluation, in accordance with 34 CFR §§300.301 - .306 and COMAR 13A.05.01.04 - .06. Therefore, the MSDE finds a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the FCPS to provide documentation by July 1, 2018, that the IEP team has convened and taken the following actions:

- a. Completed the IDEA evaluation started in April 2018, following proper procedures, and determined whether the student is a student with a disability under the IDEA; and
- b. If the team determines that the student has a disability and is eligible for special education services under the IDEA, the team must develop an IEP for the student, and determine the amount and nature of compensatory services to be provided for the delay in identification and the provision of a Free and Appropriate Public Education (FAPE). The team must also have developed a plan for the provision of compensatory services to be completed within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the FCPS to provide documentation by August 30, 2018, of the steps it has taken, including training, to ensure that the XXXXXXXX staff comply with the requirements for responding to a request for an IDEA evaluation. The documentation must include a description of how the FCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does not reoccur.

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.

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Please be advised that both the parents and the FCPS have the right to submit additional written documentation to this office, which must be received within 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 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 parents and the FCPS 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: XXXXXX
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