



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: #18-115

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 March 2, 2018, the MSDE received a complaint from Ashley S. VanCleaf, Esq., hereafter, “the complainant,” on behalf of the above-referenced student, and her parents, Mr. XXXXXX and Mrs. XXXXXXXX. 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. Specifically, it was 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 §§300.304-.306.

BACKGROUND:

The student is nine (9) years old, and attends XXXXXXXXXXXXXXXXXXXXXXXX. She has not been identified as a student with a disability under the IDEA.

FINDINGS OF FACTS:

1. On November 13, 2017, the student's parents requested an IDEA evaluation for the student, expressing concern regarding the student's handwriting needs and "dyslexia and dysgraphia."
2. On December 6, 2017, the IEP team met, reviewed the student's data, and determined that assessments were necessary to complete the evaluation. The team recommended, and the student's parents provided consent for, an educational assessment in reading and written language, a psychological assessment, and a classroom observation. The team determined that an occupational therapy assessment was not appropriate at that time because the student's needs in that area arose out of recently having a cast on her arm removed.
3. The IEP team convened on February 1, 2018 to complete the evaluation for the student. The results of the assessment are as follows:
 - Educational assessment: The results of the educational assessment indicated that the student performed at the "low average" to "average" range on each subtest administered.
 - Psychological assessment: The results of the psychological assessment indicated that the student had overall strengths in verbal comprehension and weaknesses with decoding. The student performed in the "average" to "high average" ranges in subtests and corresponding composite score areas on the tests for intelligence. In tests administered to measure the student's phonological processing, she performed in the "low" to "average" range in individual subtests, but in the "low average" to "average" range as determined by composite scores. Similarly, the student score in the "low average" to "average" range in tests administered to measure individual achievement in reading.
 - Classroom observation: The observation conducted for the student occurred in her math class. The observer did not observe the student during a time that the student's decoding or comprehension skills would have been demonstrated.

4. The IEP team noted that the student was reading on grade level and, while there were some discrepancies in the data, that these discrepancies were not “extreme.” The team determined that the student had “some low average scores on some subtests, but does not have overall discrepancies that would warrant special education services.” The team concluded that the student did not qualify as a student with a disability under the IDEA.

DISCUSSION/CONCLUSIONS:

A Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that manifests itself in the imperfect ability to listen, think, speak, read, write, spell, or perform math calculations (34 CFR §300.8 and COMAR 13A.05.01.03). The IEP team may determine that a student has a Specific Learning Disability if the student does not achieve adequately for the student’s age or meet State-approved grade-level standards in specific areas when provided with learning experiences and instruction appropriate for the student’s age or State-approved grade-level standards.

This determination can be made based on either of the following criteria:

- The student does not achieve adequately for his or her age or meet State-approved grade-level standards despite the provision of appropriate instruction and the provision of scientific, research-based interventions targeted to the needs of the student; or
- The student does not achieve adequately for his or her age or meet State-approved grade-level standards despite the provision of appropriate instruction and the student demonstrates a pattern of strengths and weaknesses in performance achievement, or both, relative to age, based on appropriate assessment data (34 CFR §300.309).

IEP teams may, in conjunction with the above criteria, look for a “severe discrepancy” between the student’s intellectual ability and achievement (MSDE Technical Assistance Bulletin, *Specific Learning Disability and Supplement*, November 7, 2016) In any case, the IEP team must consider data from a variety of sources. Although the IEP team may use the “severe discrepancy” approach and use a statistically sound formula to measure when there is a severe discrepancy between aptitude and achievement, it may not rely solely upon a single statistical formula as the sole criteria for determining eligibility (34 CFR §300.304, *Letter to Zirkel*, United States Department of Education, Office of Special Education Programs, 2007, 47 IDELR 268).

When determining whether a student meets the criteria for identification as a student with a Specific Learning Disability, the IEP team must consider information from an observation of routine classroom instruction and from the monitoring the student’s performance that occurred before the referral for evaluation. Alternatively, at least one (1) member of the team, other than the student’s regular education teacher, must observe the student in the student’s learning

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environment and provide information to the team about the student's academic performance and behavior in the areas of difficulty (34 CFR §300.310 and COMAR 13A.05.01.05).

In this case, the complainant alleges that the IEP team did not assess the student in all areas of concern, did not perform an observation of the student in the area of difficulty, and did not apply the appropriate criteria in determining the student's eligibility as a student with a disability.

Based on Findings of Facts #1-#4, the MSDE finds that the IEP team appropriately assessed the student in all areas of need and applied the appropriate criteria when determining that the student was not eligible under the IDEA, in accordance with 34 CFR §§300.304-306.

However, based on those same Findings of Facts, the MSDE finds that the IEP team did not consider the results of a classroom observation that involved the student's areas of difficulty and that, as a result, the evaluation was not sufficiently comprehensive, in accordance with 34 CFR §300.304. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the FCPS to provide documentation, by June 15, 2018, that the IEP team has completed the evaluation, following proper procedures, and developed an IEP for the student if she is identified as a student with a disability.

If the student is identified as a student with a disability, the MSDE further requires the FCPS to ensure that the IEP team determines the compensatory services or other remedy for the delay in identifying the student under the IDEA.

School-Based

The MSDE requires the FCPS to provide documentation by the start of the 2018-2019 school year, of the steps it has taken to ensure that XXXXXXXXXXXXXXXXXXXX staff properly implements the requirements for using data from classroom observations when conducting an evaluation for a Specific Learning Disability. 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 recur.

System-Based

During the course of this investigation, a similar violation was identified with respect to the use of the results of a classroom observation when conducting an evaluation for a Specific Learning Disability involving another FCPS student attending a different school (see State complaint #18-111). Therefore, the MSDE requires the FCPS to provide documentation by the start of the 2018-2019 school year of the steps it has taken to determine if the violation identified in these

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Letter of Findings 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 results of classroom observation conducted in the areas of concern are being considered when conducting evaluations for a Specific Learning Disability. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations

Where the requirements for considering data from classroom observations are not met, 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 Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-7770.

Please be advised that the FCPS and the complainant 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents 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 Free Appropriate Public Education (FAPE) for the student,

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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

c: Theresa Alban
Carol S. Breeze
Carmen Working
Linda Chambers
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
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