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May 2, 2017

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Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #17-117¹

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.

ALLEGATIONS:

On March 3, 2017, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) 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 MCPS has not ensured that student has been evaluated and identified as a student with a disability under the IDEA, since March 3, 2016,² in accordance with 34 CFR §300.111.

¹ In correspondence, dated March 30, 2017, this case reference number was inadvertently reported as #17-121.

² While it was alleged that the violation occurred prior to March 3, 2016, the complainant was informed in writing that this office can only address an allegation of a violation that occurred within one year of the filing of the State complaint (34 CFR §300.153).

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INVESTIGATIVE PROCEDURES:

1. On March 3, 2017, the MSDE received the State complaint and documentation to be considered.
2. On March 8, 2017, the MSDE sent a copy of the complaint, via facsimile, to Mr. Philip Lynch, Director of Special Education Services, MCPS.
3. On March 28, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegation.
4. On March 30, 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. Lynch of the allegation to be investigated and requested that his office review the alleged violation.
5. On April 25, 2017, the MSDE received a written response from the MCPS which acknowledged a violation with respect to the allegation.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Independent psychological evaluation, dated April 2014;
 - b. Section 504 Evaluation summary, dated October 2014;
 - c. Electronic mail (email), dated between November 18, 2016 and April 19, 2017;
 - d. Individualized Education Program (IEP) team meeting invitation, dated for December 20, 2016;
 - e. Teachers' reports on the student, dated November 2016;
 - f. IEP meeting summary, dated December 20, 2016;
 - g. Intervention data collected from the student, dated between December 21, 2016 and February 24, 2017;
 - h. IEP meeting summary, dated March 7, 2017;
 - i. Correspondence, dated April 25, 2017, from the MCPS Central Office staff;
 - j. IEP team meeting invitation, dated for May 2, 2017;
 - k. MCPS *Policy for Placement, Promotion, Acceleration, and Retention*; revised in March 2010; and
 - l. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on March 3, 2017.

BACKGROUND:

The student is 11 years old and has not been identified as a student with a disability under the IDEA. She attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX (Docs. a - j, and l).

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FINDINGS OF FACTS:

1. On November 16, 2016, the complainant provided the school-based members of the IEP team with an independent psychological evaluation, dated April 2014,³ and requested an IDEA evaluation. In response to the complainant's request, an IEP meeting was scheduled for December 20, 2016 (Docs. a - c).
2. On December 20, 2016, the IEP team convened. The team again reviewed the independent psychological evaluation, which includes a diagnosis of Attention-Deficit/Hyperactivity Disorder (ADHD) combined with executive function weaknesses. The results of the evaluation indicate that the student has "superior" higher order verbal skills, non-verbal reasoning and analytical skills, and that she performed "adequately" on brief in-office test of working memory. The evaluation also indicates that the student's pencil speed and visual-motor integration are "below average" and that the complainant and teachers report that the student has difficulty retaining information at times. The evaluation summary included recommendations for a 504 Accommodations Plan, psychiatric consult for ADHD medication, and an occupational therapy consult for handwriting (Docs. a, d, f, i, and l).
3. The IEP team reviewed the student's educational history, which indicated that she was above grade level in reading and math, and her standardized test scores are in the 85 - 99 percentile. The team considered information about the complainant's concern with the student's organizational skills, and teachers' reports that the student has attention issues at times, difficulty with bringing materials to class, and often works more effectively when in close proximity of the teachers. It was also reported that the student's written work was creative, very detailed, but some weakness was noticed with written expression. Based on the data, the IEP team determined that the student was on target to meet the expected rate of progress for her grade level and that the team did not suspect that the student had a disability under the IDEA. The team decided to provide the student with a writing intervention in the general education program, and agreed to reconvene for an Educational Management Team (EMT)⁴ meeting on March 7, 2017, to review the student's progress (Docs. a, e - g, i, k and l).
4. The MCPS requires the school staff to initiate intervention strategies when a student in prekindergarten through grade eight (8) is not "attaining assigned objectives." If the student does not respond to the strategies, the EMT will develop a plan for educational support in the general education program. Parents/guardians and, when appropriate, students will be included in the development of the plan. The principal will monitor the implementation of this plan (Doc. k).

³ In October 2014, the MCPS held a Section 504 Evaluation meeting for the student to review existing data, including an independent psychological evaluation, dated April 2014. Based on a review of the data, the team determined that the student was not eligible under Section 504 of the Rehabilitation Act of 1973 (Docs. a and b).

⁴ An EMT meeting is held to monitor the effectiveness of support and interventions provided in the general education program (Docs. h and j).

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5. On March 3, 2017, in response to the State complaint filed by the complainant, the MCPS changed the March 7, 2017 EMT meeting to an IEP team meeting, indicating that the purpose of the meeting was to address the complainant's continued concern regarding the student's writing skills and inattentiveness in class. The team decided to conduct assessments to determine if the student qualified as a student with a disability under the IDEA, related to an Other Health Impairment (OHI). The team recommended that the writing interventions continue while the evaluation was being conducted. The complainant provided consent for assessments at the IEP team meeting and the IDEA evaluation is pending (Docs. i, j, and l).

DISCUSSION/CONCLUSION:

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 have disabilities and need special education and related services or who are suspected of having disabilities and being in need of special education and related services. 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. However, the public agency must ensure that this process does not delay or deny a student's access to special education services under the IDEA (34 CFR §300.111).

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 a list of impairments, including an Other Health Impairment, and who, by reason thereof, requires special education and related services. If a student is determined to have one (1) of the impairments listed, but is found to require only related services and not special education instruction, then the student does not meet the criteria for identification as a student with disability under the IDEA (34 CFR §300.8).

The IDEA disability of OHI is defined as having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, resulting in limited alertness with respect to the educational environment. This may be due to chronic or acute health problems, such as ADHD (34 CFR §300.8).

The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student is classified. 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 (COMAR 13.A.05.01.06).

Based on the Findings of Facts, the MSDE finds that, although there is no documentation that the student is not "attaining assigned objectives," the MCPS has taken steps to provide supports in the general education program, in accordance with its procedures, in order to address the complainant's concerns.

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Further, based on the Findings of Facts, the MSDE finds that while the MCPS is now conducting an IDEA evaluation to address the complainant's continuing concerns, there is no data to support a suspicion of a disability under the IDEA. Therefore, this office does not find that a violation occurred.

TIMELINE:

Please be advised that the complainant and MCPS 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 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 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: Jack Smith
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