



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

April 3, 2018

Ms. Jessica Williams
Education Due Process Solutions
711 Bain Drive #205
Hyattsville, Maryland 20725

Dr. Terrell Savage
Acting Executive Director
Special Education & Student Services
Department of Special Services
Howard County Public Schools
The Old Cedar Lane Building
5451 Beaverkill Road
Columbia, MD 21044

RE: XXXXX
Reference: #18-087

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 February 2, 2018, the MSDE received a complaint from Ms. Jessica Williams, hereafter, the complainant” on behalf of Mr. XXXXXXXX and Mrs. XXXXXXXX and their son, the above-referenced student. In that correspondence, the complainant alleged that that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the HCPS should have begun the evaluation process to determine if the student is a student with a disability in need of special education and related services prior to January 4, 2018, in accordance with 34 CFR §§300.111, and .301-.311 and COMAR 13A.05.02.13(A).

BACKGROUND:

The student is seven (7) years old, and is not identified as a student with a disability under the IDEA.

FINDINGS OF FACTS:

Pre-Referral

1. The Instructional Intervention Team (IIT)¹ met during the 2016-2017 and 2017-2018 school years to discuss the student's slow progression in reading, writing and math. The IIT decided to provide additional academic support, instructional interventions, and strategies for teachers and set goals for the student to be able to meet classroom expectations.
2. On the teacher input form for an initial referral to the Individualized Education Program (IEP) team, the student's reading teacher reported that the student's reading is at a lower level when compared to the other students in his grade. She reported that the student's accuracy, use of details, stamina, self-monitoring skill and ability to retell a story is limited; however, he is able to answer comprehension questions accurately when given picture cues. The teacher also reported that the student is able to read fluently using three or four word phrase groups, with some expressive interpretation and pausing guided by the author's meaning and punctuation. The progression reports indicate that while the student is making marked improvements, he is receiving instruction in a reading program, and a phonics intervention.
3. On the teacher input form for an initial referral to the IEP team, the student's math teacher reported that while the student is working towards curriculum standards in math, he has weaknesses in the area of memory, difficulty maintaining his attention, difficulty remembering his basic calculation skills, and with using problem solving skills in math class. He uses a teacher-made chart to help him with solving math problems, participates in a small instruction group, and utilizes an individual intervention time that is provided in addition to the daily math class.

February 1, 2018 IEP Team Meeting

4. On February 1, 2018, the IEP team convened at the request of the complainant, who expressed concerns about the student's lack of retention of knowledge and lack of automatic recalling of fundamental academics. The student's father shared with the IEP team that some of his son's academic difficulties may stem from navigating between two

¹ The Instructional Intervention Teams are HCPS school-based groups of teachers and other staff that meet regularly to discuss how they can help their general education students improve – academically and behaviorally. (www.hcps.org).

languages as his native language is XXXXXXXX. His dominant language is English, but he continues to effectively communicate daily in his native language with his grandmother at home.

5. At the February 1, 2018 IEP meeting, the math teacher stated that the student continues to develop his foundational number sense and reasoning skills. The second quarter report card indicates the student is working below grade level in math. The school staff documented that the student's grade level status on the report card changed "due to the abstract nature of the second grade curriculum and its dependence upon problem solving and the amount of backmapping² the student required to learn previously taught skills. The teacher further reported that the student continues to benefit from a "hundreds" chart and is dependent upon pictures when problem solving.
6. The math teacher further reported that the student has participated in a small instructional group and/or an individual intervention group for fifteen (15) minutes per day. The student is also identified to participate in an intervention group to prepare second graders for third grade math, in anticipation of the readiness skills needed for the 2018-2019 school year. The student's father expressed his concern about the student being below grade level in reading and math for the second report card while receiving interventions in both reading and math and school staff reporting that the student has made marked improvements.
7. At the February 1, 2018 IEP meeting, the team considered information from the student's math teacher that the student's math skills are below grade level. She stated that the interventions provided have proven to have a positive effect on the student in math. The math teacher also reported on the results of a number readiness assessment, in which the student remembered 58% of what he learned in first grade. The expectation is for the second grade student to retain 70% of the first grade curriculum to ensure they are ready for the second grade. By March 2018, the student earned a 75% on the first grade number readiness assessment.
8. The student began the 2017-2018 school year at Level G/H Fountas & Pinnell.³ In January 2017, he was at a Level I, which placed him slightly below his peers. His teacher reported that he is working on an "H" reading level and is expected to be working on a level "K". The student receives a "double dose" of reading with the reading specialist in addition to a block of language arts ninety minutes daily. The reading specialist provided the family with a reading bag and books that are on the student's instructional level for

² Backmapping is the re-teaching of previously taught materials, such as kindergarten and first grade curriculum, to a second grade student while exposing him to second grade curriculum standards (www.hcpss.org).

³ Fountas & Pinnell's Leveled Literacy Intervention is a short-term, supplementary intervention system to improve literacy achievement of struggling readers with engaging leveled books and fast-paced systematically designed lessons (www.fountasandpinnell.com/intervention/).

daily reading aloud to improve his reading fluency. The language arts teacher met with the parents and conferenced about the student's strengths and weaknesses.

9. At the February 1, 2018 IEP team meeting, the reading specialist reported that the student has difficulty answering inferential questions, understanding spoken language, expressing his thoughts orally, retaining and recalling information, writing with fluency, decoding words and using phonics skills. The language arts teacher reported that the student struggles to decode words and exhibits inconsistent recall of presented information. He has difficulty recalling information from the text in sequence and often misses the main idea. The data reflects that he had difficulty when asked to make inferences about information presented in problems.
10. On an informal writing assessment, the language arts teacher reported that the student has shown "marked improvement" in the areas of organization, support, evidence and language when completing a narrative writing sample. The student continues to need to provide these standards when completing an informative writing sample.
11. At the February 1, 2018 IEP team meeting, the teacher of English Language Learners (ELL), states that the student does not require accommodations in daily instruction. The teacher further states that the student receives specialized instruction several times per week outside of the classroom along with receiving push-in services during instruction. The ELL teacher notes that the student earned the highest level when speaking the English language but was at a lower level when writing. She further notes improvement in spelling sight words, punctuation and speaking with fluency.
12. At the February 1, 2018 IEP team meeting the teachers of art, music and physical education describe the student as "always participating in class" and that "he is able to put personal meaning into his artwork and make it his own." After reviewing the student's progress, teacher reports, input from the parents and the complainant's concerns, the IEP team recommended that educational, psychological, and occupational therapy assessments be conducted in order to address the parents' academic concerns and determine the existence of a Specific Learning Disability or Attention Deficit with Hyperactivity Disorder (ADHD).

March 16, 2018 IEP Team Meeting

13. On March 16, 2018, the IEP team considered the results of the psychological assessment which included the following:
 - A record review;
 - A parent interview;
 - A teacher interview;
 - The Leiter-3rd Edition (Leiter-3), a nonverbal cognitive assessment;

- The Cognitive Assessment System-2nd Edition (CAS-2), a norm referenced measure of cognitive ability;
 - A report of the Behavior Assessment System for Children – 3rd Edition (BASC-3);
 - A report of the Conners – 3rd Edition (Conners-3) an assessment tool used to obtain parents’ and teachers’ observations of student behavior in home and at school; and
 - A report of the behavioral observations by the school psychologist.
14. The student was observed by HCPS personnel on two occasions using the Behavioral Observation of Students in Schools (BOSS).⁴ Results revealed that the student was on-task for 63% of the 20-minute observation period. The student engaged in off-task behavior for 74% of the time observed. The majority of the student’s off-task behaviors included bouncing, wiggling his legs and looking around the classroom. The student’s peer comparison was on-task for 94% of the observation period and off-task for 18% of the time observed. For the second observation, the student was on-task for 86% of the 30-minute observation period. The student engaged in off-task behavior for 31% of the time observed. The majority of off-task behaviors consisted of shifting in his seat, rocking, using the restroom and staring. The student’s peer comparison was on-task 100% of the time and off-task for 4% of the time.
15. The school psychologist documented previous attendance data noting that during the student’s kindergarten year (2016), the student missed 17 consecutive days of school, citing this as a factor to consider “since fundamental skills that are taught in kindergarten appear as gaps in learning at a later time.”
16. The school psychologist also reported on the results of an assessment which indicated below average nonverbal cognitive abilities with weaknesses in visual working memory. The results from the assessment of cognitive functioning indicated processing weaknesses that impacted the student’s ability to quickly and accurately scan and evaluate visual stimuli such as symbols, numbers, colors, and patterns. According to the school psychologist, the student’s cognitive abilities appear to be “below average with a relative strength in successive processing skills.”
17. The school psychologist reported that the student’s results from the assessments do not support the presence of inattention and/or hyperactivity across home and school settings, and, therefore, a diagnosis of ADHD is not indicated at this time.
18. The school psychologist recommended that the student receive access to teacher or peer notes, chunking of new information, repetition of directions, periodic breaks, use of

⁴ The BOSS is a systematic behavior observation code that measures the percent of attentive versus off-task behavior of the target student and compares these results to a classroom peer. The BOSS includes two categories of on-task (e.g., actively and passively engaged) and three categories of off-task behaviors (e.g., verbal, motor, or passive).

systematic study strategies such as memory mnemonics, teacher checks for understanding, teacher prompts for attention, learning reading comprehension strategies such as previewing (which allows the student the opportunity to flip through the book and talk about each of the pictures presented in the book) and orally summarizing what he's read after each page. The school psychologist also recommended math study strategies, slower paced instruction and the use of reinforcers to increase the student's persistence.

19. At the March 16, 2018 IEP meeting, the team considered the report of the educational assessment which indicates on the Woodcock-Johnson IV (WJ-IV) that the student achieved within the "average range" in all academic areas. The complainant shared concerns that the assessment results were not reflective of the student's classroom performance. The teacher confirmed that "the student's responses indicated patterns that are, in fact, similar to the way the student performs in the classroom." The school based IEP team stated that the WJ-IV is one data point and it is not aligned with the core standards based curriculum however, may be used when reviewing the student's strengths and weaknesses.
20. At the March 16, 2018 IEP meeting, the school psychologist also reported that when considering eligibility for special education services as a student with a Specific Learning Disability, English language development and proficiency must be considered as a factor that could contribute to slower academic progress. The school psychologist further reported that consistent exposure to a second language is critical to developing language proficiency and that students require five to seven years of consistent exposure and practice in a second language before they are able to obtain Cognitive Academic Language Proficiency (CALP).⁵
21. The school psychologist reported that the student's cognitive profile is not suggestive of a learning disability.
22. The school psychologist further explained how cultural factors must be considered when determining whether the student is a student with a disability that requires specially designed instruction. The student currently receives English Language Learner (ELL) services and the primary language spoken at home is not always English. The complainant questioned why cultural factors were being considered if the student is scoring high on his ELL assessments. The school based IEP team reiterated that the ELL assessments the student has been given over the years "do not measure academic language, which is something that can take 5-7 years to develop for children who are learning English as a second language."
23. The complainant suggested that the student be provided with time in school to use online academic tools to practice reading and math. The school based IEP team responded that

⁵ Cognitive Academic Language Proficiency (CALP) refers to listening, speaking, reading and writing subject area content material.

in order for the student to use the online academic tools the complainant suggested, they need to be approved by the county and complimentary to the methods used in the classroom to reduce the student's academic confusion.

24. The student's father explained that he understands that based on the student's psychological and educational assessment results, he does not appear to be a student with a disability, but that, he wants a plan put in place in order to ensure his continued academic progress.
25. A continuation of this meeting was requested by the complainant to be scheduled for a later date to review the results of the occupational therapy testing and finalize the special education eligibility determination for the student.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #3 and #5 - #7, the MSDE finds that the IEP team has adopted strategies that have been recommended to assist the student with improving his reading and math skills.

Based on the Findings of Facts #4, #9 - #18, and #22 - #24, the MSDE finds that the HCPS has ensured that the IEP team has considered all of the evaluation data, including the results of public agency assessments and the student's parents' concerns, when identifying and evaluating the student's academic needs and that the data is consistent with the IEP team's decisions.

Based on the Findings of Facts #16, #19, - #21, this office finds that there is no evidence that the HCPS needed to begin the evaluation process prior to January 4, 2018, in accordance with 34 CFR §300.111, and .301-.311 and COMAR 13A.05.02.13 (A). Therefore, this office does not find that a violation has occurred with respect to the allegation.

TIMELINE:

Please be advised that the HCPS 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 be accompanied by a substantial reason why it was not provided during the investigation.

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.

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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, 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/IEP
Early Intervention Services

MEF/sf

c: Michael Martirano
Kathy Stump
Kelly Russo
XXXXXX
Dori Wilson
Anita Mandis
Sharon Floyd