



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

October 17, 2018

XXX
XXX
XXX
XXX

Ms. Joleen McShane
Acting Supervisor of Special Education
Queen Anne's County Public Schools
202 Chesterfield Avenue
Centreville, Maryland 21617

RE: XXXXX
Reference: #19-025

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and Special Education 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 August 21, 2018, the MSDE received correspondence from Mr. and Mrs. XXXXX, hereafter, "the complainants," on behalf of their daughter. In the correspondence, the complainants alleged that the Queen Anne's County Public School (QACPS) 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 QACPS did not follow proper procedures when identifying and evaluating the student to determine if the student has a disability requiring special education and related services, during the 2017-2018 school year, in accordance with 34 CFR §§300.301-.311 and COMAR 13A.05.01.06. This includes the following:

- a. The QACPS did not ensure that the *KeyMath Diagnostic Assessment* was conducted when completing an IDEA evaluation, in accordance with 34 CFR §§300.303 - .311 and COMAR 13A.05.01.06;

- b. The QACPS did not ensure that the complainants were provided with a copy of the psychological assessment report, at least five (5) business days before the report was considered by the Individualized Education Program (IEP) team, in accordance with COMAR 13A.05.01.07;
- c. The QACPS did not provide prior written notice of the IEP team's February 2, 2018 eligibility determination, in accordance with 34 CFR §300.503; and
- d. The QACPS did not ensure the provision of the Parental Rights Maryland Procedural Safeguards Notice, in accordance with Md. Code Ann., Education Article §8-405.

BACKGROUND:

The student is eleven (11) years old and has a 504 Accommodations Plan (504 Plan) for learning with the documented impairment of Attention Deficit Disorder. During the 2017-2018 school year, the student attended XXXXXXXXXXXXXXXXXXXX. She currently attends XXXXXXXXXXXXXXXXXXXX.

FINDINGS OF FACTS:

- 1. From January 2016 to June 2017 the student was provided with additional support in math and participated in a specific math intervention program for 30 minutes a day with increased assessment results. The student did not qualify for a math intervention at the start of the 2017-2018 school year.
- 2. During the 2017-2018 school year, the student scored the following on classroom unit tests in math:

September	56%
November	37.5%
December	33.33%
February	35%
February (retake)	80.95%
March	37.5%
May	50%
- 3. On December 5, 2017, in response to the complainants' request, the IEP team met and decided to conduct cognitive, emotional and academic assessments in the areas of reading, writing and math, with a focus on math problem solving and math calculations. The IEP team suspected an Other Health Impairment due to Attention Deficit Hyperactivity Disorder (ADHD).
- 4. On February 2, 2018, the IEP team convened to determine whether the student was eligible for special education services. The QACPS acknowledged that the psychological assessment

XXX

XXX

Ms. Joleen McShane

October 17, 2018

Page 3

report was not available at least five (5) business days before the scheduled meeting due to school system weather delays and closings. The complainants received the psychological assessment report one (1) day prior to the IEP team meeting. The complainants agreed to proceed with the meeting so that the meeting would not be delayed.

5. A comprehensive evaluation was conducted in the areas of cognition, social emotional, and academics. The IEP team considered the *Woodcock Johnson IV Test of Achievement*, which revealed “average” to “low average” range scores. The team considered *STAR 360*¹ scores, class observations in math and art, and classroom assessments and work samples. The team noted that there was a variance in the unit test scores. The student’s *Star 360* scores placed her on the 5th grade level with a scaled score of 664 in September 2017 and a 5.8 grade level with a scaled score of 710 in January 2018.
6. The IEP team reviewed that, the student has, over an extended period, demonstrated areas of strength and weakness through tiered interventions and has been able to work her way out of needing intervention in both reading and math. The student’s report card for the 2017-2018 indicated that the student was approaching and progressing towards grade level standards in math based on her classroom performance.
7. The IEP team reviewed data that indicated elevated levels in the area of internalizing problems, anxiety, and withdrawal on the parent report while only withdrawal was elevated on the teacher report. Additionally, the data reflected no elevated areas on the teacher forms but very elevated scores on the parent form in the area of inattention and learning problems. The school psychologist reported that the student’s global social/emotional and behavioral functioning is consistent with what would be expected of a child her age. The IEP team determined the student does not meet the criteria for identification as a student with a disability under the IDEA.
8. At the IEP team meeting on February 2, 2018, after the non-eligibility determination was made, the complainants requested the *KeyMath Diagnostic Assessment* be administered. In response to the complainants’ request, the IEP team agreed to investigate to determine whether the *KeyMath Diagnostic* was available within the QACPS in order to identify needed accommodations which could be provided to the student through her 504 Plan.
9. There is documentation that the complainants were provided with a written copy of the Parental Rights: Maryland Procedural Safeguards Notice at the time of the initial evaluation but no documentation that an oral explanation of the parents’ rights and responsibilities were provided.

¹ The *Star 360* assessment reports include student achievement and growth scores to provide a complete picture that compares each student’s growth to that of his or her academic peers nationwide.

XXX

Ms. Joleen McShane

October 17, 2018

Page 4

10. There is documentation that written notice of the decisions made at the February 2, 2018 IEP team meeting was sent to the complainants on March 3, 2018.
11. In an email correspondence from the complainants to the principal on March 23, 2018, the complainants questioned whether the QACPS was able to access the *KeyMath Diagnostic Assessment*. Within the email documentation, the complainants assert that they requested the *KeyMath Diagnostic Assessment* at the December 2, 2017 IEP team meeting. The school staff responded with a request to expedite a 504 Plan meeting to discuss the complainants concerns and their request for additional information.
12. On April 4, 2018, in response to the complainants' concerns, the student resumed her participation in a math intervention.
13. The 504 Plan, dated May 21, 2018, includes accommodations of having a small group for testing and instruction, being provided with a copy of teacher notes, the chunking of tests, assignments and assessments, check for understanding, asking the student if the small group instruction is needed, access to paper/pencil tasks, preferential seating and weekly check-ins with the math teacher.
14. On September 20, 2018, in response to the complainants' continuing concerns, the IEP team reconvened to determine if there was additional information that needed to be considered to determine the student eligible to receive special education services due to the concerns of the complainants. The complainants shared their concerns about the student's math achievement and participation in math intervention programs. The general education teacher stated that the student does not stand out among other students as struggling. The special education teacher noted that checklists, step by step directions and written procedures have been helpful to the student. The special education supervisor emphasized the pattern of success the student experiences when she consistently participates in the tiered interventions but also noted the inconsistency in her assessment scores.
15. The documentation of the September 20, 2018 IEP team meeting reflects that the math specialist shared that the student is not confident in her math ability even though she picks up skills quickly. The math specialist stated that the student has demonstrated strengths and weaknesses and her scores are only slightly below her same-age peers noting that there has been a pattern of success when the student participates in the intervention groups. Based upon the student's inconsistent assessment scores in math, the IEP team decided to conduct another IDEA evaluation using the *KeyMath Diagnostic Assessment* to determine if the student's math needs warranted additional intervention.
16. An IEP team meeting is scheduled for November 1, 2018 to review the results of the *KeyMath Diagnostic Assessment* to determine eligibility for special education services.

DISCUSSION/CONCLUSIONS:

Based on the Finding of Fact #9, the MSDE finds that, while the complainants were provided with written notice of the procedural safeguards during the initial evaluation, there is no documentation that they were also provided with an oral explanation of the safeguards, in accordance with Md. Code Ann., Ed. Art. §8-405. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #4, the MSDE finds that the QACPS did not ensure that the complainants were provided with a copy of the psychological assessment report, at least five (5) business days before the report was considered by the IEP team, in accordance with COMAR 13A.05.01.07. Therefore this office finds a violation occurred with this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #14 - #16, the MSDE finds that the IEP team is conducting another IDEA evaluation, at which time the complainants will have the opportunity to address any concerns about the psychological assessment. Therefore, no corrective action is required to remediate this violation.

Based on the Finding of Facts #1, #8, and #11 - #16, the MSDE finds that there was sufficient data to support the eligibility determination and that the *KeyMath Diagnostic Assessment* was not recommended to be conducted as part of the evaluation, in accordance with 34 CFR 300.301- .311 and COMAR 13A.05.01.06. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #10, the MSDE finds that there is documentation of the provision of written notice of the eligibility determination made on February 2, 2018, in accordance with 34 CFR 300.503. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student Specific

The MSDE requires the QACPS to provide documentation by December 1, 2018 that an oral explanation of the Parental Rights: Maryland Procedural Safeguards Notice was provided when the IEP team convenes on November 1, 2018.

School Based

The MSDE requires the QACPS to provide documentation by February 1, 2019 of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXX staff comply with the requirements to provide documents at least five days prior to IEP team meetings in which they will be considered and that parents are provided with an oral explanation of the procedural safeguards at initial evaluations.

XXX
Ms. Joleen McShane
October 17, 2018
Page 6

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Bierenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at 410-767-7770.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The complainants 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 Early Intervention and Special Education Services

MEF/sf

c: Andrea Kane
XXXXXXXXXX
Dori Wilson
Anita Mandis
Sharon Floyd
Nancy Birenbaum