



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

December 21, 2018

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Dr. Susan Austin
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXX
Reference: #19-057

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/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.

ALLEGATIONS:

On November 2, 2018, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The HCPS did not ensure that on March 8, 2018, the confidentiality of personally identifiable information about the student was maintained, in accordance with 34 CFR §§300.610 and .622 and the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99.
2. The HCPS did not ensure that the student was consistently provided with the accommodations required by the Individualized Education Program (IEP) between November 2, 2017 and October 8, 2018, in accordance with 34 CFR §§300.101 and .323.
3. The HCPS did not ensure that the student’s Behavior Intervention Plan (BIP) was implemented between November 2, 2017 and October 8, 2018, in accordance with 34 CFR §§300.101 and .323.

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4. The HCPS did not ensure that the student was provided with disciplinary protections since November 2, 2017, in accordance with 34 CFR §300.530 and COMAR 13A.08.03.
5. The HCPS did not ensure that proper procedures were followed when conducting an evaluation of the student in November 2, 2017, in accordance with 34 CFR §§300.303 - .306.
6. The HCPS did not ensure that the IEP addressed the student's academic and social/emotional needs between November 2, 2017 and October 8, 2018, in accordance with 34 CFR §§300.320 and .324.

BACKGROUND:

The student is thirteen (13) years old and attended XXXXXXXXXXXXXXXXXXXX during the 2017-2018 school year and from September 5, 2018 until October 8, 2018, when the complainant withdrew him from HCPS to provide him with home instruction.

On February 1, 2018, the student was identified as a student with an Emotional Disability under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: MAINTAINING PERSONALLY-IDENTIFIABLE INFORMATION

FINDINGS OF FACT:

1. The HCPS acknowledges that a violation has occurred with respect to the allegation. Specifically, the HCPS acknowledges that, on March 8, 2018, the student's personally-identifiable information was inadvertently shared with other students during class. The HCPS has since provided staff professional development in the area of "sharing student information-persons permitted access" in August 2018.

CONCLUSION:

Based on the Finding of Fact #1, the MSDE finds that the HCPS did not ensure that the confidentiality of personally identifiable information about the student was maintained, in accordance with 34 CFR §§300.610 and .622 and the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99. Therefore, this office finds that a violation has occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #1, the MSDE finds that the HCPS has taken steps to ensure that the violation identified does not recur at XXXXXXXXXXXXXXXX School. Therefore, no further corrective action is required.

**ALLEGATIONS #2 AND #3: PROVISION OF ACCOMMODATIONS
AND IMPLEMENTATION OF THE BIP**

FINDINGS OF FACTS:

2. The student's IEP requires that he be provided with social/behavioral supports, including a daily contract point sheet, home/school communication, clarifying choices for the student, avoidance of power struggles, coping strategy reminders, positive behavioral supports, and frequent praising.
3. There is documentation that the student was provided with the accommodations required by the IEP, from March 1, 2018 to October 5, 2018.
4. The BIP requires that the student be provided with supports, including strategies to assist him with completing classwork assignments, managing social interactions in class, and following classroom and school rules. There is documentation that the student was consistently provided with those supports during his time in and out of the classroom, while in school.

CONCLUSIONS:

Allegation #2: Provision of Accommodations

Based on the Findings of Facts #2 and #3, the MSDE finds that the student was provided with the accommodations required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #3: Implementation of the BIP

Based on the Finding of Fact #4, the MSDE finds that the student was consistently provided with the supports in the manner described in the BIP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #4: DISCIPLINARY PROTECTIONS

FINDING OF FACT:

5. There is no documentation that the student was removed from school in excess of ten (10) school days during the 2017-2018 and 2018-2019 school years.

CONCLUSION:

Based on the Finding of Fact #5, the MSDE finds that, because the student was not disciplinarily removed from school in excess of ten (10) days during the same school year, the disciplinary

protections do not apply, in accordance with 34 CFR §§300.530-.536 and COMAR13A.05.01.07 and .08.01.11. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATIONS #5 AND #6: PROPER PROCEDURES FOR CONDUCTING AN EVALUATION AND AN IEP THAT ADDRESSES THE STUDENT'S SOCIAL/EMOTIONAL NEEDS

FINDINGS OF FACTS:

6. On September 22, 2017, the complainant made a referral to the PGCPS for an IDEA evaluation of the student. Her referral identified concerns related to the student's social/emotional functioning.
7. On October 5, 2017, the IEP team convened and determined that psychological and educational assessments would be conducted for the student, as the team suspected that the student is a student with an Emotional Disability. The complainant provided consent for the assessments at the meeting.
8. The psychological assessment, dated October 27, 2017, reflects that "there are behavioral issues due to the student's inappropriate behavior under normal circumstances," and that the concerns "have occurred over a long period of time and to a marked degree." It further states that, even though the student demonstrates inappropriate behaviors in class, he continues to learn, achieve passing grades, and met grade-level expectations in state testing.
9. The educational assessment, dated October 18 and 25, 2017, and November 27, 2017, reflects that the student is performing in the "average" or "above average" in all academic areas tested, and that "no significant areas of weakness were identified during the assessment."
10. On November 30, 2017, the IEP team convened to review assessment results and determine eligibility. The eligibility report reflects that data from the educational assessment was used in making the eligibility determination, but it does not reflect data from the psychological assessment was considered. The team determined that the student did not meet the criteria for identification of a student with an Emotional Disability under the IDEA, without documenting the basis for their decision.
11. At the same meeting, the IEP team determined that the student met the criteria for identification as a student with a disability under Section 504 of the 1973 Rehabilitation Act, and developed a plan for the provision of accommodations to support his social/emotional needs in the general education program.

12. On January 11, 2018, the complainant made a referral to the PGCPS for an IDEA evaluation of the student. Her referral identified concerns related to the student's social/emotional functioning.
13. On February 1, 2018, the IEP team convened to review additional data collected in response to the provision of supports in the general education program, and the psychological and educational assessment previously reviewed at the November 30, 2017 IEP team meeting. The meeting summary reflects that the student has needs with "remaining on task and displaying appropriate classroom behaviors, has received referrals for classroom disruption, and his current grades have decreased." Based on the data and assessment results, the team determined that the student qualified as a student with an Emotional Disability under the IDEA, as he continues to "meets the criteria of inappropriate behavior under normal circumstances and that these concerns have occurred over a long period of time and to a marked degree." The team also recommended that a Functional Behavior Assessment (FBA) be conducted for the student, and the complainant provided consent at the meeting.
14. On March 1, 2018, the IEP team convened to develop the student's initial IEP and review results from the FBA. Based on the results previously reviewed at the February 1, 2018 IEP team meeting and the FBA, the team identified needs in the areas of social emotional functioning and self-management. The team developed goals and supplementary aids in each of the identified areas, included counseling services, and developed a BIP to address the student's identified needs.
15. The reports of the student's progress on the IEP goals, made on April 2018 and June 2018, reflect that the student made sufficient progress toward achieving the goals by March 2019.
16. On October 8, 2018, the complainant withdrew the student from HCPS to provide him with home instruction.

CONCLUSIONS:

Allegation #5: Proper Procedures for Conducting an Evaluation

In this case, the complainant alleges that the eligibility determinations made on November 30, 2017 and February 1, 2018 were inconsistent, although the same assessment results were used for both eligibility determinations. The complainant asserts that the student should have been determined eligible on November 30, 2017.

Based on the Findings of Facts #6 - #14, the MSDE finds that the HCPS did not ensure that proper procedures were followed when conducting an evaluation of the student in November 2017, because there is no documentation that the team reviewed all available assessment results determined by the team, in accordance with 34 CFR §§300.303 - .306.

Further, the HCPS did not document the basis for their decision on November 30, 2017, that the student did not qualify for special education services under the IDEA. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #6: IEP that Addresses the Student's Social/Emotional Needs

Based on the Findings of Facts #13 - #16, the MSDE finds that the HCPS developed an IEP that addresses the student's identified needs on March 1, 2018, accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the HCPS to provide documentation within 60 days of enrollment should the complainant decide to re-enroll the student in the HCPS during the 2018-2019 school year, that the IEP team has properly determined the compensatory services, or other remedy for the delay in identifying the student as a student with a disability under the IDEA, from November 30, 2017 to February 1, 2018.

School-Based

The MSDE requires the HCPS to provide documentation by March 31, 2019 of the steps taken to ensure that the violations identified do not recur at XXXXXXXXXXXXXXXX School.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbum, 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.

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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 Early Intervention/Special Education Services

MEF:ac

c: Sean Bulson
Colleen Sasdelli
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