



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

February 5, 2019

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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: #19-074

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 October 1, 2018 the MSDE received a complaint from Ashley S. VanCleaf, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his mother, XXXXXXXXXXXX. 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 above-referenced student.

The MSDE investigated the following allegations:

1. The FCPS should have suspected that the student is a student with a disability, and conducted an evaluation under the IDEA between October 1, 2017 to March 3, 2018, in accordance with 34 CFR §300.111 and COMAR 13A.05.01.06.
2. The FCPS did not follow proper procedures when making an Extended School Year (ESY) services determination on June 25, 2018, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08B.

3. The FCPS did not ensure that the student was provided with a language intervention from the beginning of the 2018-2019 school year until September 21, 2018, in accordance with 34 CFR §§300.301 and .323.

BACKGROUND:

The student is ten (10) years old and is identified as a student with a Specific Learning Disability (SLD) under the IDEA, related to Dyslexia and Dysgraphia. He attends XXXXXXXXXXXXXXXX XXXX and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. On October 1, 2017, the student was being provided with a reading intervention as a general education student, which focused on fluency and comprehension. His reading profile reflects that at that time, he was “below average” in reading when he began the 2017-2018 school year.
2. There is documentation that the student demonstrated progress with the reading intervention, from the beginning of the 2017-2018 school year to his second benchmark reading assessment in November 2017.
3. In March 2018, the Student Support Team (SST) met to discuss the student’s progress. The meeting notes reflect that the student was “a half a year behind the grade level expectation,” and has difficulties with writing and expressing his ideas orally in complete thoughts or sentences. It also reflects that the student has been in multiple reading interventions for language arts, and has shown progress with the interventions.
4. On April 4, 2018, the IEP team convened, in response to a referral made by the student’s mother, for an IDEA evaluation of the student. Based on teacher reports and parental concerns of the student, the team determined that an observation of the student would be conducted, in addition to psychological, educational, occupational therapy, and speech/language assessments. This included components of dyslexia testing, as the team suspected that the student is a student with a Specific Learning Disability. The student’s mother provided consent for the assessments at the meeting.
5. The psychological assessment, dated October 27, 2017, reflects that the student’s cognitive ability was in the “average to high average range,” verbal comprehension, fluid reasoning, processing speed were in the “average” range, visual spatial and motor integration, and working memory in the “high average range.” However, weakness was identified in the areas of phonological memory and sound blending, spelling, punctuation, and organization. It includes recommendations to supplement verbal instructions with visual explanations, demonstrations, or prompting, practice with blending, sound differentiation, reinforcement of spelling rules, pre-writing, highlighting, Venn Diagrams, word banks, the provision of a quiet and distraction free environment, and the use of technology.

6. The educational assessment, conducted in May 2018 reflects that the student demonstrates “low average” ability in the areas of reading and written language, and “high average” abilities in math. It includes recommendations for the continuation of the reading intervention, practice reading and discussions about what was read, daily handwriting practices at home and school, and consideration for speech to text or scribe for lengthy assignments.
7. The speech/language assessment, dated May 24, 2018, reflects that the student’s “articulation skills are within the mild range” and do not appear to have a negative impact on his social, emotional or academic performances. It includes recommendations to have the student speak slower and gather his thoughts before responding, and to encourage self-advocacy and build confidence.
8. The occupational therapy assessment, conducted April and May 2018, reflects that the student demonstrates strengths in visual motor and perception skills, independent classroom routines, verbal prompts, “thoughts to paper” skill, and keyboarding. He demonstrates weaknesses in motor coordination, writing fatigue and mechanics, organization, and impulsivity. It includes recommendations for pencil grips, prompt appropriate writing posture, practice letter formations, erase rather than rewrite, completing work on a computer, practice spelling, and utilizing desk organization techniques.
9. The independent educational assessment, dated April 10, 2018, reflects that the student displays “deficits of Dyslexia-phonological awareness.” It includes recommendations for a multisensory, structured tutoring for reading, writing, and spelling.
10. On June 1, 2018, the IEP team reconvened to determine eligibility for the student under the IDEA. The school staff reported that the student was making progress in reading with the reading intervention but has difficulties with writing. The SLD eligibility report reflects a severe discrepancy in basic reading, reading comprehension, fluency, and written language, based on his “strong cognitive ability.” Based on the assessment results and teacher and parental input, the team determined that the student has a SLD under the IDEA, related to Dyslexia and Dysgraphia. The team also determined that the student does not require speech/language services, and would receive “informal” occupational therapy support in the upcoming school year.
11. On June 25, 2018, the IEP team convened to develop an initial IEP for the student. The team determined that the student would continue to receive a reading intervention that focus on phonics, phonemic awareness, encoding, comprehension, and fluency. The team also considered ESY services for the student and documented its determination regarding each factor. The team found that the IEP did include annual goals related to critical life skills, but that there was not a likelihood of regression of critical life skills caused by a normal school break and failure to recover those skills in a reasonable amount of time, based on the student’s “historical data.” The team also found that there was no progress yet towards mastery of the goals that had been developed, that there were no emerging skills, breakthrough opportunities, interfering behaviors, or special circumstances that existed.

In addition, the team found that the nature and severity of the student's disability did not indicate a need for ESY services. Based on the information, the team determined that the student would not be prevented from receiving benefits from the education program during the regular school year if ESY services are not provided.

12. On December 20, 2018, the IEP team convened to review the student's progress. The team acknowledges that the student did not receive the amount of reading intervention required by the IEP, from the beginning of the 2018-2019 school year to September 21, 2018, and determined that compensatory services would be provided with the provision of the reading intervention. There is documentation that the student's mother agreed with the offer of compensatory reading services by the FCPS, and that a tutoring schedule was created by the school staff for the provision of the compensatory services.

CONCLUSIONS:

Allegation #1: Identification of a Disability Under the IDEA

Based on the Finding of Facts #1 - #11, the MSDE finds that the evidence does not support the allegation that FCPS should have suspected that the student is a student with a disability, and have conducted an evaluation under the IDEA between October 1, 2017 to March 3, 2018, in accordance with 34 CFR §300.111 and COMAR 13A.05.01.06. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2: ESY Services Determination Procedures

Based on the Finding of Fact #11, the MSDE finds that the FCPS followed proper procedures when making an ESY services determination on June 25, 2018, in accordance with 34 CFR §300.106, COMAR 13A.05.01.07B(2) and COMAR 13A.05.01.08B(2). Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #3: Provision of a Reading Intervention

Based on the Findings of Facts #11 and #12, the FCPS acknowledges that the student was not provided with the provision of a reading intervention, as required by the IEP, from the beginning of the 2018-2019 school year to September 21, 2018, in accordance with 34 CFR §§300.301 and .323. MSDE appreciates and concurs with this acknowledgement and therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #12, the MSDE finds that the student's parent agreed to the compensatory services offered by the FCPS for the lack of the provision of the reading intervention for the student, and that a tutoring schedule was created by the IEP team for the provision of compensatory services in reading. Therefore, no further corrective action is required to remediate the violation.

TIMELINE:

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 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: XXXXXX
 Theresa Alban
 Linda Chambers
 XXXXXX
 Dori Wilson
 Anita Mandis
 Albert Chichester