



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

April 22, 2020

Ms. Jessica Williams
Education Due Process Solutions, LLC
711 Bain Drive, #205
Hyattsville, Maryland 20785

Ms. Trinell Bowman
Director of Special Education
Prince George's County Public Schools
1400 Nalley Terrace
Landover, Maryland 20785

RE: [REDACTED]
Reference: #20-103

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 27, 2020, the MSDE received a complaint from Ms. Jessica Williams, hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Prince George's County Public Schools (PGCPS) 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 PGCPS did not follow proper procedures when conducting an IDEA evaluation, since September 3, 2019, in accordance with 34 CFR §§300.8, .111, .301 - .311, .321 and COMAR 13A.05.01.06. The complainant specifically alleged the following:

- a. The PGCPS did not ensure that the Individualized Education Program (IEP) team meetings included the required participants;

- b. The PGCPS did not ensure that the evaluation was sufficiently comprehensive to identify all of the student's special education and related service needs;
- c. The PGCPS did not ensure that the IEP team's eligibility determination was consistent with the data that the student requires special education as a result of his disability;
- d. The PGCPS did not ensure that an evaluation report was developed that includes the required content; and
- e. The PGCPS did not ensure that the evaluation was completed within the required timelines.

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973, based on a diagnosis of Attention activity Disorder (ADHD).

The student attended [REDACTED] until the March 16, 2020 Statewide closure of all schools, as the result of the national COVID-19 pandemic.

FINDINGS OF FACTS:

1. There is documentation that, on October 15, 2019, the IEP team met to consider the concerns of the parent about the student's cognitive/intellectual ability and academic performance, after she provided school staff with a signed consent for an IDEA evaluation.
2. At the time of the October 15, 2019 IEP team meeting, the student had a 504 accommodations plan under Section 504 of the Rehabilitation Act of 1973 (504 Plan) as a result of a diagnosis of ADHD. There is documentation that a general education teacher of the student and a special education teacher participated in the meeting.
3. The Prior Written Notice (PWN) of the October 15, 2019 IEP team meeting reflects that the team considered data from the student's education record, including data considered by a previous IEP team in 2018 following a previous referral for an IDEA evaluation made by the parent. This data reflects that in 2018, the student was identified with needs in the areas of attention, initiation, organization, impulse control and organization, which resulted from ADHD. The documentation reflects that, in 2018, the IEP team did not suspect that the student requires special education services after considering the data, but referred the student for an evaluation under Section 504 of the Rehabilitation Act of 1973, which resulted in the development of the 504 Plan.
4. At the October 15, 2019 IEP team meeting, the team also considered teacher input, informal reading assessment data, parent concerns regarding the student's lack of attention in class, academic grade reports, county assessment data, Lexile levels and MAP scores. Based on the data, the IEP team recommended that psychological and

educational assessments be conducted, and the parent provided written consent. There is no documentation that the IEP team considered data from the 504 team, including concerns expressed by the parent to the 504 team on June 11, 2019 about the student's lack of progress and lack of implementation of the 504 Plan.

5. There is documentation that, on February 20, 2020, the IEP team met to consider the assessment results and completed the IDEA evaluation. An audio recording of the meeting reflects that the complainant expressed concern that there were no teachers of the student or a special education teacher present and that the school staff explained that this was because "this is an assessment review meeting." A review of the audio recording further reflects that the IEP team chairperson was serving in the role of a special education teacher on the team. However, there is no documentation that a general education teacher of the student participated in the meeting.
6. The documentation and audio recording of the February 20, 2020 IEP team meeting reflect that the team considered the results of a psychological assessment that state the student scored in the "low average" range in cognitive ability, verbal comprehension and perceptual reasoning functioning. It reflects that his visual motor integration skills were also commensurate with his cognitive ability. The report does not identify concerns in any of these areas.
7. The documentation and audio recording of the February 20, 2020 IEP team meeting also reflects that the team considered the results of an educational assessment that state the student scored in the "low average" range in reading and math and in the "average" range in written language. The team also considered that the student's reading and math grades were consistent and "average" across the first and second quarters of the school year.
8. The documentation and audio recording of the February 20, 2020 IEP team meeting reflect that the complainant expressed concern that the psychological assessment did not include all of the required components. The school psychologist explained that the data from 2018 regarding the student's ADHD was accepted and that testing did not need to be repeated in that area for the assessment to be valid.
9. A review of the audio recording of the February 20, 2020 IEP team meeting reflects that the team decided that the student does not meet the criteria for identification as a student with a Specific Learning Disability.
10. Based on these concerns, the team decided that more data was needed regarding implementation of the student's 504 plan before a determination could be made regarding the need for special education instruction as a result of an Other Health Impairment related to ADHD.

DISCUSSION/CONCLUSIONS:

Required Participants

Based on the Findings of Facts #2 and #5, the MSDE finds that there is documentation that, while all of the required members of the IEP team were present at the October 15, 2019 IEP team meeting, there is no documentation that there was a general educator at the February 20, 2020 IEP team meeting as required by 34 CFR §300.308. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Comprehensiveness of the Evaluation

Based on the Findings of Facts #1 - #4, #8, and #10, the MSDE finds that the IEP team did not consider data from the 504 Plan team when conducting the evaluation, in accordance with 34 CFR § 300.301. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Data to Support the Eligibility Determination and Evaluation Report

Based on the Findings of Facts #3 - #4, #6 - #7 and #9, the MSDE finds that there was data to support the team's decision regarding the identification of the student with a Specific Learning Disability (SLD), in accordance with 34 CFR §§300.306, .308, and .324. Therefore, the MSDE finds that no violation occurred with respect to this aspect of the allegation.

However, based on the Finding of Fact #9, the MSDE also finds that there is no documentation that a SLD report was created as required, in accordance with § 300.311. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Evaluation Timelines

Based on the Findings of Facts #1 and #5, the MSDE finds the PGCPS did not ensure that the evaluation was completed within the required timelines, required by 34 CFR § 300.301 and COMAR 13A.05.01.06. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMEFRAMES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Dr. Birenbaum can be reached at (410) 767-7770.

Student Specific:

The MSDE requires that the PGCPs provide documentation that the IEP team has reconvened to conduct an initial eligibility determination following proper procedures. If, as a result of the evaluation, the student is identified as a student with a disability under the IDEA, the IEP team must develop an IEP and determine the compensatory services or other remedy for the delay in identification.

School Based:

The MSDE requires that the PGCPs provide documentation of the steps taken to ensure that the [REDACTED] staff follow proper procedures in conducting IDEA evaluations, in accordance with 34 CFR §§ 300.300 – 300.311 and COMAR 13A.05.01.04 - .06.

TECHNICAL ASSISTANCE:

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


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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:dee

c: Monica Goldson
Gwen Mason
Barbara VanDyke
Jeffrey Krew

Dori Wilson
Anita Mandis
Diane Eisenstadt
Nancy Birenbaum

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