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State Superintendent of Schools

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March 30, 2015

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Ms. Bobbi Pedrick
Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: XXXXX
Reference: 15-048

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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 January 29, 2015, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter “the complainant,” on behalf of her daughter. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) 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 AACPS has not ensured that proper procedures were followed to conduct an initial evaluation under the IDEA since January 29, 2014, in accordance with 34 CFR §§300.301 - .306, and COMAR 13A.05.01.04 - .06. Specifically, the complainant alleged that the AACPS has not ensured that assessment tools have been utilized to provide relevant information to assist in the identification of the student’s behavior and academic needs.

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INVESTIGATIVE PROCEDURES:

1. Ms. K. Sabrina Austin, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On, February 5, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Bobbi Pedrick, Executive Director of Special Education, AACPS.
3. On February 6, 9, 13, and 25, 2015 and March 3 and 9, 2015, Ms. Austin conducted telephone interviews with the complainant about the allegation being investigated.
4. On February 9, 2015, Ms. Austin discussed the allegation by telephone with Ms. Alison Barmat, Program Manager of Legal Issues and Compliance, AACPS.
5. On February 11, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the AACPS of the allegation and requested that the AACPS review the alleged violations.
6. On February 20, 2015, the AACPS provided the MSDE with documentation for consideration in the investigation.
7. On February 23, 2015, Ms. Austin reviewed the student's educational record at the AACPS Central Office. Ms. Barmat was present as a representative of the AACPS and to provide information on the AACPS policies and procedures, as needed.
8. On March 4, 2015, Ms. Austin and Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX and interviewed Ms. XXXXXXXXX, Principal, XXXXXXXXXXXXXXXX, and Mr. XXXXXXXX, Psychologist, AACPS. Ms. Barmat attended the site visit as a representative of the AACPS and to provide information on the AACPS policies and procedures, as needed.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Notice and Consent for Assessment, dated October 24, 2013;
 - b. Report of Educational Evaluation performed on December 5, 2013;
 - c. The student's enrollment history, undated;
 - d. Report of Psychological Assessment performed on January 24 and 27, 2014;
 - e. Notice of IEP team meeting, dated February 12, 2014, and parent response, undated;
 - f. Comprehensive Evaluation Review, dated March 19, 2014;
 - g. Notice of IEP team meeting, dated March 5, 2014, and parent response, undated;
 - h. Report of IEP team meeting, and sign-in sheet, dated March 19, 2014;

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- i. Justification for violating 60-day initial eligibility determination timeline, undated;
- j. The complainant's request for evaluation, dated April 30, 2014;
- k. Draft referral, dated April 30, 2014;
- l. Notice of IEP team meeting, dated May 7, 2014, and parent response, dated May 13, 2014;
- m. Draft Summary of Screening, dated May 14, 2014;
- n. Notice of IEP team meeting, dated May 21, 2014;
- o. Notice of IEP team meeting, dated June 4, 2014, and parent response, undated;
- p. Report of IEP team meeting, and sign-in sheet, dated June 16, 2014;
- q. The complainant's request for evaluation, dated August 25, 2014;
- r. Referral, dated August 25, 2014;
- s. Summary of screening, dated August 29, 2014;
- t. Notice of IEP team meeting, dated August 25, 2014, and parent response, dated August 27, 2014;
- u. Notice of IEP team meeting, dated October 1, 2014;
- v. Notice of IEP team meeting, dated October 22, 2014, and parent response, dated November 5, 2014;
- w. Report of IEP team meeting, and sign-in sheet, dated November 5, 2014;
- x. Student evaluation plan indicating assessments needed, dated November 5, 2014;
- y. Consent for Evaluation signed by the complainant, dated November 5, 2014;
- z. Academic Assessment, dated November 12, 2014;
- aa. Notice of IEP team meeting, dated December 8, 2014, and parent contact log indicating complainant's cancellation of meeting, dated December 18, 2014;
- bb. Notice of IEP team meeting, dated December 22, 2014;
- cc. Notice of IEP team meeting, dated January 14, 2015;
- dd. Report of IEP team meeting, and sign-in sheets, dated January 14, 2015;
- ee. Comprehensive Evaluation Review, prepared for meeting date January 14, 2015;
- ff. Form documenting timeline exception, dated January 14, 2015;
- gg. Notice of draft IEP provided prior to IEP meeting, dated January 26, 2015;
- hh. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on January 29, 2015;
- ii. Notice of IEP team meeting, dated February 9, 2015, and parent response dated February 18, 2015; and
- jj. Notice of IEP team meeting, dated February 19, 2015.

BACKGROUND:

The student is ten (10) years old and attends XXXXXXXXXXXXX. On January 14, 2015, the student was identified as a student with a Specific Learning Disability under the IDEA. A meeting to develop an Individualized Education Program (IEP) for the student was scheduled on March 6, 2015, but is being rescheduled due to a weather-related school closure on this date (Docs. dd and jj).

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ALLEGATION: MARCH 19, 2014 EVALUATION PROCEDURES

FINDINGS OF FACTS:

1. On January 29, 2014, the AACPS had completed assessments that were recommended by the Baltimore City Public Schools (BCPS) and was attempting to schedule an IEP team meeting to complete an evaluation that was begun by the BCPS. At that time, the student had been enrolled in the AACPS for only one (1) month after moving to Anne Arundel County from Baltimore City with the complainant. By that date, the timeline for completion of an evaluation that began in Baltimore City Public Schools (BCPS) had expired (Docs. a, c, d and interview with the school staff).
2. On March 19, 2014, the IEP team convened after having made an unsuccessful attempt to find an earlier mutually convenient date for the IEP team meeting (Docs. e, and g - i).
3. At the March 19, 2014 IEP team meeting, the IEP team considered the report of an educational assessment conducted by the BCPS, dated December 5, 2013, the report of the psychological assessment conducted by the AACPS on January 24 and 27, 2014, and the report of the classroom teacher on the student's performance with the provision of interventions in the general education program. The IEP team considered information that the student was "about a year behind" in reading and writing, and about a year and a half behind in math. The IEP team also considered information that the student has "average" to "low average" intellectual ability, and that she has been in five (5) schools since kindergarten (Docs. b, d, f and h).
4. Based on the data, the IEP team determined that the student did not meet the criteria for a student with a learning disability, requiring special education, because she had not previously received consistent, appropriate educational instruction due to frequent moves between several schools. There is documentation that the complainant disagreed with the decision by the IEP team. The IEP team agreed to monitor the student's performance with the general education supports in place, and to meet again in May 2014 to consider the student's progress (Docs. f and h, and interview with the school staff).

DISCUSSION/CONCLUSIONS:

A student may not be determined to be a student with a disability under the IDEA if the determinant factor for that determination is lack of appropriate instruction in reading or math (34 CFR §300.306 and COMAR 13A.05.01.06).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20,

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July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46601, August 14, 2006).

Based on the Findings of Facts #1 - #4, the MSDE finds that the IEP team's eligibility determination was consistent with the data from the school staff that the student had not received appropriate instruction in reading and math. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

ALLEGATION: JUNE 16, 2014 EVALUATION PROCEDURES

FINDINGS OF FACTS:

5. On April 30, 2014, the complainant requested in writing that the student be evaluated. There is no documentation that the school staff provided the complainant with a copy of the procedural safeguards in response to the written referral (Doc. j and interview with the school staff).
6. On June 16, 2014, the IEP team convened and considered information that the school staff had concerns about the student's reading, math, writing, expressive and receptive language, and cognitive functioning, and that they suspected that the student has a Specific Learning Disability (Docs. k, m and p).
7. The documentation of the June 16, 2014 IEP team meeting reflects that the school based members of the IEP team decided not to conduct assessments because the complainant had left the meeting, and indicates that they believed that she would not provide consent. However, the IEP team did not determine the data that was needed and no attempts were made to obtain the complainant's consent for evaluation following the meeting (Doc. p, and interview with the school staff).

DISCUSSION/CONCLUSIONS:

A public agency is required to identify, locate, and evaluate all students within its jurisdiction and to offer each student with a disability a Free Appropriate Public Education (FAPE) (34 CFR §300.111, and COMAR 13A.05.02.13). In order to ensure the provision of a FAPE, the public agency must offer each student with a disability an IEP that requires the provision of special education and related services needed to address the individual needs of the student (34 CFR §§300.101, .320 and .323).

Upon receipt of a written referral for evaluation, the public agency must determine whether it suspects the student of having a disability, and if so, promptly request parental consent to assess the student in all areas related to the suspected disability (COMAR 13A.05.01.04 and .05).

As part of an initial evaluation, the public agency must ensure that the IEP team reviews existing data, including assessment data and information from the child's teachers and parents. Based on that data, the

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public agency must identify what additional data, if any, is needed to determine the student's eligibility and educational needs (34 CFR §300.305 and COMAR 13A.05.01.06).

The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability. If the parent does not provide consent, the public agency may, but is not required to, pursue the initial evaluation of the student through the procedural safeguards, if appropriate (34 CFR 300.300).

Based on the Findings of Facts #6 and #7, the MSDE finds that there is no documentation of efforts by the school staff to obtain the complainant's consent when the IEP team suspected a disability. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

JANUARY 14, 2015 EVALUATION

FINDINGS OF FACTS:

8. On August 25, 2014, the complainant again requested, in writing, that the school staff evaluate the student. The complainant's request indicates that she did not agree with the results of the previous evaluations. There is no documentation that the school staff provided the complainant with the procedural safeguards and parental rights after receiving the written referral (Doc. q and interview with the school staff).
9. On November 5, 2014, the IEP team met, after unsuccessful attempts were made to find an earlier mutually convenient date. The complainant expressed concern about the student's lack of progress in math and language arts, as well as concern about the student's social skills. There is documentation that the IEP team considered information from the student's classroom teacher about the student's classroom performance and that the student continued to be suspected of having a Specific Learning Disability (Docs. r, s, and w).
10. Based on the data, the IEP team recommended assessments in the areas of reading, math and writing, and a classroom observation of the student. The complainant provided consent for the assessments to be conducted (Docs. w - y).
11. On January 14, 2015, the IEP team reviewed the results of the academic assessments that reflected that the student was performing two (2) to three (3) years below expected age level in broad reading, broad math, and written language. The IEP team also reviewed existing information about the student's cognitive functioning in the "low" to "low average" range. Based on the data, the IEP team determined that the student is eligible for special education as a student with a Specific Learning Disability, and agreed to develop an IEP to address her needs. There is documentation that the complainant indicated that she did not want to schedule the next IEP meeting until she was able to obtain legal representation, but that the IEP team tentatively scheduled a meeting for February 9, 2015 (Docs. z, dd and ee).

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12. The school staff prepared a document, dated January 14, 2015, that indicates that the delay in completing the evaluation within the required timeline was due to the inability of the parties to meet on an earlier date that was mutually agreeable. The document states that the school system and the complainant mutually agreed to extend the timeline due to these “extenuating circumstances” (Doc. ff).
13. The school staff attempted to convene IEP team meetings on February 9 and 20, 2015 to develop an IEP for the student. The parties report that the meetings were not held because the complainant has not yet obtained legal counsel to represent her at the meeting (Docs. cc and ii, and interviews with the school staff and the complainant).
14. The school staff attempted to convene the next IEP meeting on March 6, 2015, to develop an IEP for the student. While the meeting did not take place due to a weather related school closure on March 6, 2015, the complainant reports that she did not intend to be present because she did not have legal representation (Doc. jj and interview with the complainant).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must offer each student with a disability a FAPE through an IEP that addresses all of the needs that arise out of the student’s disability (34 CFR §§300.101 and .111).

The IEP team must complete an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral (34 CFR §300.301 and COMAR 13A.05.01.06(A)). The timeframe does not apply to a public agency if a parent repeatedly fails or refuses to make the student available for the evaluation, or the student enrolls in a school of another public agency after the timeframe has begun and prior to a determination of the student’s eligibility by the previous public agency. The exception applies only if the subsequent public agency is making sufficient progress to complete the evaluation and the public agency and the parent have agreed to a specific time for completion of the evaluation (34 CFR §300.301). Other exceptions, such as permitting a parent and a public agency to mutually agree to extend the timeframe, would not be appropriate (*Analysis of Comments and Changes to the IDEA, Federal Register*, Vol. 71, No. 156, p. 46637, August 14, 2006).

The public agency must ensure that a meeting to develop an IEP occurs within thirty (30) days of a determination that a student is eligible for special education (34 CFR §300.323 and COMAR 13A.05.01.07).

An IEP team meeting can be conducted without a parent when the public agency is unable to convince the parent to participate. However, the public agency must be able to document its attempts to arrange a mutually convenient time and place to hold an IEP team meeting (34 CFR §300.322 and COMAR 13A.05.01.07).

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Based on the Findings of Facts #8 - #11, the MSDE finds that the AACPS did not ensure that the evaluation was completed within the required timelines. This office further finds that, while the AACPS reports that the parties agreed to a delay in the completion of the evaluation, the IDEA does not provide for an exception to the timeline requirements on this basis. Therefore, the MSDE finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #9, the MSDE finds that the delay in completing the evaluation resulted from the school system's attempt to ensure the complainant's participation in the IEP team's decisions. Therefore, no student specific corrective action is required to remediate the violation.

Based on the Findings of Facts #13 and #14, the MSDE finds that the AACPS has not ensured that the IEP has been developed within the required timelines and that a violation occurred. Based on the same Findings of Facts, the MSDE finds that the AACPS has documented attempts to convince the complainant to attend the IEP team meeting to develop the IEP, and is required to proceed to develop the IEP in order to meet the obligation to offer a FAPE, regardless of whether the complainant chooses to participate.

ADDITIONAL ISSUE:

A copy of the procedural safeguards must be given to the parents upon initial referral or parent request for evaluation (34 CFR §300.504 and COMAR 13A.05.01.11).

Based on the Findings of Facts #5 and #8, the MSDE finds that the complainant requested that the student be evaluated for special education eligibility on April 30, 2014, and August 25, 2014. Based on the same Findings of Facts, the MSDE finds that there is no documentation that the school staff provided the complainant with the procedural safeguards following her requests. Therefore, the MSDE finds that the school staff did not follow proper procedures, and finds an additional violation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the AACPS to provide documentation, by May 1, 2015, that an IEP team has convened and taken the following action:

1. Develop an IEP and made reasonable efforts to obtain the complainant's consent to initiate the provision of special education and related services to the student in accordance with the proposed IEP; and
2. Determine the amount and nature of services to compensate the student for the delay in conducting an evaluation between June 16, 2014 and January 14, 2015 to be provided to the

student within one (1) year of the date of this Letter of Findings, if the complainant provides consent to the initiation of special education and related services.

The AACPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

School-Based

The MSDE requires the AACPS to provide documentation, by June 1, 2015, of the steps it has taken to determine if the violations identified in this Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXX.

Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violations do not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Systemic

The MSDE requires the AACPS to provide documentation, by the start of the 2015-2016 school year, of the steps it has taken to ensure compliance by all AACPS schools with the IDEA and related State requirement that procedural safeguards are provided each time the public agency receives a parental request for evaluation of a student, in accordance with 34 CFR §300.504 and COMAR 13A.05.01.11.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the AACPS by Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Aux can be reached at (410) 767-0255.

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Please be advised that both the complainant and the AACPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

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. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant 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/
Early Intervention Services

c: George Arlotto
Alison Barmat
XXXXXXXXXX
Dori Wilson
Anita Mandis
Kathy Aux