



August 13, 2015

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Ms. Tiffany Clemmons
Executive Director of Specialized Services
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #15-089

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 June 15, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) 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 BCPS has not ensured that proper procedures were followed when conducting an initial evaluation under the IDEA on June 9, 2015, in accordance with 34 CFR §§300.301 - .306, and COMAR 13A.05.01.05.06, as follows:

- a. The BCPS has not ensured that the assessment tools used to assess the student were used for the purposes for which the assessments are valid and reliable;
- b. The BCPS has not ensured that the evaluation was sufficiently comprehensive to identify the student’s special education and related services needs; and
- c. The BCPS has not drawn upon information from a variety of sources, including achievement tests and teacher reports.

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INVESTIGATIVE PROCEDURES:

1. On May 1, 2015, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, former Executive Director of Special Education, BCPS.
2. On May 5, 2015, Ms. Sharon Floyd, Education Program Specialist, MSDE, discussed the allegation being investigated with the complainant.
3. On May 6, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation.
4. On May 12, 2015, Ms. Floyd spoke with Mr. Darnell L. Henderson, Esq. and Ms. Diana K. Wyles, Esq., Associate Counsel, Office of Legal Counsel, BCPS about the allegation being investigated.
5. On May 21, 2015, Ms. Floyd conducted a site visit at XXXXXXXXXXXXXXXXXXXX XXXX to review the student's educational record. Ms. XXXXXX, General Education Teacher and Ms. XXXXXXXX, Assistant Principal, were present for the record review. Ms. Wyles was also present as a representative of the BCPS to provide information on the BCPS policies and procedures, as needed.
6. On May 29, 2015, and June 5, 8, and 9, 2015 the MSDE was provided with copies of documents from the student's educational record from the BCPS.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Notice of the procedural safeguards, provided to the student's parent on April 30, 2015;
 - b. Electronic (email) correspondence from the complainant, to the school staff, requesting an evaluation of the student for special education services, dated April 21, 2015;
 - c. Email from the school staff, to the complainant, in response to her request for an IEP team meeting for the student, dated April 22, 2015;
 - d. Notice and consent for assessment, signed by the complainant on May 19, 2015;
 - e. Report of a student observation, conducted by the special education teacher, during the student's language arts class, dated May 27, 2015;
 - f. Report of an educational assessment, dated May 26, 2015, and an email describing revision of the educational report, from the school staff, to the MSDE, dated July 24, 2015;
 - g. The BCPS 2014-2015 school year calendar;
 - h. Notice of the May 19, 2015 IEP team meeting, dated April 24, 2015, prior written notice, dated May 19, 2015, and IEP meeting attendance sheet, dated May 19, 2015;
 - i. Referral to child find, dated May 19, 2015;

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- j. Report of *i-Ready Math* and *i-Reading* student profile assessments and next steps for instruction, dated February 9, 2015, and information about the *i-Ready* adaptive assessments;
- k. Notice of documents for the June 9, 2015 IEP team meeting, dated June 1, 2015, prior written notice, dated June 9, 2015, IEP meeting attendance sheet, dated June 9, 2015, and a report of the evaluation and determination of initial eligibility, dated June 9, 2015;
- l. Report of a psychological assessment conducted on May 27, 2015;
- m. The student's 2014-2015 school year report card;
- n. The student's work samples during the 2014-2015 school year;
- o. Email of the student's informal intervention plan, dated June 9, 2015;
- p. Email of the student's weekly behavior chart used during the 2014-2015 school year, and a sample of 'think sheet', a writing assignment providing the student with an opportunity to debrief in written format choosing a positive behavioral outcome to a problematic situation;
- q. The student's 2014-2015 attendance records;
- r. Responses to the complainant's request for an IEE, request dated, June 18 and 23, 2015, and consent signed by the complainant, dated June 25, 2015;
- s. *Woodcock-Johnson IV* update, dated August 4, 2015;
- t. Emails from the complainant, to the MSDE, dated June 24, 2015-August 5, 2015;
- u. Emails from the complainant, to the BCPS, dated June 23, 2015-August 6, 2015;
- v. Permission to attend XXXXXXXXXXXXXXXXXXXXXXXXXX Program, dated May 29, 2015; and
- w. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on June 15, 2015.

BACKGROUND:

The student is eleven (11) years old and attended XXXXXXXXXXXXXXXXXXXXXXXXXXXX in Baltimore City during the 2014-2015 school year. She is not identified as a student with a disability under the IDEA. The student is enrolled in the Howard County Public Schools (HCPS) for the 2015-2016 school year as a result of the family's relocation to Howard County (Docs. i, q and t). During the period of time addressed by this investigation, the student's parents participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. a, h, and k).

FINDINGS OF FACTS:

1. On April 21, 2015, the complainant made a request from the BCPS that the student be evaluated for special education services. The complainant specifically discussed her concerns about the student's inappropriate behaviors and failing grades (Doc. b).
2. On April 22, 2015, the BCPS responded to the complainant's request by providing her with dates and times for an IEP team meeting. In addition, the complainant was asked to

provide additional information about her concerns regarding the student's behavior and academic performance (Doc. c).

3. On May 19, 2015, the IEP team convened, including the complainant, who voiced concerns about the student's difficulty with beginning a task, managing her attention, lateness to class, completing assignments, and poor report card grades. The team considered the student's below grade level reading and math assessment scores, her attendance record, and the interventions that had been provided in classes, such as small group instruction, preferential seating, and peer tutoring. The student had been absent seventeen (17) days and tardy thirty-six (36) times during the 2014-2015 school year. The complainant informed the school staff that the student sees a private therapist and repeated grade three (3) at her former school. The IEP team discussed that the student is easy to upset and has difficulty attempting a task if she feels she will not be able to successfully complete it (Docs. h, j, m, n, o, and q).
4. At the May 19, 2015 meeting, the IEP team also considered information from the student's teacher's regarding the student's inconsistent grades and her "stubbornness" in class. The teacher made the following statements: "When the student gets angry, she will not complete work and has difficulty letting go of her anger. She also appears to lack motivation and has difficulty keeping her hands to herself. The student struggles with attempting challenging tasks. The other students and classroom activities are distractions to the student. Her attention span is extremely short. The student has many challenges with relationships in the class. Her moods change suddenly throughout the day. The student lacks self-control and is easily frustrated. She also needs constant approval" (Docs. h, j, m, n, o, and q).
5. At the May 19, 2015 IEP team meeting, the "school therapist" stated that the student struggles with her behavior and "coming back from such strong feelings" and stated that, "The student is distracted by the highly active classroom, she struggles with minor distractions, and the student likes to be involved in the drama within the classroom, and that the student reports that math is more difficult than reading for her" (Doc. h).
6. The student's report card for the 2014-2015 school year reflects that the student was receiving failing marks in language arts, math, social studies, physical education and music during at least one quarter during the year. The student failed math every quarter. The report card also reflects that the student was demonstrating "unsatisfactory conduct" in the areas of following rules, working independently, working in groups and staying on task (Doc. m).
7. At the May 19, 2015 IEP meeting, the team documented the suspicion that the student may have an Other Health Impairment under the IDEA, and decided to conduct educational and psychological assessments, including an assessment for attention difficulties, and a classroom observation of the student based upon her difficulties with attention. The complainant signed informed consent, indicating that she understood the proposed action for the completion of assessments recommended by the BCPS (Docs. d and h).

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8. On June 9, 2015, the IEP team reconvened to review the results of assessments. A psychological assessment was conducted and the school psychologist reported that:

In a majority of skill areas, the student falls within the average range. The student is showing levels of hyperactivity, impulsivity and inattention but not high enough levels to qualify her as a student with an ADHD disability under the guidelines of the Diagnostic Statistical Manual (DSM-IV). A diagnosis of ADHD requires that the hyperactive and inattentive behaviors are demonstrated in multiple settings (such as, home and school) according to the DSM IV (Doc. l).

9. On June 9, 2015, the IEP team also considered an educational assessment report which documented the student's strengths as fluency with academic tasks and her ability to apply academic skills within the "average" range. The report states that the student is also working in the "average" range in broad reading and writing, and that she is working in the "low average" range in the area of math problem solving (Doc. f).
10. The educational assessment report contained inconsistent data about the date of testing, the date that the report was written and the assessment tool used (Doc. f).
11. At the June 9, 2015 IEP team meeting, the IEP team also considered the results of the observation report which stated that, "The student needed to be re-directed from talking to another student while the teacher explained the directions for the assignment. During the task, the student would play with the materials or talk to another student while continuing to work on the assignment." The assessment report also documented problems with the student's written expression, attention, work habits, task completion and motivation. The classroom teacher informed the observer that the behaviors observed were representative of the student's usual behavior in class (Docs. e and k).
12. At the June 9, 2015 IEP team meeting, the IEP team determined that the student does not have a condition such as ADHD that qualifies as an Other Health Impairment under the IDEA (Doc. k).
13. On June 9, 2015, the IEP team discussed the student's behavioral struggles in the classroom and determined that the student is not a student with an Emotional Disability. However, the team did not document that they considered the required factors when reaching a determination regarding whether a student has an Emotional Disability (Doc. k).
14. At the June 9, 2015 IEP team meeting, the complainant expressed her concerns about the results of the educational assessment. In response, on June 18, 2015, the BCPS granted an Independent Education Evaluation (IEE) including an educational, psychological, and a functional behavioral assessment (FBA), and a psychosocial assessment, which is pending (Docs. f, k and r).

LEGAL REQUIREMENTS:

The public agency must ensure that each student identified with a disability under the IDEA, who resides within its jurisdiction, is identified and is offered a Free Appropriate Public Education (FAPE) through an Individualized Education Plan (IEP). This is required even if the student is advancing from grade to grade and has not failed or been retained in a course or grade (34 CFR §§300.101, .111, and .320).

When conducting an initial evaluation for any student who may have a disability, the public agency must ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified (34 CFR §§300.304-.306 and COMAR 13A.05.01.06).

In conducting an IDEA evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent (34 CFR §300.304). Assessments and other evaluation materials must be used for the purposes for which the assessments or measures are valid and reliable (34 CFR §300.304).

An Other Health Impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment. This may be due to chronic or acute health problems such as Attention Deficit Hyperactivity Disorder (34 CFR §300.8).

An Emotional Disability means a condition exhibiting one (1) or more characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance. These characteristics include: an inability to learn that cannot be explained by intellectual, sensory, or health factors, an inability to build or maintain satisfactory interpersonal relationships, inappropriate types of behavior or feelings under normal circumstances, a general pervasive mood of unhappiness or depression, and a tendency to develop physical symptoms or fears associated with personal or school problems (34 CFR §300.8).

DISCUSSION/CONCLUSIONS:

Based on the Finding of Fact #10, the MSDE finds that there is documentation that the educational assessment report contains conflicting information about which educational assessment tool had been used and the dates of the assessment and report. Therefore, the MSDE finds a violation occurred with respect to ensuring that valid and reliable evaluation materials were used for the intended purposes.

Notwithstanding the violation, based on the Finding of Fact #14, the MSDE finds that the BCPS is currently conducting an Independent Education Evaluation, at the public agency expense, which includes assessing the student in all areas of concern previously identified through the evaluation process. Therefore, no additional student-based corrective actions are required with respect to this aspect of the allegation (Docs. r and u).

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Based on the Findings of Facts, #7, #8, #11 and #12, the MSDE finds that data exists to support the IEP team's decision that the student does not have a condition that meets the requirements in order for her to be identified as a student with an Other Health Impairment.

However, based on the Findings of Facts #1, #3-#6, #11, and #13, the MSDE finds that there is no data to support the team's determination regarding the student's lack of eligibility as a student with an Emotional Disability under the IDEA. Therefore, this office finds a violation related to ensuring that the evaluation is sufficiently comprehensive to be able to identify all of the student's special education and related service needs.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the BCPS to provide documentation by November 1, 2015 that an IDEA evaluation has been conducted following proper procedures and that an eligibility decision is determined. If the student is identified as a student with a disability under the IDEA, the BCPS must also provide documentation that the IEP team has determined whether services are needed to compensate the student for the delay in identification, which is to be provided within one (1) year of the date of this Letter of Findings, if the student's parent provides written consent for the initiation of special education and related services. The BCPS is to collaborate with the HCPS in completing the corrective actions.

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 parties by contacting Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the BCPS 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.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. 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 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

MEF/sf

c: Gregory E. Thornton
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