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November 13, 2015

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Mr. Russell Gray
Director of Special Education
Carroll County Public Schools
125 N. Court Street
Westminster, Maryland 21157

RE: XXXXX
Reference: #16-023

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 September 16, 2015, the MSDE received a complaint from Ms. XXXXXXXX and Mr. XXXXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Carroll County Public Schools (CCPS) 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 CCPS has not ensured that proper procedures were followed to conduct an initial evaluation under the IDEA, in accordance with 34 CFR §§300.301 - .306, and COMAR 13A.05.01.04 - .06.

INVESTIGATIVE PROCEDURES:

1. On September 17, 2015, MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Gray, Director of Special Education, CCPS.

XXX

XXX

Mr. Russell Gray

November 13, 2015

Page 2

2. On September 22, 2015, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the student's mother to clarify the allegation for the investigation.
3. On September 25, 2015, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the CCPS of the allegation and requested that the school system review the alleged violation.
4. On September 29, 2015, Mr. Loiacono contacted Mr. Wayne Whalen, Coordinator of Compliance, CCPS, to arrange a document review and site visit.
5. On October 12, 2015, Mr. Loiacono, Mr. Albert Chichester, Complaint Investigator, MSDE and Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX School to review records and interviewed the following school staff:
 - a. Mr. XXXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXX, Occupational Therapist;
 - c. Ms. XXXXXXXX, Special Educator;
 - d. Ms. XXXXXXXXXXXX, General Educator;
 - e. Ms. XXXXXXXXXXXX, Regular Educator; and
 - f. Ms. XXXXXXXXXXXX, School Psychologist.

Mr. Whalen and Ms. Christine Wittle, Supervisor for Elementary Special Education, CCPS, attended the site visit as a representative of the CCPS and to provide information on the school system's policies and procedures, as needed.

6. On October 12, 2015, the CCPS provided the MSDE with additional documentation requested at the site visit.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Prior Written Notice, dated December 4, 2014;
 - b. Prior Written Notice, dated February 12, 2015;
 - c. Prior Written Notice, dated April 15, 2015;
 - d. Prior Written Notice, dated June 1, 2015;
 - e. Prior Written Notice, dated June 8, 2015;
 - f. Prior Written Notice, dated June 12, 2015;
 - g. Prior Written Notice, dated October 27, 2015;
 - h. Evaluation Report and Determination of Initial Eligibility, dated June 1, 2015;
 - i. Specific Learning Disability Tool, dated June 8, 2015;
 - j. Other Health Impairment Eligibility Tool, dated June 1, 2015;

XXX

XXX

Mr. Russell Gray

November 13, 2015

Page 3

- k. Writing Classroom Observation, dated May 21, 2015;
- l. Math Classroom Observation, dated May 21, 2015;
- m. Reading Classroom Observation, dated May 18, 2015;
- n. Educational Assessment Report, dated June 1, 2015;
- o. Psychological Report, dated May 22, 2015;
- p. Occupational Therapy Report, undated;
- q. Speech and Language Assessment Report, dated May 18, 2015;
- r. Classroom Assessment and Intervention Data, dated June 14, 2015;
- s. Independent Neuropsychology Report, undated;
- t. Independent Occupational Therapy Evaluation, undated;
- u. Independent Educational Assessment, dated September 16, 2015;
- v. Independent Speech-Language Pathology Evaluation, dated July 14, 2015;
- w. Electronic mail from Ms. XXXX to Ms. XXXX, sent November 3, 2014
- x. Electronic mail from Ms. XXX to Ms. XXX, sent November 4, 2014;
- y. Electronic mail from Ms. XXXX to Mr. XXXXXX, sent March 20, 2015;
- z. Electronic mail from Ms. XXX to Mr. XXXXXX, sent October 14, 2015; and
- aa. Correspondence from the Complainants alleging allegations of violations of the IDEA, received by the MSDE on September 16, 2015.

BACKGROUND:

The student is ten years old and attends XXXXXXXXXXXXXXXX School. He is not identified as a student with a disability under the IDEA. (Docs. a and h).

There is documentation that the complainants participated in the education decision-making process during the IDEA evaluation process and were provided with notice of the procedural safeguards (Docs. a-f).

FINDINGS OF FACTS:

Evaluation Conducted by the Public Agency

1. The student entered the first grade at the beginning of the 2014-2015 school year. Shortly after the start of the school year, the complainants attended a Back to School Night event. They met with the student's classroom teacher and expressed concern that the student may require special education services to address the student's reading and writing needs. The classroom teacher and the complainants discussed interventions that would be used in the general education classroom to address their concerns (Docs. w and x).
2. On November 3, 2014, the complainants requested that an IDEA evaluation be conducted based on the student's difficulty with "reading, writing, and writing words by sounding them out" (Doc w.).

XXX

XXX

Mr. Russell Gray

November 13, 2015

Page 4

3. On November 24, 2014, the Individualized Educational Plan (IEP) team considered information from the school staff that interventions were being provided to the student including working in small groups for assignments, preferential seating, frequent “check-ins”, and extended time to complete assignments. The team decided that intervention data would be collected for eight weeks, and the results would be reviewed (Doc. a).
4. The IEP team met on February 5, 2015 to review the intervention data. The classroom teacher reported that the student was making progress in response to interventions put in place at the beginning of the school year. Based on this, the team determined that the student was not suspected of having an IDEA disability. The team discussed that a referral could be made to the 504¹ team at the school in order to determine whether the student requires accommodations (Doc. b).
5. On March 20, 2015, the complainants informed the school staff that they did not wish to proceed with a referral to a 504 team. They again requested an IDEA evaluation based on their concerns with the student’s “educational process” (Doc. y).
6. On April 9, 2015, the IEP team convened and again considered the student’s progress with interventions in the general education program. The teachers again reported that the student was responding to the interventions targeted at encoding, decoding, and sight words. While school based members of the IEP team did not suspect an IDEA disability, the team agreed to evaluate the student at the complainants’ request (Docs. c and r).
7. On June 1, 2015, the IEP team convened and considered the results of classroom observations and psychological, educational, occupational therapy and speech assessments, which indicated the following:
 - Observations were conducted by the special education teacher while the student while was completing writing, math and reading activities in the classroom. Each observation noted that the student often fidgeted and required frequent redirections from the classroom teacher to stay on task (Docs. k, l, and m).
 - The results of the psychological assessment indicated the student to have an overall cognitive ability in the “above average” range. It further states that the student demonstrates “substantial variability among settings” with respect to distractibility (Doc. o).
 - The results of the educational assessment indicated that the student was within the “normal range” for phonetic awareness, reading phonics, math calculation, and math problem solving, “above average” on written language and slightly “below

¹ “504” refers to Section 504 of the Rehabilitation Act of 1973 which, if a student is determined to be eligible, allows for the provision of accommodations through the development of a 504 Plan.

XXX

XXX

Mr. Russell Gray

November 13, 2015

Page 5

- average” for reading fluency and one of two tests administered for reading comprehension, when compared to his peers (Doc. n).
- The results of the speech and language assessment indicated that the student’s articulation, core language, receptive language and expressive language scores fell “within the average range when compared to his peers” (Doc. q).
 - The results of the occupational therapy assessment indicated that the student’s neuromuscular skills, handwriting, visual perception were in the “normal range” for his peers. The report also indicated that while the student was found to be “below average” in visual motor integration and sensory processing, he did not require direct occupational therapy (Doc. p).
8. Based on the data, the team did not find evidence of Attention Deficit Hyperactivity Disorder (ADHD), and therefore determined that the student does not meet the criteria for identification as a student with an Other Health Impairment (OHI) under the IDEA. Due to time constraints, the team decided to reconvene to determine whether the student meets the criteria for identification as a student with a Specific Learning Disability (SLD) (Docs. e, h, and j).
9. On June 8, 2015, the IEP team reconvened. At the meeting, the IEP team determined that there is no evidence that the student is not achieving adequately with the provision of interventions in the general education program. Therefore, the team determined that the student does not meet the criteria for identification as a student with a SLD. The complainants expressed their disagreement with the evaluation results and requested an Independent Educational Evaluation (IEE), to include a neuropsychological assessment. The team decided to reconvene after school-based members had the opportunity to consider that request (Docs. e, h, and i).

The Independent Educational Evaluation

10. On June 12, 2015, the IEP team reconvened and the complainants were informed that an IEE would be provided at public expense. The complainants were provided a referral to the Maryland Association of Non-Public Special Education Facilities (MANSEF) to assist them with arranging for the private assessments to be conducted (Doc. f).
11. The independent speech-language pathology assessment was conducted on June 29, 2015 and July 1, 2015. The independent occupational therapy assessment was conducted on July 24, 2015. The independent neuropsychological assessment was conducted August 26 and 27, 2015. The independent educational assessment was conducted on July 26, 2015 and August 2 and 16, 2015, and dated September 16, 2015 (Docs. s-v).
12. An IEP team meeting was scheduled for October 15, 2015 to discuss the results of the IEE but the meeting was rescheduled at the complainants’ request (Doc. z).

XXX

XXX

Mr. Russell Gray

November 13, 2015

Page 6

13. On October 27, 2015, the IEP team convened and considered the results of all testing conducted as part of the IEE (Doc. g).

DISCUSSION/CONCLUSIONS:

Evaluation Conducted by the Public Agency

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR § 300.111). It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services.

To meet this expectation, school staff may review a student's academic and behavioral performance and determine teaching strategies, modifications to instruction, and behavior management techniques, which will appropriately assist the student. However, the public agency must ensure that implementation of intervention strategies do not delay or deny a student's access to special education services under the IDEA (34 CFR §300.111).

Upon receipt of a referral for an IDEA evaluation, the public agency must review the existing data, including evaluations, information provided by the student's parents, classroom-based assessments, and observations conducted by teachers. On the basis of that review, the public agency must determine whether additional data is needed and if so, that assessments and other evaluation measures needed to produce the data are conducted (34 CFR §§300.301 - .305 and COMAR 13A.05.01.04).

A student with a disability, under the IDEA, is a student who has been evaluated as having one of a list of impairments, including Other Health Impairment (OHI) and a Specific Learning Disability (SLD), and who, by reason thereof, requires special education and related services (34 CFR §300.8).

An OHI means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, resulting 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).

A SLD means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia (34 CFR §300.8).

XXX

XXX

Mr. Russell Gray

November 13, 2015

Page 7

A student may be found to have a SLD if the student does not achieve adequately for his or her age or to meet grade level standards when provided with appropriate learning experiences and instruction, or exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade level standards or intellectual development, using appropriate assessments (34 CFR §300.309).

Based on the Findings of Facts # 1-9, the MSDE finds that there is documentation to support the IEP team's decision that the student does not meet the criteria for identification as a student with an OHI or a SLD under the IDEA. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The Independent Educational Evaluation

Parents have the right to request an Independent Educational Evaluation (IEE) at public expense if they disagree with the evaluation conducted by the public agency. If a parent requests an IEE, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate, or ensure that an IEE is provided (34 CFR §300.502).

In this case, the complainants believe that CCPS did not ensure that the IEE was conducted in a timely manner. Based on the Findings of Facts #10-13, the MSDE finds that the CCPS responded to the complainants' request for an IEE and ensured that it was provided without unnecessary delay. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the CCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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 within the timelines reported in this Letter of Findings.

XXX

XXX

Mr. Russell Gray

November 13, 2015

Page 8

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 the provision of a Free Appropriate Public Education 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:gl

c: Stephen H. Guthrie
Wayne Whalen
Christine Wittle
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Dori Wilson
Anita Mandis
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