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May 13, 2016

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Ms. Rebecca Rider
Director of Special Education
Baltimore County Public Schools
The Jefferson Bldg. 4th Floor
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #16-083

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.

ALLEGATIONS:

On March 16, 2016, the MSDE received a complaint from Ms. XXXXXXXX, hereafter, “the complainant,” on behalf of her daughter. In that correspondence, the complainant alleged that the Baltimore County 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 following allegations:

1. The BCPS did not ensure that the eligibility determination made as a result of an IDEA evaluation was consistent with the data, including an Independent Educational Evaluation (IEE), when conducting an evaluation during the 2015-2016 school year, in accordance with 34 CFR §300.305.
2. The BCPS did not have the proper participants to interpret the assessment of fine motor skill needs when conducting an IDEA evaluation during the 2015-2016 school year, in accordance with 34 CFR §§300.308 and .321.

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3. The BCPS did not complete an IDEA evaluation within the required timeline during the 2015-2016 school year, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06.
4. The BCPS did not provide proper written notice of the Individualized Educational Program (IEP) team's February 29, 2016 decision, that additional data was not required when conducting an evaluation, in accordance with 34 CFR §300.305.

INVESTIGATIVE PROCEDURES:

1. On March 16, 2016, the complainant provided the MSDE with documentation to be considered.
2. On March 17, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
3. On March 22, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
4. On March 25, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Rider of the allegations to be investigated and requested that her office review the alleged violations.
5. On April 13, 2016, Mr. Chichester and Ms. Sharon Floyd, Complaint Investigator, MSDE, conducted a site visit to the XXXXXXXXX Elementary School to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXX, Occupational Therapy Assistant;
 - c. Ms. XXXXXXXX, Special Educator;
 - d. XXXXXXXXXXXX, School Psychologist;
 - e. Ms. XXXXXXXXXXXX, School Counselor; and
 - f. Ms. XXXXXXXXXXXX, School Counselor.

Ms. Conya Bailey, Office of Special Education Compliance, BCPS, attended the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.

6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. BCPS Child Find Referral, dated January 28, 2016 and February 1, 2016;
 - b. Occupational therapy evaluation, dated February 8, 2015;
 - c. Physical therapy assessment, dated February 28, 2016;
 - d. Psychological evaluation, dated December 14, 2015; from XXXXXXXXXXXX XXXXXXXXXXXX;

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- e. IEP meeting summaries, dated February 29, 2016 and May 3, 2016;
- f. Parent permission for assessment, dated March 10, 2016;
- g. Correspondence, dated February 1, 2016, between the BCPS Office of Child Find and the school staff;
- h. Correspondence, dated May 14, 2016, between the complainant and the school staff;
- i. Teacher observation reports, dated March 15, 2016;
- j. Teacher performance reports, dated March 15, 2016;
- k. IEP meeting invitation, dated February 2, 2016; and
- l. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on March 16, 2016.

BACKGROUND:

The student is four (4) years old and is a parentally placed at XXXXXXXX, a private school in Baltimore County. She is not identified as a student with a disability under the IDEA (Doc. a).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Doc. a).

FINDINGS OF FACTS:

1. On January 28, 2016, the complainant made a referral to the BCPS Office of Child Find for an evaluation of the student under the IDEA. On February 1, 2016, the XXXXXXXX Elementary School received the referral from the Office of Child Find, which identified the complainant's concerns related to the student's Attention Deficit Hyperactivity Disorder (ADHD), anxiety, Dyslexia, and Executive Functioning Disorder. The referral also indicates that the complainant had concerns about the student's balance and gross motor skills and that the student was receiving private occupational therapy (OT) services (Docs. a and h).
2. On February 29, 2016, the IEP team convened to review a private psychological assessment which had been obtained by the complainant. The results of the assessment indicated that the student's overall intellectual functioning was in the "average range" and that the student was fully alert, cooperative, and appeared to put forth the "appropriate effort" during testing. The assessment report included recommendations for the provision of accommodations to assist the student in areas where she demonstrated weaker performance such as processing speed, communication and organization (Doc. d).
3. At the February 29, 2016 IEP meeting, the complainant also provided a private OT assessment for the team to consider. The student's private OT provider attended the meeting at the complainant's request. The school-based occupational therapist was listed on the meeting invitation but did not attend the meeting. The school staff report that this is because she was not informed of the request for her participation. There is no

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documentation that the team considered the complainant's concerns about the student's fine motor skills needs at the meeting (Docs. b, k, l, and an interview with the school staff).

4. At the February 29, 2016 meeting, the complainant reported that on February 28, 2016, a private physical therapy (PT) assessment had also been conducted and that the complainant intended to provide the assessment to the team for review (Docs. c and e).
5. At the February 29, 2016 meeting, the complainant provided information that the student was receiving medication to address the ADHD (Doc. e and an interview with the school staff).
6. The summary from the IEP meeting on February 29, 2016 indicates that the team decided that they would reconvene to consider information from the student's teachers and class observation (Docs. e, i, and j).
7. Following the February 29, 2016 IEP meeting, an IEP team member contacted the complainant to obtain written consent to conduct a classroom observation at the student's private school. On March 10, 2016, the complainant provided consent for the student to be observed at school (Docs. e, f, and l).
8. On March 15, 2016, the BCPS school counselor observed the student at her school and completed a classroom observation report. The student's teachers also provided reports of the student's class performance (Docs. i and j).
9. On May 3, 2016, the IEP team,¹ which included a school-based occupational therapist, considered the assessment results. Based on the psychological assessment, the team decided that an updated educational assessment was needed to identify the student's weaknesses in phonological processing and reading skills. The team also decided that the private OT assessment did not provide sufficient data and recommended that additional testing be conducted in this area. In addition, the team decided that the private PT assessment did not provide sufficient data and recommended that another observation be conducted in the student's current school setting. The complainant provided consent for assessments at the meeting and the team agreed to reconvene for an eligibility determination meeting on July 31, 2016 (Doc. e).
10. At the May 3, 2016 IEP meeting, the team agreed to reconvene on July 31, 2016 to review new assessment results and to determine the student's eligibility for special education services under the IDEA (Doc. e).

¹ The correspondence documents that the school staff attempted to reconvene the IEP eligibility meeting before the scheduled May 3, 2016 date; however, an earlier meeting did not occur due to the complainant's unavailability (Docs. a and h).

DISCUSSION/CONCLUSIONS:

Allegation #1 Evaluation Procedures

Each Local Education Agency (LEA) must locate, identify, and evaluate all students with disabilities located in the school district served by the LEA, in accordance with the IDEA “Child Find” requirements. This includes those students attending private schools (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).

The evaluation must be sufficiently comprehensive to identify all of the student’s special education and related services needs, whether or not commonly linked to the disability category in which the student is classified. The eligibility determination must be made on an individual basis and be based on the student’s specific needs. The IEP team must review the evaluation data, and based on that data, determine whether the student meets the criteria for identification as a student with a disability under the IDEA (COMAR 13.A.05.01.06).

In this case, the complainant alleges that the IEP team’s determination regarding the student’s eligibility for special education services under the IDEA is inconsistent with the data. Based on the Findings of Facts #1 - #10, the MSDE finds that the IEP team has not yet made an eligibility determination. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2 Required IEP Participants

The public agency must ensure that the IEP team for each student with a disability includes participants such as an individual who can interpret the instructional implications of evaluation results (34 CFR §300.321).

In this case, the complainant alleges that the IEP team that convened on February 29, 2016 did not include someone who could consider her concerns about the student’s fine motor skills needs, as raised in her IDEA referral and in the report of the private assessment.

Based on the Finding of Fact #3, the MSDE finds that the IEP team did not include the required participants, and that a violation occurred. Notwithstanding the violation, based on the Finding of Fact #9, the MSDE finds that the IEP team subsequently reconvened on May 3, 2016 with staff who could interpret the results of the private OT assessment and assist the team with considering the complainant’s concerns about the student’s fine motor skills. Therefore, this office does not require corrective action to remediate the violation.

Allegation #3 Evaluation Timeline

The public agency must obtain parental consent to conduct an evaluation and must ensure that the evaluation is completed within sixty (60) days of parental consent for assessments and within ninety (90) days of the receipt of the referral for evaluation. The only exceptions to these timelines are if the parent repeatedly fails to produce the student for the evaluation or the student enrolls in a school of another public agency during the evaluation process (34 CFR §§300.300, .301, and COMAR 13A.05.01.06).

Based on the Findings of Facts #1, #9, and #10, the MSDE finds that the BCPS has not ensured that the IDEA evaluation has been completed within the required timelines. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #4 Proper Written Notification of Decision

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of students or the provision of a FAPE to students. This notice must include information about the decisions made, the basis for the decisions, the data used when making the decisions, and the options considered by the team (34 CFR §§300.503 and .305). The purpose of providing prior written notice is to ensure that parents have sufficient information in order to determine whether they wish to exercise their right to access the dispute resolution procedures if they disagree with the IEP team's decisions.

In this case, the complainant alleges that the BCPS did not provide her with notice of whether the IEE in the area of OT was accepted or rejected following the February 29, 2016 IEP meeting.

Based on the Finding of Fact #3, the MSDE finds that the team did not make any proposals or refusals related to the private OT concerns raised at the meeting. Therefore, no prior written notice was required and this office does not find that a violation has occurred with this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by September 1, 2016 that the IEP team has completed the IDEA evaluation consistent with the data. If the student is identified as a student with a disability, the MSDE requires the BCPS to provide documentation that an IEP has been developed and that compensatory services have been determined for the delay in identification of the student, to be provided if the student enrolls in the BCPS.

School-Based

The MSDE requires the BCPS to provide documentation by the start of the 2016-2017 school year of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXX Elementary School. 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 violation does 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.

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.

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 within the timelines reported in this Letter of Findings.

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.

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The MSDE recommends that this Letter of Findings be included with any request for mediation or due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:ac

c: S. Dallas Dance
Conya Bailey
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Dori Wilson
Anita Mandis
Albert Chichester