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May 13, 2016

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

Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: XXXXX
Reference: #16-086

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 March 18, 2016, the MSDE received a complaint from Ms. Jessica Williams, hereafter, “the complainant,” on behalf of the above-referenced student, and his mother, Ms. XXXXXXXXXX. In that correspondence, the complainant alleged that the Charles 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 following allegations:

1. The CCPS did not follow proper procedures when responding to a request for an IDEA evaluation in April 2015 and June 2015, in accordance with 34 CFR 300.301 and COMAR 13A.05.01.04-.06.
2. The CCPS did not ensure that an expedited evaluation was conducted for the student following a disciplinary removal in June 2015, in accordance with 34 CFR §300.534.

3. The CCPS has not followed proper procedures when disciplinarily removing the student from school since June 2015, as required by 34 CFR §§300.530, .534 and .536 and COMAR 13A.08.01.11.
4. The CCPS has not followed proper procedures when determining the student's educational placement since June 2015, in accordance with 34 CFR §§300.114, .116 and 530.
5. The CCPS did not provide proper notice to the parent before proposing a change to the student's placement, in March 2016, in accordance with 34 CFR §300.503.
6. The CCPS has not ensured that the student's Individualized Education Program (IEP) addresses the student's academic and behavioral needs, since August 2015, in accordance with 34 CFR §§300.320 and 324.

INVESTIGATIVE PROCEDURES:

1. On March 18, 2015, MSDE sent a copy of the complaint, via facsimile, to Dr. Arden Sotomayor, Executive Director of Specialized Services, CCPS.
2. On March 22, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant, and identified the allegations for investigation.
3. On March 23, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations 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.
5. On April 4, 2016, Mr. Loiacono contacted Ms. Nancy Pirner, Acting Director for Special Education Compliance, CCPS, by electronic mail to arrange a document review and site visit.
6. On April 6, 2016, Mr. Loiacono, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE and Mr. Albert Chichester, Complaint Investigator, MSDE conducted a site visit at Charles County Public Schools headquarters to review records. Ms. Pirner and Ms. Lewan Hutchison, Instructional Specialist for Compliance and Instruction, CCPS, attended the site visit as representatives of the CCPS and to provide information on the school system's policies and procedures, as needed.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated September 29, 2015;
 - b. IEP meeting notes and decisions, dated April 13, 2015;
 - c. IEP meeting notes and decisions, dated June 15, 2015;
 - d. IEP meeting notes and decisions, dated September 1, 2015;

- e. IEP meeting notes and decisions, dated September 29, 2015;
- f. IEP meeting notes and decisions, dated December 2, 2015;
- g. IEP meeting notes and decisions, dated February 10, 2016;
- h. IEP meeting notes and decisions, dated March 9, 2016;
- i. IEP meeting notes and decisions, dated March 16, 2016;
- j. IEP meeting notes and decisions, dated April 1, 2016;
- k. Discipline Incidents List, October 2015 to March 2016;
- l. CCPS "Safe Schools" Policy, undated;
- m. Teacher reports prepared for December 2, 2015 IEP team meeting;
- n. Emotional Disability worksheet, dated August 11, 2015, and
- o. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on March 18, 2016.

BACKGROUND:

The student is fifteen years old and identified as a student with an Other Health Impairment related to Attention-Deficit/Hyperactivity Disorder (ADHD) under the IDEA. He has an IEP that requires the provision of special education instruction and related services (Docs. a-c).

During the time period covered by the investigation, the student had the following placements:

- From the start of the 2014-2015 school year to June 4, 2015, the student attended XXXXXXXXXXXX Middle School, the school he would attend if not disabled;
- From June 5, 2015 to the end of the first quarter of the 2015-2016 school year, the student was placed at XXXXXXXXXXXXXXXXXXXXXXXX, an alternative school placement;
- From the second quarter of the 2015-2016 school year to March 1, 2016, the student attended XXXXXXXX High School, the school he would attend if not disabled; and
- From March 1, 2016 to the present, the student has been placed at home as a result of a reportable offense (Docs. a-k).

There is documentation that the parent participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-h).

ALLEGATIONS #1 AND #2: RESPONSE TO A REQUEST FOR AN EVALUATION IN APRIL AND JUNE 2015

1. On April 13, 2015, the IEP team at XXXXXXXXXXXX Middle school met in response to a referral for an initial evaluation made by the parent. The team considered the parent's concerns about the impact of the student's ADHD on his education. The team also considered results of a hearing screening which the student failed, and decided to

reconvene once the parent obtained a full hearing evaluation. However, there is no documentation that the team reconvened (Doc. b).

2. Following a disciplinary removal on June 4, 2015, the CCPS suspension hearing officer made another IDEA referral for the student. The IEP team met on June 15, 2015 and determined that assessments were needed. The IEP team suspected an Other Health Impairment and an Emotional Disability. The team did not document any discussion about completing the evaluation on expedited basis due to the fact that the student was disciplinarily removed from school. On June 15, 2016, the parent signed consent for assessments to be conducted (Doc. c).
3. During the summer of 2015, the assessments were completed. The IEP team attempted to meet on August 11, 2015, but the parent requested that the meeting be rescheduled. Therefore, the team met on September 9, 2015 to review the assessment data. In addition to the results of educational and psychological assessments recommended in June, the team had documentation that the parent obtained a hearing evaluation which identified no hearing problems. Based on their review, the team documented its decision that the student meets the criteria for identification as a student with an OHI due to ADHD, but did not document its consideration of the factors required to determine whether he meets the criteria for identification as a student with an Emotional Disability (Doc. a, d, and n)

DISCUSSION/CONCLUSIONS:

As part of an initial evaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of the review and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student is a student with a disability and the educational needs of the student, the present levels of academic achievement and related developmental needs of the student, and whether the student needs special education and related services (34 CFR §300.305 and COMAR 13A.05.01.06).

If the IEP team determines that additional data is required, the public agency must ensure that assessment procedures are administered as needed to make sure that the student is assessed in all areas related to the suspected disability and that each special education and related service needed by the student is identified, regardless of whether the need is commonly linked to the disability (COMAR 13A.05.01.04 and .05). Because medical services for evaluation or diagnostic purposes is included as a related service under the IDEA, the public agency must ensure that any medical evaluation that is determined necessary by the IEP team be conducted, as well (34 CFR §300.34).

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)). In the case of a student who has been disciplinarily removed from school, an evaluation must be completed in an expedited manner (34 CFR § 300.534).

Allegation #1: Proper Procedures During the April and June 2015 Evaluations

Based on Finding of Fact #1 the MSDE finds that the CCPS did not ensure that an assessment of the student's hearing was conducted as determined necessary by the IEP team on April 13, 2015. Based on Findings of Facts #1 and #2, the MSDE also finds that the CCPS did not ensure that the evaluation that began on April 12, 2015 was completed within the required timelines.

Further, based on the Findings of Facts #1-#3, the MSDE finds that there is no documentation that the IEP team followed proper procedures when considering whether the student meets the requirements for identification as a student with an Emotional Disability under the IDEA. Therefore, the MSDE finds that violations occurred with respect to this allegation.

Allegation #2: Expedited Evaluation in June 2015

Based on the Findings of Facts #2 and #3, the MSDE finds that the CCPS did not ensure that assessments recommended by the IEP team on June 15, 2015, while the student was disciplinarily removed from school, were expedited. Therefore, this offices finds that violations occurred with respect to the allegation.

ALLEGATIONS #3, #4 AND #5: DISCIPLINARY REMOVALS DURING THE 2015-2016 SCHOOL YEAR

FINDINGS OF FACTS:

4. From June 4, 2015 to March 1, 2016, the student was involved in five documented incidents that resulted in disciplinary removals from school, as follows:
 - June 4, 2015 - removed to alternative education setting for 45 days for "insubordination";
 - October 26, 2015 - removed for one day for a "disruption";
 - January 20, 2016 - removed for two days for "disrespect";
 - February 23, 2016 - removed for two days for "disruption"; and
 - March 1, 2016 - removed to his home with the provision of Home and Hospital Tutoring (HHT) services pending the disposition of a "reportable offense" (Doc. b and i).
5. There is no documentation that the student was provided with the required IDEA disciplinary protections during each of the disciplinary removals¹ (Docs. g-j).

¹ While there is documentation that a manifestation meeting was held following the disciplinary removal on February 23, 2016, there is no documentation that the IEP team developed a plan for delivering services during the disciplinary removal (Doc. h).

6. The school system has a practice of permitting the Student Services Office to determine the services and placement of students, including students with disabilities, who are disciplinarily removed for a “reportable offense.”² In this case, the CCPS Student Services Office placed the student at home without verification that the student was unable to attend school due to an emotional or medical condition (Doc. k).

DISCUSSION/CONCLUSIONS:

Allegation #3: Disciplinary Protections

A student who has not been determined to be eligible for special education and related services under the IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in the IDEA if the public agency had knowledge that the student may be a student with a disability before the behavior that precipitated the disciplinary action occurred (34 CFR §300.534).

A public agency is deemed to have knowledge that a student is a student with a disability under the IDEA if the parent of the student requested an evaluation. If the public agency had evaluated the student, and determined that the student is not a student with a disability following that evaluation, the public agency would not be deemed to have this knowledge (34 CFR §300.534).

A student with a disability may be disciplinarily removed from school. However, after the tenth day of disciplinary removal during the school year, a student with a disability must be provided with the services necessary to appropriately progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

In addition, once a change in educational placement occurs for a student with a disability as a result of a disciplinary removal, State and federal regulations require that the IEP team convene within ten business days of the removal to determine whether the student’s behavior was a manifestation of the disability, and if so, develop or review and revise, as appropriate, and existing BIP (34 CFR §300.530 and COMAR 13A.08.03).

If the student’s behavior is found to be a manifestation of the disability, the student must be returned to the educational placement from which the student was removed unless the parent and public agency agree to a change in placement. If the student’s behavior is not found to be a manifestation of the disability, the IEP team must determine the extent to which services are necessary during the period of removal in order to enable the student to progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

² These are crimes involving violations of specific criminal statutes, including crimes of violence (COMAR 13A.08.01.17).

Based on the Findings of Facts #4 and #5, the MSDE finds that the student was entitled to, but was not provided with, the disciplinary protections during removals that occurred in June 2015 and October 2015 because he had been removed in excess of ten school days during the 2015-2016 school year while an IDEA evaluation was pending.

Based on the Findings of Facts #4-6, the MSDE finds that the student was entitled to, but was not provided with, the IDEA disciplinary protections during the removals that occurred in January 2016, February 2016, and March 2016 because he was removed from school in excess of ten school days during the 2015-2016 school year and he was identified as a student with a disability under the IDEA. Therefore, this office finds that violations occurred with respect to the allegation.

Allegation #4: Determination of Educational Placement

In Maryland, the IEP team must make educational placements decisions for a student with a disability (34 CFR 300.327 and COMAR 13A.05.01.10).

If a student, including a student with a disability, is charged with a reportable offense, the local superintendent and the school principal must consider prohibiting the student from attending the same school or riding on the same school bus as the alleged victim of the offense if the offense involves rape or a sexual offense. If the student is convicted of such an offense, the student is prohibited from attending the same school or riding the same bus as the victim (Md. Ed. Code Ann. §7-103).

Notwithstanding these requirements, appropriate educational programming must be provided to a student with a disability under the IDEA who is charged or convicted of such an offense, in accordance with COMAR 13A.05.01. Further, the instructional setting for the provision of educational services to a student who has been disciplinarily removed from school may not be a student's home; this is because placement in the home is the most restrictive environment along the continuum of placements because it does not permit instruction to take place with other students. In Maryland, an educational placement in the student's home is only appropriate if a school psychologist, licensed physician or psychiatrist provides verification that a student is unable to attend school due to a physical or emotional condition (COMAR 13A.05.01.10).

Based on Findings of Facts #6, the MSDE finds that the CCPS did not ensure that proper procedures were followed when determining that the student's educational placement is his home in March 2016, and that a violation occurred with respect to the allegation.

Allegation #5: Prior Written Notice

Written notice must be provided to parents before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a Free Appropriate Public Education (FAPE) to the student. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options

considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

Based on the Finding of Fact #6, the MSDE finds that the CCPS did not ensure that the parent was provided with prior written notice of the change in the student's educational placement that occurred in March 2016. Therefore, this office finds that a violation occurred.

**ALLEGATION #6 MEETING THE ACADEMIC AND BEHAVIORAL NEEDS
OF THE STUDENT SINCE AUGUST 2015**

FINDINGS OF FACTS

7. The IEP team met to develop an initial IEP for the student on September 29, 2015. At the meeting the team reviewed results of educational testing, teacher input, parent input, and classroom progress. The team developed a behavioral goal for the student to improve his ability to manage frustration. To support the student in achieving progress toward this goal, the IEP team recommended that the student meet with his case manager daily, be provided with frequent "check-ins"³ while receiving instruction and that he be allowed to use a "chill pass" to appropriately remove himself from the classroom, and take frequent breaks (Doc. a).
8. The IEP team met on December 2, 2015 to review the student's progress. Teacher reports indicated that the student was capable of understanding material, but that the student's behavior and inconsistency with completing assigned work were negatively affecting his grades. The IEP team revised the student's IEP to require the use of a grade tracking sheet which would assist the student by providing additional feedback in classroom performance. Although the student had been disciplinarily removed from 2015-2016 school throughout the school year, there is no documentation that the IEP team considered whether a Functional Behavioral Assessment (FBA) was needed (Doc. f).
9. The IEP team met on February 10, 2016 to review the student's progress. The teacher reports indicated that the student's interfering behaviors were continuing to impede his academic achievement. At the meeting, the IEP team recommended an FBA, and the parent provided consent for the assessment. The results of the FBA are pending (Doc. g)

DISCUSSION/CONCLUSIONS:

The public agency must offer each student with a disability a Free Appropriate Public Education (FAPE) through an IEP that includes special education and related services that address the student's identified needs. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral

³ The "check-ins" during instruction were designed to assist the student with remaining on task (Doc. a).

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interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320 and .324).

Based on Findings of Facts #7-9, the CCPS ensured that the IEP team considered the data available to them when determining that the student's academic needs. However, based on those same Findings of Facts, the MSDE finds that the team did not sufficiently respond to either the known or emerging interfering behaviors as evidenced by his frequent suspensions and teacher reports. Further, the IEP team did not ensure that an FBA was complete and a Behavior Intervention Plan (BIP) in place when the student returned from an alternative educational setting. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the CCPS to provide documentation by June 1, 2016 that the IEP team has completed the following:

- a. Developed a BIP for the student, based on the results of the FBA;
- b. Considered positive behavioral supports necessary to address the student's interfering behaviors related to his lack of regular school attendance and disruptive classroom behavior; and
- c. Determined the compensatory services or other remedy for the violations identified in this Letter of Findings.

School-Based/Systemic

The MSDE requires the CCPS to provide documentation by the start of the 2015-2016 school year that steps have been taken to ensure that the violations identified during this investigation do not reoccur.

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. Nancy Birenbaum, 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 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

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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, 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 and 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:gl

c: XXXXXXXX
 Kimberly Hill
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