



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

August 3, 2012

XXX
XXX
XXX
XXX

Ms. Chrisandra A. Richardson
Associate Superintendent
Department of Special Education and Student Services
Montgomery County Public Schools
850 Hungerford Drive, Room 200
Rockville, Maryland 20850

Ms. Gwendolyn J. Mason
Director
Department of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #12-095

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 our investigation.

ALLEGATION:

On June 5, 2012, the MSDE received correspondence from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter “the complainants,” filed on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to the above-referenced student. This office investigated the allegation that the MCPS did not follow proper procedures on April 16, 2012, when the Individualized Education Program (IEP) team determined that the student did not require special education instruction and related services under the IDEA, as required by 34 CFR §§300.304 - .306.

XXX

XXX

Ms. Chrisandra A. Richardson

Ms. Gwendolyn J. Mason

August 3, 2012

Page 2

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the allegation in the complaint.
2. On June 8, 2012, a copy of the complaint was provided by facsimile to Ms. Gwendolyn J. Mason, Director of Special Education Services, MCPS, and Ms. Alison Steinfelds, former Supervisor, Equity Assurance and Compliance Unit, Legal Services, MCPS.
3. On June 14, 2012, Ms. Williams conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On June 15, 2012, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On that same date, the MSDE also notified the MCPS of the allegation to be investigated and requested that the MCPS review the alleged violations.
5. On July 2, 2012, the MCPS sent correspondence to the MSDE to be considered during the investigation.
6. On July 23, 2012, Ms. Williams conducted a telephone interview with the complainant about the allegation being investigated.
7. Documentation provided by the parties was reviewed. The documents relevant to the findings and conclusions referenced in this letter include:
 - a. Correspondence from the complainants to the MSDE, received on June 5, 2012;
 - b. Private Neuropsychological Examination Report, dated December 12, 2011;
 - c. MCPS Team Consideration of the Private Neuropsychological Report, dated February 13, 2012;
 - d. MCPS Individual Subject Teacher Referral Summaries, dated January 27, 2012;
 - e. MCPS Parent Interview/Eligibility Questionnaire, dated February 1, 2012;
 - f. MCPS Student Screening Profile, dated February 3, 2012;
 - g. MCPS Educational History Report, dated February 6, 2012;
 - h. MCPS Student Screening Profile Worksheet, dated February 7, 2012;
 - i. MCPS Classroom Observation Report, dated February 7, 2012;
 - j. MCPS IEP Team Screening Form, dated February 13, 2012;
 - k. MCPS Section 504 Evaluation Report, dated February 13, 2012;
 - l. MCPS Section 504 Plan, dated February 13, 2012;
 - m. MCPS IEP Meeting Invitation, dated March 9, 2012;
 - n. MCPS School Psychological Observation Report, dated March 26, 2012;
 - o. MCPS Educational Evaluation Report, dated March 27, 2012;
 - p. MCPS IEP Team Meeting notes, dated April 16, 2012;

XXX

XXX

Ms. Chrisandra A. Richardson

Ms. Gwendolyn J. Mason

August 3, 2012

Page 3

- q. MCPS Prior Written Notice regarding the IDEA eligibility determination, dated April 19, 2012; and
- r. Correspondence from the MCPS to the MSDE, dated June 28, 2012.

BACKGROUND:

The student is twelve (12) years old and he XXXXXXXXXXXXXXXXXXXXXXXXXXXX. He is identified as a student with a disability under Section 504 of the Rehabilitation Act of 1974 (Section 504) based on Mood Disorder and Attention Deficit/Hyperactivity Disorder (ADHD). On February 13, 2012, a Section 504 Accommodations Plan (504 Plan) was developed for the student (Docs. k and l).

FINDINGS OF FACTS:

1. On April 16, 2012, the IEP team, including the complainants, convened and completed an evaluation to determine whether the student is a student with a disability under the IDEA. At the meeting, the team considered the evaluation data listed below (Docs. a, m, p, q, and r).
2. The IEP team considered a December 12, 2011 private neuropsychological evaluation identifying needs in the areas of organization, attention, graphomotor skills, and “coping with mood.” The evaluation report indicates that these needs can be addressed through the provision of explicit cues and frequent redirection, preferential seating, reduced class work and homework, a period during the school day for organizing or beginning homework, and occupational therapy to improve graphomotor skills (Docs. b and c).
3. The IEP team considered a March 26, 2012 report of a classroom observation conducted by a school psychologist that indicates the student is “an engaged [and] motivated student” who interacts positively with peers and adults. The report also indicates that the student follows class procedures and directions without prompts and can be re-directed when needed (Doc. n).
4. The IEP team considered the results of a March 27, 2012 MCPS educational assessment report indicating that the student demonstrates difficulty with letter formation and spacing, organizing his ideas, bringing required materials to class, and completing tasks in a timely manner. The report contained recommendations that the student be provided with assistance organizing his materials and maintaining his assignment book, and that he be encouraged to use a word processor for tasks that require large amounts of writing (Doc. o).
5. The IEP team considered the complainants’ concerns related to the student’s listening comprehension, distractibility, fine motor skills, and attention span as well as their report that the student requires “extra support to be successful in the school setting and to reach his maximum potential” (Docs. e, f, j, and p).

XXX

XXX

Ms. Chrisandra A. Richardson

Ms. Gwendolyn J. Mason

August 3, 2012

Page 4

6. The IEP team considered teacher reports that the student is able to grasp concepts and that his academic performance is on grade level; he often works too quickly and needs to focus on the details when completing work (Docs. d, g, h, i, and j).
7. Based on the information presented, the IEP team determined that the student does not meet the criteria for identification as a student with a disability under the IDEA because the data do not identify a need for special education instruction to access instruction (Docs. p, q, and r).

DISCUSSION/CONCLUSION:

The IDEA defines a student with a disability as a student who has been determined to have one of the disabilities listed under the IDEA, and who, by reason thereof, needs special education instruction and related services. Special education instruction means specifically designed instruction that includes adapting, as appropriate, the content, methodology, or delivery of instruction to meet the unique needs of the student. The specifically designed instruction is intended to address the unique needs of the child that result from the disability and to ensure access to the general curriculum, so that the student can meet educational standards (34 CFR §§300.8 and .34).

Related services include transportation and developmental, corrective, and other supportive services, such as occupational therapy, as are required to assist a student with a disability to benefit from special education. If it is determined that a student has one of the disabilities identified under the IDEA, but only needs a related service and not special education instruction, the student is not a student with a disability under the IDEA (34 CFR §§300.8 and .39).

In this case, the complainants allege that the student has been denied special education instruction, despite data that demonstrate that he experiences “significant” difficulties at school. They assert that the student requires “additional supports” in order to access instruction.

Based on the Findings of Facts #1 - #7, the MSDE finds that, while the student has been identified with educational needs, there is no data that supports that he requires special education instruction to address those needs. Therefore, the MSDE finds that there is no documentation that the student meets the criteria for identification as a student with a disability under the IDEA and does not find that a violation occurred.

If the complainants believe that the student should be provided with additional supports through the 504 Plan, they maintain the right to request a Section 504 team meeting to consider their concerns.

Please be advised that both the complainants and the MCPS 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 conclusion reached in this Letter of

XXX

XXX

Ms. Chrisandra A. Richardson

Ms. Gwendolyn J. Mason

August 3, 2012

Page 5

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.

Questions regarding the findings, conclusions in this letter should be addressed to this office in writing. The complainants 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 for the student, including issues subject to a 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/tw

cc: Joshua P. Starr
Julie Hall
Sharon Gooding
XXXXXX
Dori Wilson
Anita Mandis
Tyra Williams