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State Superintendent of Schools

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January 12, 2011

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Mrs. Kristin Mentges
Coordinator of Special Education
Talbot County Public Schools
12 Magnolia Street
P.O. Box 1029
Easton, Maryland 21601

RE: XXXXX
Reference: #11-031

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.

ALLEGATION:

On November 15, 2010, MSDE received correspondence from Ms. XXXXXXXXX, the student's mother, hereafter "the complainant," filed on behalf of her son. In that correspondence, the complainant alleged that the Talbot County Public Schools (TCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. This office investigated the allegation that TCPS has not ensured that the evaluations conducted since February 19, 2010¹ have been sufficiently comprehensive to identify the student's special education and related service needs, in accordance with 34 CFR §§300.301 and .304 - 306.

¹ Based upon the complainant's correspondence, MSDE initially identified February 3, 2010 as the date that the allegation began. During the course of the investigation, it was determined that the Individualized Education Program meeting was held on February 19, 2010.

XXX

Mrs. Kristin Mentges

January 12, 2011

Page 2

INVESTIGATIVE PROCEDURES:

1. Ms. Vickie Frazier, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 17, 2010, a copy of the complaint was provided via facsimile to Mrs. Kristin Mentges, Coordinator of Special Education, TCPS.
3. On November 23 and 29, 2010, Ms. Frazier attempted unsuccessfully to contact the complainant, by telephone, to clarify the allegation to be investigated.
4. On November 29, 2010 and December 1 and 7, 2010, Ms. Frazier conducted telephone interviews with Mrs. Mentges.
5. On November 29, 2010 and December 2, 2010, Ms. Frazier received documentation from the student's education record from TCPS staff, via electronic mail (e-mail).
6. On December 1, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On that same date, MSDE notified Mrs. Mentges of the allegation to be investigated, and requested that her office review the alleged violation.
7. On December 3 and 7, 2010, Ms. Frazier received additional information regarding the student's program from TCPS staff, via e-mail.
8. On December 16, 2010, MDSE received a written response to the allegation from TCPS staff.
9. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Correspondence and attachments from the complainant to MSDE, received on November 15, 2010;
 - b. Individualized Education Program (IEP), dated March 11, 2009;
 - c. Report of a functional behavioral assessment, conducted between January 4, 2010 and January 19, 2010;
 - d. Report of a speech language assessment, dated February 1, 2010;
 - e. Report of an educational assessment, dated February 3, 2010;
 - f. IEP and team meeting summary, dated February 19, 2010;
 - g. Report of an independent psychological assessment, dated July 20, 2010;
 - h. *Child Study Teacher Form*, dated September 10, 2010;
 - i. *Child Study Team Parent Questionnaire*, dated September 10, 2010;
 - j. IEP team meeting summary, dated September 14, 2010;
 - k. *Notice of No Assessment Needed* form, dated September 14, 2010;

XXX

Mrs. Kristin Mentges

January 12, 2011

Page 3

- l. Occupational Therapy/Plan of Care, received by TCPS on September 15, 2010;
- m. Behavior Plan, dated October 8, 2010;
- n. *Section 504 Evaluation and Eligibility Determination Form*, dated October 11, 2010;
- o. Section 504 Accommodation Plan and meeting summary, dated October 11, 2010;
- p. Report of an occupational therapy assessment, dated November 8, 2010; and
- q. Correspondence from TCPS to MSDE responding to the allegation, dated December 14, 2010.

BACKGROUND:

The student is five (5) years old and attends XXXXXXXXXXXXX (XXXXXXXXXX). On February 19, 2010, a reevaluation was conducted, and the IEP team determined that the student, who had been identified as a student with a speech/language impairment under IDEA since January 2008, no longer met the criteria for identification as a student with a disability under IDEA.

On September 14, 2010, an evaluation was conducted in response to a referral made by the complainant. At that meeting, the IEP team determined that the student is not a student with a disability under IDEA.

On October 11, 2010, an accommodation plan was developed for the student under Section 504 of the Rehabilitation Act (504 Plan). The 504 Plan states that the student's eligibility is based on "ADHD; Disruptive Behavior NOS; Pervasive Developmental Disorder NOS; Receptive & Expressive Language Deficits" (Docs. b, f, j, n, o and q).

ALLEGATION 1A: REEVALUATION – FEBRUARY 19, 2010

FINDINGS OF FACT:

- 1. On February 19, 2010, a reevaluation of the student was conducted. At that time, the student was identified as a student with a speech/language impairment under IDEA, and an IEP was in effect which required that the student receive special education instruction to address the following goals:
 - a. Improve participation in classroom routines by: (i) transitioning from activity to activity with one (1) verbal and one (1) visual prompt; (ii) following two (2) step directions; (iii) taking turns with peers in unstructured play; and (iv) participating in sensory experiences including touching, smelling, eating a bite of new food and drinking out of a straw/open cup.
 - b. Improve pragmatic language skills by: (i) using appropriate eye contact during conversations; (ii) answering questions appropriately to convey meaning and express wants and needs; (iii) participating in two (2) to three (3) conversational exchanges;

and (iv) using verbal strategies to express frustration appropriately and seeking adult assistance when necessary to resolve conflicts with peers (Docs. b and f).

2. At the February 19, 2010 IEP team meeting, the team reviewed the following assessment data:
 - a. A speech/language assessment, dated February 1, 2010, which indicates that the student is demonstrating low average receptive/expressive language skills, with no evidence of a language delay or disorder. The report recommends accommodations that can be used in the classroom, but does not contain recommendations for direct speech/language therapy as a related service.
 - b. An educational assessment, dated February 3, 2010, which indicates that the student is functioning in the average range for reading and math. The report recommends accommodations that can be utilized in the classroom such as extended time, repeated directions and a visual schedule to help with the student's behaviors.
 - c. A functional behavioral assessment, dated February 19, 2010, which indicates that the student demonstrates impulsive/disruptive behaviors that impact his academic performance (Docs. b - f).
3. Based on the review of the data, the team determined that, while student is "demonstrating low average receptive and expressive language skills with no evidence of a language delay or disorder," there is "no adverse educational impact at this time." Therefore, the team determined that the student no longer meets the criteria for identification as a student with a disability under IDEA (Doc. f).
4. There is no documentation that the team considered whether the student continued to require the special education instruction that he had been receiving to address the fine motor and behavioral needs (Doc. f).

DISCUSSION/CONCLUSIONS:

The IDEA requires that the IEP address the needs that arise from the student's disability regardless of the category of disability determined by the IEP team. When conducting a reevaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the evaluation is 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 has been classified. The school system must evaluate a student who has been determined eligible for services under IDEA, before determining that the student is no longer a student with a disability, under IDEA (34 CFR §§300.304 and .305).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents; current classroom-based, local, or State assessments; classroom-

XXX

Mrs. Kristin Mentges

January 12, 2011

Page 5

based assessments; and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

Based on Findings of Fact 1-4, MSDE finds that while there is documentation that concerns were raised about the student's behavior and fine motor skills during the reevaluation, there is no documentation that the team considered the student's need for special education services to address those needs, and therefore, did not follow proper procedures when determining that the student no longer required special education instruction. Therefore, MSDE finds that a violation occurred.

ALLEGATION 1B: EVALUATION – SEPTEMBER 14, 2010

FINDINGS OF FACT:

5. On August 30, 2010, the complainant provided TCPS staff with a copy of a psychological assessment that she had obtained over the summer and requested that an evaluation be conducted (Doc. g).
6. On September 14, 2010, the IEP team convened and reviewed the previously considered assessment data contained in the student's education record. Additionally, the team considered the following:
 - a. A psychological assessment, dated July 20, 2010, that was obtained by the complainant, which indicates that the student has difficulties in the areas of communication and social interaction, is often noncompliant with directions, has tantrums, and elopes from caregivers. The report also indicates that the student has fine motor difficulties and difficulties integrating sensory information. To address these behavioral and fine motor needs, the assessor recommends that a behavior plan be developed and the student receive occupational therapy services.
 - b. A teacher report, dated September 10, 2010, which indicates that the student is on grade level for reading and math. The report indicates that the student has needs in the areas of fine motor skills, impulsivity, completion of tasks and motivation for tasks. Additionally, the report indicates that the student has behavioral concerns such as yelling, running from the teacher, spitting and kicking. The report further indicates that he requires toilet training.
 - c. A parent questionnaire that indicates that the complainant is concerned about the student's speech, attention, writing and behaviors (Docs. g - k).

XXX

Mrs. Kristin Mentges

January 12, 2011

Page 6

7. The summary of the September 14, 2010 meeting documents that the team recommended that the complainant make the student's community-based occupational therapy records available to TCPS, so that the TCPS occupational therapist could "review and determine if school based [occupational therapy] services and/or accommodations were needed" (Docs. j and k).
8. Although the team determined that additional data was needed regarding the student's fine motor skills, it also determined that the student is not a student with a disability, under IDEA, because the student's language weakness does not impact his education (Docs. j and k).
9. On October 11, 2010, a school team convened and determined that the student requires accommodations through a Section 504 Plan. The team also recommended that an occupational therapy assessment be conducted, which was completed on November 8, 2010 (Docs. l, n - p).

DISCUSSION/CONCLUSIONS:

In conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. The public agency must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. It may not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability or for determining an appropriate educational program for the student (34 CFR §300.304).

Based on the evaluative data, the team must determine whether the student is a student with a disability, under IDEA. Additionally, if the student is found to be a student with a disability, the team must determine the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (34 CFR § 300.304).

Based on Finding of Fact #5-8, MSDE finds that the team made the eligibility determination prior to obtaining all of the evaluative data it decided was necessary to identify the student's functional performance that required special education services. Therefore, MSDE finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific:

MSDE requires TCPS to provide documentation by March 15, 2011, that the IEP team has conducted an evaluation of the student following proper procedures. This includes consideration of the results of all of the evaluative data determined necessary at the September 14, 2010 IEP team meeting, including the occupational therapy assessment. TCPS must document that it has obtained data in all areas of concern raised by the complainant, including data regarding the student's behavior and fine motor needs, and that it has made a determination consistent with the data.

XXX

Mrs. Kristin Mentges

January 12, 2011

Page 7

Additionally at that meeting, if the team determines that the student is a student with a disability, the team must also determine the amount and nature of *compensatory services*² or other remedy necessary to redress the loss of educational services to the student since February 19, 2010, when the school system did not follow proper procedures when determining that the student no longer required special education services.

TCPS must provide the complainant with proper written notice of the team's determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the complainant disagrees with the decisions, she maintains the right to request mediation and to file a due process complaint to resolve the dispute consistent with IDEA.

School Based/Systemic:

MSDE requires TCPS to provide documentation, by March 15, 2011, of the steps taken to determine if the procedural violations related to evaluation procedures are unique to this case or if they represent a pattern of noncompliance at XXXXXX. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violation does not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date the school system's initial determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement is conducting a Self-Assessment Verification with TCPS. Verification of the school system's compliance will also be conducted through this process consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP) Memorandum #09-02.

In addition, MSDE will conduct a review to verify compliance with the requirement to ensure that proper procedures are followed when completing the evaluation process within timelines. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

² Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings of fact, conclusions or corrective actions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, 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 LOF.

Questions regarding the findings of fact, conclusions or corrective actions contained in this LOF 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 appropriate public education for the student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAH/vf

c: Karen Salmon
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Vickie Frazier
Martha Arthur