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Interim State Superintendent of Schools

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April 10, 2012

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Mrs. Bonnie L. Walston
Director of Special Education
Wicomico County Public Schools
101 Long Avenue
P.O. Box 1538
Salisbury, Maryland 21802-1538

RE: XXXXX
Reference: #12-053

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 February 10, 2012, the MSDE received correspondence from Ms. XXXXXXXXXXXX, the student's mother, hereafter "the complainant," filed on behalf of her son. In that correspondence, the complainant alleged that the Wicomico County Public Schools (WCPS) 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 WCPS did not ensure that an evaluation was conducted prior to February 23, 2012¹ to determine whether the above-referenced student is a student with a disability under the IDEA, as required by 34 CFR § 300.111.

¹ Following the initiation of the State complaint investigation, the MSDE was informed that the WCPS began the evaluation process on February 23, 2012 (Doc. r).

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INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the allegation in the complaint.
2. On February 13, 2012, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE conducted a telephone interview with the complainant to clarify the allegation to be investigated.
3. On February 15, 2012, a copy of the complaint was provided by facsimile to Mrs. Bonnie L. Walston, Director of Special Education, WCPS.
4. On February 21, 2012, Ms. Williams conducted a telephone interview with the complainant about the allegation being investigated.
5. On February 21, 2012, the MSDE received documents from the complainant to be considered during the complaint investigation.
6. On February 22, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On that same date, the MSDE also notified the WCPS of the allegation to be investigated and requested that the WCPS review the alleged violation.
7. On March 26, 2012, Ms. Williams and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, reviewed the student's educational record at the Wicomico County Board of Education. Mrs. Walston and Ms. Lynne Smoak, Supervisor of Special Education Compliance, WCPS, were present at the record review as representatives of the WCPS and to provide information on the WCPS policies and procedures, as needed.
8. On March 28, 29, and 30, 2012, the MSDE received copies of documents from the WCPS to be considered during the complaint investigation.
9. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Correspondence from the complainant to the MSDE, received on February 10, 2012;
 - b. Maryland Department of Human Resources, Social Services Administration, Circular Letter #99-4, Establishing Multidisciplinary Teams, dated December 1998;
 - c. Wicomico County Multi-Disciplinary Team, Memorandum of Understanding, dated July 4, 2004;
 - d. WCPS Student Services Teams Program Description;

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- e. WCPS School Tracking Log for the Student, dated October 2006 – February 17, 2012;
- f. WCPS Health Services Program Procedure, Emergency Petition, dated August 2010;
- g. WCPS Student Conduct History Log for the 2010-2011 school year;
- h. WCPS Student Conduct History Log for the 2011-2012 school year;
- i. WCPS Attendance History, dated September 9, 2011 – March 20, 2012;
- j. WCPS Education Support Advisor Log for the Student, dated November 2, 2011- January 17, 2012;
- k. Petition for Emergency Evaluation, dated November 2, 2011;
- l. Electronic Correspondence between the WCPS staff, dated November 9, 2011;
- m. Electronic Correspondence between the WCPS staff, dated, November 30, 2011;
- n. WCPS Request for Disciplinary Action, dated November 30, 2011;
- o. WCPS Multidisciplinary Team Meeting Letter, dated December 7, 2011;
- p. WCPS Consent Form for a Functional Behavioral Assessment, dated December 12, 2011;
- q. Complainant's Request for an IDEA Evaluation, dated January 25, 2012;
- r. IEP Team Meeting Summary, dated February 23, 2012;
- s. Electronic Correspondence from the WCPS to the MSDE, dated March 29, 2012; and
- t. IEP Team Meeting Summary, dated March 30, 2012.

BACKGROUND:

The student is ten (10) years old. On March 30, 2012, the student was identified as a student with an emotional disability under the IDEA. An Individualized Education Program (IEP) team meeting is scheduled for April 24, 2012 to develop an IEP.

The student has attended the following WCPS schools during the time period covered by this investigation:

- From the start of the 2010-2011 school year until February 17, 2012, the student attended XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX).
- Since February 17, 2012, the student has attended XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) as the result of an administrative transfer agreed to by the complainant and the school system.

There is documentation that the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. e, r, and t).

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FINDINGS OF FACTS:

1. During the 2010-2011 school year the student began to display disruptive and disrespectful behaviors in the classroom and these behaviors resulted in out-of-school suspensions during the school year. The documentation indicates there were two (2) incidents in November 2010, one (1) incident in December 2010, two incidents (2) in February 2011, one (1) incident in April 2011, three (3) incidents in May 2011, and one (1) incident in June 2011, totaling eleven (11) days of out-of-school suspensions (Docs. g and o).
2. During the 2011-2012 school year, the student continued to exhibit similar behaviors and the frequency of the behaviors increased. In September 2011 and October 2011, the student received out-of-school suspensions for this behavior, including a physical altercation with another student on October 12, 2012 (Docs. h, n, and o).
3. On October 26, 2011, as school staff observed the increase in behaviors, they referred the student to a Student Services Team (SST)² to consider behavioral interventions that could be provided in the general education program. As a result of the SST referral, the student was assigned different teachers in an attempt to find a teacher with whom the student likes to work, and an educational support advisor (ESA) was assigned to assist him with peer relationships, anger management, and to develop strategies with the student's teachers and guidance counselor to support the student (Docs. d, h, j, and n).
4. On October 28, 2011, the student received an out-of-school suspension for two (2) days for refusing to remain in the classroom and complete work (Docs. h).
5. On November 2, 2011, when the student returned to school following the October 28, 2011 suspension, the student made threats against himself and school staff. As a result of the threats, the school principal initiated a *Petition for Emergency Evaluation*³ to determine if the student required admission to a psychiatric facility (Docs. f, h, and k).

² The Student Services Team (SST) coordinates support services for general education students and their families. The teams work to ensure behavioral, academic, and family supports are in place. Students are referred to the SST when a teacher or other staff member is concerned that the student is not responding to in-class or in-school interventions, resulting in the student not being successful in class or becoming a behavior problem. The behavioral concerns may include issues with attendance, class disruption, inattention, lack of cooperation, lack of organization, and office referrals (Doc. d).

³ A *Petition for Emergency Evaluation* (Petition) is a request that can be made by designated WCPS staff and is utilized when a student appears to present a danger to the life or safety of himself or to others and is believed to be suffering from a mental disorder. Once a Petition is completed, the student will be taken into police custody to be transported to the designated hospital for an examination to determine if psychiatric hospitalization is required (Doc. f).

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6. On November 8, 2011, the student returned to school (Doc. i).
7. On November 30, 2011, the student received an out-of-school suspension for ten (10) days for engaging in an altercation with another student and disrupting the class. Based on the student's behavior, the school psychologist recommended that the complainant be approached to discuss referring the student for an evaluation to determine his eligibility for special education and related services (Docs. h, m, and n).
8. On December 7, 2011, a Wicomico County Multi-Disciplinary Team Meeting (WCMDT)⁴ was convened at the request of school staff in order to identify community-based supports for the student. A report by school staff, submitted for consideration by the WCMDT, documents that the student engaged in inappropriate discussions with his peers and could not make friends due to his behavior. It also documents that when efforts made to address the student's needs within the general education program school were unsuccessful, staff requested that the complainant consent to an evaluation to determine the student's eligibility for special education and related services. However, when school staff discussed this with the complainant, she declined to sign for permission. The report further documents that an individual with whom the student lives observed the student's behavior at school and also attempted to convince the complainant that his behaviors need to be addressed. Based on this information, a referral was made for the family for community-based support services (Docs. b, l, and o).
9. On December 9, 2011, school staff met with the complainant to discuss the student's return to school from the November 30, 2011 out-of-school suspension. At that meeting, the complainant requested that the student be provided with instruction outside of the classroom on a one-on-one basis and school staff agreed (Docs. a and s).
10. On December 15, 2011, the student returned to school from the November 30, 2011 out-of-school suspension and school staff began providing the student with instruction on a one-to-one basis in response to the complainant's request (Docs. a, i, and s).
11. On January 25, 2012, the complainant made a written request that the student be evaluated to determine if he requires special education and related services (Doc. q).
12. On March 30, 2012, the IEP team completed an evaluation and determined that the student meets the criteria for identification as a student with an emotional disability under the IDEA (Docs. r and t).
13. An IEP meeting is scheduled for April 24, 2012 in order to develop an IEP for the student (Doc. t).

⁴ The Wicomico County Multi-disciplinary Team (WCMDT) for Children and Families is an interagency group of representatives from law enforcement, education, mental health, private social services agencies, the State's attorney's office, and other agencies. The purpose of the WCMDT is to determine community-based support for children and their families (Doc. c).

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DISCUSSION/CONCLUSIONS:

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, however, 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 behavior performance and determine teaching strategies, modifications to instruction and behavior management techniques that 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 IDEA (34 CFR § 300.111). Therefore, if school staff suspect that the student has a disability under the IDEA or receive a written referral for evaluation, the public agency must promptly request consent to assess the student and ensure that assessments are conducted, if needed (COMAR 13A.05.01.04).

To prevent students from being misidentified as being disabled, the IDEA requires that, in order for a student to be determined eligible for special education instruction and related services, the student must meet specific eligibility criteria. A student with a disability under the IDEA is defined as a student with one of a list of specific disabilities, including emotional disability, and who, by reason thereof, needs special education instruction and related services. An emotional disability is defined as a condition exhibiting one or more of a list of characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance. These characteristics include an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances, a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems (34 CFR §300.8).

There are no regulations or guidelines to define the term "long period or time" for purposes of determining how long interventions and strategies should be provided prior to evaluating a student to determine whether the student is a student with an emotional disability and in need of special education. However, the United States Department of Education, Office of Special Education Programs (OSEP) has stated that "because of the variation in the type and intensity of behaviors which may be exhibited [by students], a number of States have elected to operationalize "long period of time" by providing a range of time during which the behavior must have been present, generally two to nine months." OSEP stated that these State practices are acceptable (*Letter to Anonymous*, 213 IDELR 247, 1989).

In this case, the complainant alleges that the WCPS should have begun the evaluation process prior to February 23, 2012 (Doc. a). Based on the Findings of Facts #1 - #10, the MSDE finds that the WCPS followed proper procedures when attempting to provide supports in the regular

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education program to address the student's interfering behaviors. Based on the Finding of Fact #8, the MSDE finds that when those supports were not successful, the school system attempted to conduct an evaluation, but the complainant refused to provide consent.

Based on the Findings of Facts #11 - #13, the MSDE further finds that when the complainant made a request for an evaluation, school staff followed proper procedures to ensure that an evaluation was completed and that an IEP is being developed. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

Please be advised that both parties 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 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.

Questions regarding the findings and conclusions 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 Appropriate Public Education (FAPE) 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: John Fredericksen
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Dori Wilson
Anita Mandis
Tyra Williams