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Interim State Superintendent of Schools

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May 23, 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: #12-068

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 March 28, 2012, the MSDE received correspondence from Ms. XXXXXXXXX, the student's mother, hereafter "the complainant," filed on behalf of her daughter. 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 since March 2011¹ to determine whether the above-referenced student is a student with a disability under the IDEA, as required by 34 CFR § 300.111.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the allegation in the complaint.

¹ The complaint included allegations of violations that occurred more than a year before the date it was received. The complainant was informed, in writing, on April 6, 2012, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

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2. On March 29, 2012, Ms. Anita Mandis, Section Chief, Due Process and Complaint Investigation Branch, MSDE conducted a telephone interview with the complainant to clarify the allegation to be investigated.
3. On April 2, 2012, a copy of the complaint was provided by facsimile to Mrs. Bonnie L. Walston, Director of Special Education, WCPS.
4. On April 6, 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.
5. On April 10, 18, and 25, 2012, Ms. Moyo contacted the WCPS staff and requested documentation from the student's educational record.
6. On May 1, 2012, the WCPS staff provided Ms. Moyo with copies of documents from the student's educational record to be considered during the complaint investigation.
7. On May 14, 2012, Ms. Moyo conducted a telephone interview with the complainant about the allegations.
8. On May 15, 2012, the complainant provided Ms. Moyo with documentation to be considered during the investigation.
9. On May 17, 2012, Ms. Moyo contacted the WCPS staff and requested additional information from the student's educational record.
10. On May 18, 2012, the WCPS staff provided Ms. Moyo with the additional information requested.
11. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Student Conduct History Log for the 2010-2011 school year;
 - b. Report Card for the 2010-2011 school year;
 - c. Student's Attendance Record from March 24, 2011 to June 10, 2011;
 - d. WCPS Student Services Team (SST) Program Description;
 - e. WCPS Student Code of Conduct, distributed during the 2010-2011;
 - f. SST Referral, dated September 16, 2011;
 - g. SST Teacher Input Forms, dated September 21, 2011;
 - h. Education Support Advisor Log for the Student, dated September 21, 2012 to March 5, 2012;
 - i. SST Meeting Notes, dated, October 16, 2011;
 - j. Student Success Plan, dated October 26, 2011;
 - k. Behavior Action Plan, dated October 26, 2011;
 - l. Behavior Action Plan update, dated January 12, 2012;

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- m. Excerpt from the Daily Behavior Log, dated February 22, 2012;
- n. Student Conduct History Log for the 2011-2012 school year;
- o. Student's Report Card for the 2011-2012 school year;
- p. Student's Attendance History for the 2011-2012 school year;
- q. Correspondence from the complainant to the MSDE, received on March 28, 2012;
- r. Complainant's Request for an IDEA Evaluation, dated March 29, 2012;
- s. Special Education Screening Form, dated March 29, 2012;
- t. Prior Written Notice, dated April 16, 2012;
- u. Consent for Assessment, dated April 16, 2012; and
- v. Correspondence from the Private Social Worker to School staff, dated April 17, 2012.

BACKGROUND:

The student is thirteen (13) years old and attends XXXXXXXXXXXXXXXX (XXXXXXXXXX). On April 16, 2012, the Individualized Education Program (IEP) team began an evaluation to determine if the student is a student with a disability under the IDEA. There is documentation that the complainant was provided with notice of the procedural safeguards (Docs. q - v).

FINDINGS OF FACTS:

1. During the spring of the 2010-2011 school year, the student began to display disruptive and disrespectful behaviors in the classroom, such as talking excessively, being inattentive, refusing to follow directions, refusing to complete her school work, and leaving the classroom without permission. In addition, the student was often tardy to class. When the student exhibited these disruptive behaviors, she was removed from the classroom to a supervised setting to speak with a teacher or administrator (Docs. a - c).
2. At the start of the 2011-2012 school year, the student continued exhibiting the same behaviors as the previous school year. On September 16, 2011, in response to these behaviors, school staff referred the student to the Student Services Team (SST)² to consider behavioral interventions that could be provided in the general education program to assist the student with demonstrating appropriate behavior (Doc. f).
3. On October 26, 2011, the SST convened, and developed a behavior plan including goals for the student to decrease tardiness, maintain self-control, and comply with class rules. The plan also included strategies for school staff to use to assist the student with accomplishing the behavioral goals. Additionally, school staff were assigned to provide additional support to the student throughout the school day and to provide her with positive reinforcement when she exhibited appropriate behaviors (Docs. g - k).

² General education students are referred to the Student Services Team (SST) when a school 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 SST coordinates support services for general education students and works to ensure behavioral, academic, and family supports are in place (Doc. d).

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4. There is documentation that following the development of the behavior plan, the student was provided with the interventions incorporated into the plan including the use of a daily behavior chart, positive reinforcements, and meetings with school staff discuss appropriate behavior. However, despite these interventions the student continued to receive behavior referrals (Docs. h, m, and n).
5. On March 29, 2012, the complainant made a request, in writing, for an evaluation under the IDEA (Doc. r).
6. On April 16, 2012, an IEP team met and considered information from the complainant, indicating the student is diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). There is no indication that this information had previously been shared with school staff. The team also considered information about the interventions used to assist the student in the general education program and school staff reports that these strategies were not successful in addressing the student's behaviors. Based on this information, the IEP team determined that the student is suspected of having a disability under the IDEA and recommended that assessments be conducted (Docs. s – u and review of the educational record).
7. On April 17, 2012, the complainant provided school staff with documentation indicating that the student is diagnosed with ADHD; however the documentation does not include information regarding when the diagnosis was made or by whom (Doc. v).
8. There is no documentation that school staff suspected the student of having a disability under the IDEA prior to April 16, 2012 or that a written referral for evaluation was made prior to March 29, 2012 (review of the student's educational record).

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).

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In this case, the complainant alleges that school staff should have suspected a disability under the IDEA and started the evaluation process prior to her request for an evaluation under the IDEA she made on March 29, 2012 (Doc. q). Based on the Findings of Facts #1 - #5, the MSDE finds that the WCPS followed proper procedures when attempting to provide supports in the regular education program to address the student's interfering behaviors. Based on the Findings of Facts #6 - #8, the MSDE finds that when the complainant made a request for an evaluation, school staff followed proper procedures to begin the evaluation process under the IDEA. 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/km

cc: John Fredericksen
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Dori Wilson
Anita Mandis
Koliwe Moyo