



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

April 19, 2013

XXX
XXX
XXX

Mr. Edward Feinberg
Coordinator, Birth to Five
Anne Arundel County Public Schools
Point Pleasant Elementary School
1450 Furnace Avenue
Glen Burnie, Maryland 21060

Ms. Mary Tillar
Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: XXXXX
Reference: #13-058

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 child. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On February 20, 2013,¹ the MSDE received correspondence from Ms. XXXXXXXXXXXX, hereafter “the complainant,” filed on behalf of her son, the above-referenced child. In that correspondence, the complainant alleged that the Anne Arundel County Infants and Toddlers Program (AACITP) and the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State

¹ On February 14, 2013, the MSDE received correspondence containing allegations of violations of the IDEA that did not include a proposed remedy, which is required to initiate a State complaint. On February 20 and 21, 2013, following notification from the MSDE of the need for this information, the complainant provided the required information and the complaint investigation was initiated (34 CFR §300.153).

XXX

Mr. Edward Feinberg

Ms. Mary Tillar

April 19, 2013

Page 2

requirements with respect to the above-referenced child. This office investigated the allegations listed below.

1. The AACITP did not ensure that the child was provided with the early intervention services, as required by the Individualized Family Service Plan (IFSP), on February 14, 2013, in accordance with 34 CFR §§303.20 and .340; and
2. The AACPS did not follow proper procedures when conducting an evaluation under Part B of the IDEA, as required by 34 CFR §§300.304 - .306.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the allegations in the complaint.
2. On February 14, 2013, the MSDE received correspondence from the complainant that contained allegations of violations of the IDEA.
3. On February 19, 2013, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, contacted the complainant, by telephone, to explain that the IDEA requires that a complaint include a proposed remedy in order for a complaint investigation to be initiated and to clarify the allegations to be investigated.
4. On February 20 and 21, 2013, the complainant provided the MSDE with the additional information required, and the MSDE initiated the State complaint process.
5. On February 20 and 21, 2013, a copy of the complaint was provided by facsimile to Mr. Edward Feinberg, Coordinator, Birth to Five, AACPS; Ms. Mary Tillar, Director of Special Education, AACPS; and Ms. Alison B. Steinfelds, Program Manager, Compliance and Legal Issues, AACPS.
6. On February 21, 2013, the AACITP contacted the MSDE to provide information regarding the allegations in the complaint.
7. On March 8, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On that same date, the MSDE also notified the AACITP and AACPS of the allegations to be investigated and requested that AACITP and AACPS review the alleged violations.
8. On March 12 and 28, 2013, Ms. Williams conducted telephone interviews with the complainant.

XXX

Mr. Edward Feinberg

Ms. Mary Tillar

April 19, 2013

Page3

9. On March 12, 15, and 18, 2013, the AACITP contacted the MSDE to provide information regarding the allegations in the complaint.
10. On March 25, 2013 and April 8, 2013, the AACPS sent the MDSE electronic mail (e-mail) correspondence with information to be considered for the investigation.
11. On April 5 and 8, 2013, the MSDE contacted the AACITP to obtain additional information regarding the allegations in the complaint.
12. On April 6, 2013, the AACITP contacted the MSDE and provided additional information regarding the allegations in the complaint.
13. On April 8, 2013, the AACITP sent the MSDE documents, via e-mail, to be considered during the complaint investigation.
14. Documentation provided by the parties was reviewed. The documents relevant to the findings and conclusions referenced in this Letter of Findings are listed below.
 - a. Correspondence and attachments from the complainant to the MSDE, received on February 14, 20, 21, and 22 2013;
 - b. IFSP, dated March 13, 2012;
 - c. IFSP, dated October 24, 2012;
 - d. AACPS Initial Evaluation Referral, dated January 2, 2013;
 - e. AACPS Student Evaluation Plan, dated January 31, 2013;
 - f. AACPS Academic Assessment Report, dated February 28, 2013;
 - g. AACPS Communication Assessment Report, dated February 28, 2013;
 - h. AACPS Occupational Therapy Assessment Report, dated February 28, 2013;
 - i. AACPS Comprehensive Evaluation Report, dated March 15, 2013;
 - j. AACPS IEP Team Meeting Report, dated March 15, 2013;
 - k. IFSP, dated March 15, 2013; and
 - l. Written response to the complaint from the AACITP and the AACPS to the complainant, dated April 3, 2013.

BACKGROUND:

The child is thirty-six (36) months old. On March 6, 2012, he was identified as a child in need of early intervention services under Part C of the IDEA, based on a Developmental Delay in the areas of adaptive behavior, cognition, and communication. On March 13, 2012, an IFSP was developed.

On March 15, 2013, the child was identified as a child with a Developmental Delay under the Part B of the IDEA. On the same day, the complainant elected for the student to receive services

XXX

Mr. Edward Feinberg

Ms. Mary Tillar

April 19, 2013

Page 4

under an extended IFSP, and the extended IFSP was developed. The child receives these services in a classroom setting located at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX).

There is documentation that, during the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. b and j).

**ALLEGATION #1: IMPLEMENTATION OF THE IFSP ON
FEBRUARY 14, 2013**

SUMMARY OF FINDINGS/CONCLUSIONS:

The child's IFSP required the provision of early intervention services in a classroom setting located at XXXXXXXXXX. The AACITP and the AACPS report that on February 14, 2013, school was open but, due to inclement weather, some teachers and service providers, including those that work with the student, were absent on that date. As a result, they acknowledge that on February 14, 2013, early intervention services were not provided to the student (Docs. a, b, c and l). The MSDE concurs with the findings and appreciates the acknowledgement.

ALLEGATION # 2 PART B EVALUATION PROCEDURES

FINDINGS OF FACTS:

1. On January 2, 2013, when the child was thirty-four (34) months old, the AACITP staff made a referral for evaluation under Part B of the IDEA based on concerns about the child's functioning in the areas of fine and sensory motor, expressive and receptive language, and social and pre-academic skills (Doc. d).
2. On January 31, 2013, the AACPS convened an IEP team. The IEP team considered assessment data and information from the AACITP that the child demonstrates "sensory integration difficulties and autism-like characteristics." The IEP team also considered information from the AACITP that the child was receiving early intervention services, including special instruction, consultative behavior therapy and occupational therapy, and was participating in a structured classroom program three (3) days per week. The IEP team further considered information from the AACITP that the child demonstrates the ability to name and recognize a variety of shapes and letters, as well as "some improvement in his ability to respond to questions and in his willingness to engage in reciprocal play with some prompting" (Docs. d and e).
3. Based on its review of the data, the IEP team recommended educational, communication, and occupational therapy assessments be conducted (Doc. e).

XXX

Mr. Edward Feinberg

Ms. Mary Tillar

April 19, 2013

Page 5

4. On March 15, 2013, the IEP team reconvened and considered the results of the educational assessment and observations conducted in the daycare setting. The results indicated that the child has difficulty interacting appropriately with his peers and others through “conversational turn-taking,” difficulty processing out-of-context questions and directions, and difficulty sustaining attention for imaginative play and challenging or less preferred activities (Docs. f, i, and j).
5. At that meeting, the IEP team also considered the results of a communication assessment, indicating that, while the child presented with “normal receptive and expressive language development,” his functional expressive language skills are “significantly impacted by inconsistent and limited appropriate pragmatic/social communication abilities.” Additionally, the assessment report includes information obtained from the complainant and the child’s AACITP Service Coordinator, stating that, unless the child is provided with structure, expectations, and support, his interactions with others “are not established well enough to meet his needs.” The IEP team also considered information from the complainant that the child becomes frustrated when experiencing difficulty communicating (Docs. g, i, and j).
6. The IEP team further considered the results of an occupational therapy assessment indicating that the child demonstrates “adequate fine and visual motor skills.” The assessment report includes information from the complainant and the AACITP staff indicating that, while the child had a history of auditory and tactile sensitivities, these have improved and no longer impact his ability to engage in school-related activities (Docs. h, i, and j).
7. Based on its review of this data, as well the information shared by the AACITP staff and the complainant, the IEP team decided that the child meets the criteria for identification as a child with a Developmental Delay under the IDEA. The complainant elected to continue services through an extended IFSP, and the IEP team decided that the child will continue to receive early intervention services in a classroom setting at Point Pleasant ES (Docs. j and k).

DISCUSSION/CONCLUSIONS:

As part of an initial evaluation, the public agency must review existing evaluative data, including assessment data and information from the child’s teachers and parents. Based on that data, the public agency must identify what additional data, if any, is needed to determine whether the child is a child with a disability and the educational needs of the child (34 CFR §300.305 and COMAR 13A.05.01.04).

When 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 child

XXX

Mr. Edward Feinberg

Ms. Mary Tillar

April 19, 2013

Page 6

and must not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for 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 (34 CFR § 300.304).

In this case, the complainant alleges that, on January 31, 2013, she was informed by the AACPS staff that the child would not be identified as a child with a disability under the IDEA, and that she was concerned that the IEP team was not considering the child's social/emotional and communication needs in an unstructured setting (Doc. a and Interviews with the complainant).

Based on the Findings of Facts #1 - #6, the MSDE finds that the IEP team considered assessment data, information about the child's development and functional performance, and parent concerns. Based on the Finding of Fact #7, the MSDE finds that the IEP team made an eligibility determination consistent with evaluation data. Therefore, this office does not find that a violation occurred with respect to this allegation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the AACITP and the AACPS to provide documentation by June 1, 2013 that the child has been provided with services to redress the loss of services that occurred on February 14, 2013.

Documentation of the corrective action taken is to be submitted to this office to the attention of the Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

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

Please be advised that both the complainant and the public agencies 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 this Letter of Findings.

XXX

Mr. Edward Feinberg

Ms. Mary Tillar

April 19, 2013

Page 7

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 public agencies must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective action contained in this letter should be addressed to this office in writing. The complainant and the public agencies 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: Kevin M. Maxwell
Alison Steinfels
XXXXXX
Donna Riley
Dori Wilson
Sandi Marx
Anita Mandis
Martha J. Arthur
Nancy Vorobey
Brian Morrison