



March 21, 2013

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Mr. Russell Gray
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: XXXXX
Reference: #13-040

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 the investigation.

ALLEGATION:

On January 24, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the CCPS has not followed proper procedures to ensure that the student has been evaluated and identified as a student with a disability under the IDEA since September 12, 2012, in accordance with 34 CFR §300.111 and COMAR 13A.05.01.04 - .06 and 13A.08.04.04 and .05.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 24, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Gray, Director of Special Education, CCPS.

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3. On January 25 and 28, 2013, Ms. Hartman conducted telephone interviews with the complainant to clarify the allegation to be investigated.
 4. On January 28, 2013, the MSDE received correspondence from the complainant, via electronic mail (email), amending the remedy she proposed to resolve the State complaint.
 5. On January 29, 2013, the MSDE sent a copy of the complainant's amended proposed remedy to Mr. Gray.
 6. On January 30, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint, and identified the allegation subject to this investigation. On the same date, the MSDE notified the CCPS of the allegation and requested that the CCPS review the alleged violation.
 7. On February 4 and 19, 2013, the MSDE requested information and documents from the CCPS, via email.
 8. On February 11, 2013, the CCPS provided the MSDE with information and documentation to be considered during the investigation of the allegation.
 9. On February 21, 2013, Ms. Hartman and Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at XXXXX XXXXXXXXXXXX (XXXXXXXXXX) to review the student's educational record, and interviewed the following CCPS staff:
 - a. Ms. XXXXXXXXXXX, Assistant Principal, XXXXXXXX;
 - b. Ms. XXXXXXXXXXX, Principal, XXXXXXXXXXX;
 - c. Ms. XXXXXXXX, School Counselor, XXXXXXXXXXXXXXX;
 - d. Ms. XXXXXXXXXXXXXXX, Kindergarten Teacher, XXXXXXXX;
 - e. Mr. XXXXXXXXXXXXXXX, Intervention Specialist, XXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXXXX); and
 - f. Ms. XXXXXXXX, Instructional Assistant, XXXXXXXX.
- Mr. Wayne Whalen, Coordinator of Compliance, CCPS, attended the site visit as a representative of the CCPS and to provide information on the CCPS policies and procedures, as needed.
10. On February 22, 2013, the CCPS provided the MSDE with additional information and documentation to be considered during the investigation of the allegation.
 11. On March 18, 2013, Ms. Hartman conducted a telephone interview with the complainant to obtain additional information regarding the allegation being investigated.

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12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. State complaint, including correspondence and attachments received by the MSDE on January 24 and 28, 2013;
 - b. The CCPS' enrollment data for the student during the 2011-2012 and 2012-2013 school years;
 - c. Student Intervention Planning Worksheet, dated February 16, 2012;
 - d. Email correspondence from the CCPS staff to the complainant, dated March 5, 2012;
 - e. Disciplinary log for the student during the 2012-2013 school year;
 - f. Attendance report for the student while attending XXXXXXXXXXXX during the 2012-2013 school year;
 - g. Samples of behavioral intervention strategies utilized for the student by XXXX XXXXX staff during the 2012-2013 school year;
 - h. Student Services Team Initial Review, with hand-written notes of school staff, dated October 5, 2012;
 - i. Functional Behavioral Assessment, dated October 18, 2012;
 - j. Behavior Intervention Plan, dated October 18, 2012;
 - k. Report of Seclusion or Physical Restraint, dated October 31, 2012;
 - l. Email correspondence among the CCPS staff, dated November 8, 2012;
 - m. Handwritten notes by the CCPS staff of a meeting between the CCPS and the complainant, dated November 14, 2012;
 - n. Handwritten notes by the CCPS staff of a Student Services Team meeting, dated November 20, 2012;
 - o. The student's report card for the first two (2) quarters of the 2012-2013 school year;
 - p. Application to the XXXXXXXXXXXXXXXXXXXX, dated November 26, 2012
 - q. The CCPS' process and procedures for use of the Instructional Support Team or the Student Services Team;
 - r. The CCPS' Elementary Collaborative Problem Solving Chart; and
 - s. Sample Problem Solving Student Data Form utilized by the Student Services Team, undated.

BACKGROUND:

The student is five (5) years old and he is a general education student. He has not been evaluated to determine if he is a student with a disability under the IDEA.

The student participated in a Pre-school Program at XXXXXXXXXXXXXXXXXXXX (XXXXXXX) from the start of the 2011-2012 school year until February 28, 2012, when the complainant withdrew him from that program. He began attending Kindergarten at XXXXXXXXXXXX at the start of the 2012-2013 school year.

On December 6, 2012, the student began participating in the XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXX,¹ an alternative program for students with behavior needs, located on the grounds of XXXXXXXXXXXXXXXXXXXX (Docs. a-p, and interviews with the complainant and the CCPS staff).

FINDINGS OF FACTS:

2011-2012 School Year

1. The student enrolled in the XXXXXXXXXXXX Pre-school Program at the start of the 2011-2012 school year. He began demonstrating noncompliant behaviors, including hitting his teacher, and in response, the XXXXXXXXXXXX staff utilized a variety of behavior intervention techniques, including a behavior plan and charts to monitor the student's progress with the use of the plan (Docs. b and c, and interviews with the CCPS staff).
2. On February 16, 2012, the student was referred to the Student Services Team (SST),² which recommended that a referral be made to a behavioral specialist. The SST is one of the interventions utilized by the CCPS to assist general education students who demonstrate academic and behavioral needs. It is intended to assist and monitor the progress of students who are experiencing difficulty with attendance, discipline, or family issues, and to determine what steps should be taken to address those issues, including referring the student for an evaluation under the IDEA if a disability is suspected (Docs. b-d and q-s, and interviews with the CCPS staff).
3. The complainant and the student's father reported to school staff that they did not observe similar behavior at home, and did not agree that behavioral interventions were required. On February 28, 2012, they withdrew the student from the Pre-school Program (Doc. b and interviews with the CCPS staff).

2012-2013 School Year

4. At the start of the 2012-2013 school year, the student re-enrolled at XXXXXXXXXXXX, where he attended Kindergarten. From the student's second day of class until the time he was transferred to the XXXXXXXXXXXX¹ on December 6, 2012, he demonstrated the same types of behaviors as he displayed in the Pre-school Program. As a result of these behavioral incidents, the student received forty-three (43) disciplinary referrals, which

¹ XXXXXXXXXXXX is an elementary alternative education program designed to assist students with behavior management needs through a structured behavior support system and direct teaching of social skills. XXXXXXX XXXXXXX includes CCPS teachers, a school psychologist, and a behavior specialist. Counseling is provided to students to assist them in managing their behavior, and to families to assist parents with behavior management. It is a short-term placement with the goal of returning students to their home schools as soon as possible. The CCPS staff report that, if a student is not responding to the general education interventions utilized at the XXXXXXX XXXX and a disability under the IDEA is suspected, a referral for an IDEA evaluation is made (<http://www.carrollk12.org/Assets/file/XXXX/XXXXX.Brochure.2012.pdf> and interviews with CCPS staff).

² The SST consists of school staff and other CCPS staff, such as a pupil personnel worker, based on the needs demonstrated by the individual student (Docs. q-s).

included being referred to the principal's office, placed in the "time-out" room, and suspension from school (Docs. b-f).

5. The XXXXXXXXXX staff utilized a variety of behavioral intervention techniques to assist the student with managing his behaviors. These included the use of a behavior chart allowing the student to earn rewards for appropriate behavior, as well as the provision of social stories about personal space (Docs. g and i).
6. On September 20, 2012, October 5, 2012 and October 18, 2012, the SST met to discuss the student's disruptive behaviors and his response to the implemented behavioral interventions (Docs. h-j and p).
7. On October 31, 2012, the student was physically restrained as a result of behavior which could have resulted in injury to others (Doc. k).
8. On November 8, 2012, following an incident at the XXXXXXXXXX during which the student threatened school staff, the CCPS referred the student for a "Violence Assessment" through the Serious Threats Assessment Program.³ However, in lieu of the "Violence Assessment," the complainant obtained an assessment privately (Docs. a and l, and interviews with the CCPS staff).
9. On November 14, 2012, following another behavioral incident, XXXXXXXXXX staff and the CCPS Director of Student Services met with the complainant to discuss enrolling the student in the XXXXXXXXX¹ (Doc. m).
10. On December 6, 2012, with the agreement of the complainant, the student was transferred to the XXXXXXXXXX (Doc. b and interviews with the complainant and CCPS staff).
11. XXXXXXXXXX staff report that, prior to the student's transfer to the XXXXXXXXX XXXXXXX¹ the complainant had requested that he be provided with counseling services, and was informed that counseling services are not generally provided to students as part of the general education program, but that they could be provided to the student through his participation in the XXXXXXXXXX¹ (Interview with CCPS staff).
12. The documentation of the student's academic performance indicates that he was meeting "all first quarter academic goals in Kindergarten" while at XXXXXXXXXX, despite the "great deal of instructional time" lost as a result of his behavioral issues (Doc. o and interviews with CCPS staff).
13. There is documentation that the student is responding to the behavioral interventions being provided in the XXXXXXXXXX, and that he has not received any disciplinary referrals since his first month of participation in the program. The student's report card

³ In Carroll County, all children in public schools who make threats of serious violence are referred to the Serious Threats Assessment Program, administered by the Carroll County Youth Services Bureau, for an evaluation (<http://www.carrollhealthdepartment.dhmd.gov/mental/services/threatassess.html>).

indicates that his grades have improved from the first two (2) quarters of the 2012-2013 school year when he was attending XXXXXXXXXXXX (Docs. e and o, and interviews with the CCPS staff).

14. There is no documentation that a written referral has been made for an IDEA evaluation. The CCPS staff report that, upon receipt of such a request, the school system would respond to the referral by determining whether a disability was suspected and, if so, convene an IEP team to conduct an evaluation under the IDEA (Interview with CCPS staff and 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 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 behavioral performance and determine teaching strategies, modifications to instruction, and behavior management techniques, which 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 the IDEA (34 CFR §300.111).

If physical restraint is used with a student who is not identified as a student with a disability under the IDEA, the public agency must consider interventions to be implemented in the general education environment in order to address the student's behavioral needs, or, if the student is suspected of having an IDEA disability, refer the student for an evaluation (COMAR 13A.08.04.03 and .05).

In this case, the complainant alleges that the school system should have suspected that the student has a disability and conducted an IDEA evaluation based on the behaviors the student has demonstrated in school. She further alleges that she requested that the student be provided with an Individualized Education Program (IEP) while he was attending XXXXXXXXXXXX, but that XXXXXXXXXXXX staff rejected the request based on lack of funding (Doc. a and interview with the complainant).

Based on the Findings of Facts #11 and #14, the MSDE finds that there is no documentation that a written referral for an IDEA evaluation was made. However, the complainant is reminded that she maintains the right to make a written referral for an evaluation if she suspects that the student is a student with a disability under the IDEA.

Based on the Finding of Fact #2, the MSDE finds that the CCPS has procedures in place for providing interventions in the general education program to address both academic and behavioral needs, for monitoring student responses to those interventions, and for referring a student for an IDEA evaluation if the student is suspected of being a student with a disability.

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Based on the Findings of Facts #1 – #10, the MSDE finds that the CCPS ensured that interventions were provided to the student in the general education program in order to address his behavioral needs.

Based on the Findings of Facts #7 – #10, the MSDE finds that, following the use of physical restraint, the CCPS began providing the student with more intensive behavior interventions. Based on the Findings of Facts #12 and #13, the MSDE finds that the student has responded to these interventions. Therefore, the MSDE does not find that a violation has occurred.

Please be advised that both the complainant and the CCPS 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 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 for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/ch

cc: Stephen H. Guthrie
Wayne Whalen
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