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March 8, 2013

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Mr. Glenn Hammerbacher
Supervisor of Special Education
Worcester County Public Schools
6270 Worcester Highway
Newark, Maryland 21841

RE: XXXXX
Reference: #13-036

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.

ALLEGATIONS:

On January 14, 2013,¹ the MSDE received a complaint from Mr. XXXXXXXXXXX and Mrs. XXXXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants alleged that the Worcester County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student. The MSDE investigated the allegations listed below.

1. The WCPS did not ensure that proper procedures were followed in response to the complainants’ request for an evaluation under the IDEA during the 2011-2012 school year,² in accordance with 34 CFR §§300.301 and .306, and COMAR 13A.05.01.04 and .06.

¹ Correspondence from the complainants containing an allegation of a violation of the Individuals with Disabilities Education Act (IDEA) was received by the MSDE on January 8 and 10, 2013. The requested remedy, which is required to initiate the complaint investigation, was received on January 14, 2013, and amended on January 28, 2013 (Doc. b).

² The complainants alleged a violation dating back to December 2011. However, the complainants were informed, in writing, on January 29, 2013, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received (34 CFR §300.153).

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2. The WCPS has not ensured that proper procedures have been followed in response to the complainants' request for an evaluation under the IDEA during the 2012-2013 school year, in accordance with 34 CFR §§300.301 - .306,.322, and .328, and COMAR 13A.05.01.04 - .07.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 15, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mr. John B. Gaddis, Assistant Superintendent of Schools, WCPS, and Mr. Glenn Hammerbacher, Supervisor of Special Education, WCPS.
3. On January 23, 2013, Ms. Hartman conducted a telephone interview with the student's mother to clarify the allegations to be investigated.
4. On January 28, 2013, the MSDE received correspondence from the complainants amending their proposed remedy.
5. On January 29, 2013, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE sent a copy of the amended proposed remedy to Mr. Gaddis and Mr. Hammerbacher, notified the WCPS of the allegations, and requested that the WCPS review the alleged violations.
6. On January 29, 2013, the MSDE requested information and documents from the WCPS, via email.
7. On February 6, 2013, the WCPS provided the MSDE with information to be considered during the investigation of the allegations, via overnight courier.
8. On February 15, 2013, Ms. Hartman and Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at XXXXXXXXXX XXXXXX (XXXXXX) to review the student's educational record, and interviewed the following WCPS staff:
 - a. Mr. XXXXXXXXXX, Special Education Service Coordinator, XXXXXXXXXXXX, WCPS;
 - b. Ms. Jill M. Dillon, School Psychologist, WCPS;
 - c. Mr. XXXXXX, Guidance Counselor, XXXXXXXX, WCPS;
 - d. Mr. Frederick D. Grant, Supervisor of Student Services, WCPS;
 - e. Ms. XXXXXXXXXX, Special Educator, XXXXXXXXXXXX, WCPS;
 - f. Ms. XXXXXXXX, Testing Coordinator, XXXXXXXX, WCPS;
 - g. Ms. XXXXXXXXXXXX, Principal, XXXXXXXXXXXX, WCPS; and
 - h. Ms. XXXXXXXX, Special Educator, XXXXXXXXXXXX, WCPS.

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In addition to the WCPS staff listed above, Mr. XXXXXXXXXXXXX, who served as the principal of XXXXXXXX during the 2011-2012 school year, attended the site visit. Mr. Hammerbacher attended the site visit as a representative of the WCPS and to provide information on the WCPS policies and procedures, as needed. Mr. P. Tyson Bennett, legal counsel for the WCPS, also attended the meeting.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Due Process Hearing Complaint, dated March 5, 2013;
 - b. State complaint, including correspondence and attachments received by the MSDE on January 8, 10, 14, and 28, 2013;
 - c. Written referral for evaluation submitted by the student's mother to the WCPS, dated November 16, 2011;
 - d. Individualized Education Program (IEP) team meeting notes, dated December 12, 2011;
 - e. Teacher reports of the student's classroom performance in Foundations of Technology and Government, dated December 12, 2011;
 - f. The student's attendance records for the 2011-2012 and 2012-2013 school years;
 - g. The student's report cards for the 2011-2012 and 2012-2013 school years;
 - h. 504 Accommodations Plan and amendments, dated January 4, 2012; February 16, 2012; March 19, 2012; August 29, 2012; September 18, 2012; and January 14, 2012;
 - i. Written referrals for evaluation submitted by the student's mother to the WCPS, dated September 6 and 17, 2012;
 - j. Consent for Assessments, dated September 18, 2012;
 - k. Psychological Assessment Report, dated October 12, 2012;
 - l. Educational Assessment Report, dated November 14, 2012;
 - m. Invitation to a December 10, 2012 IEP team meeting, dated November 28, 2012;
 - n. Correspondence from the WCPS staff to the student's mother, undated;
 - o. IEP team meeting notes, dated January 14, 2012; and
 - p. Application for Home and Hospital Teaching, dated December 10, 2012.

BACKGROUND:

The student is fifteen (15) years old and is enrolled at XXXXXXXXXXXXXXXXXXXX; however, she has not attended school regularly during the time period covered by this investigation. The complainants have submitted doctors' notes excusing her absences, and on December 10, 2012, they submitted verification from a licensed physician that she is unable to attend school regularly due to a medical condition. On January 8, 2013, the WCPS began offering Home and Hospital Teaching services to the student on an itinerant basis when she is unable to attend school due to illness.

In January 2012, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 (Section 504) based on her diagnoses of XXXX XXXXX XXXXX,

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XXXX, attention deficit hyperactivity disorder (ADHD), anxiety, and XXXX XXXX; she has a 504 Accommodations Plan (504 Plan).

Since this State complaint was filed, an IDEA evaluation was completed on January 14, 2013,³ and the Individualized Education Program (IEP) team determined that the student does not meet the criteria for identification as a student with a disability under the IDEA (Docs. a-p and interviews with the WCPS staff).

ALLEGATION #1: 2011-2012 SCHOOL YEAR

Findings of Facts:

1. On November 18, 2011, the WCPS received correspondence from the student's mother asking that the student be "tested to see if she qualifies for an accommodation, or IEP plan." The student's mother expressed concerns about the impact of the student's medical and emotional conditions, as well as her lack of concentration, on her education (Doc. c).
2. On December 12, 2011, an IEP team, including the complainants, convened in response to the concerns raised by the student's mother in her November 18, 2011 correspondence. At the meeting, the team considered information and documentation from the complainants that the student is diagnosed with rheumatoid arthritis, lupus, attention deficit hyperactivity disorder, bipolar disorder, anxiety, and borderline personality disorder. The IEP team also considered information from teachers that the student is frequently absent due to illness and demonstrates some distractibility in class, but that she is "bright" and "capable," and that she is able to complete all of her assignments (Docs. d-g).
3. The IEP team documented that, based on the information provided, the student was not suspected of requiring special education instruction as a result of her medical and mental health conditions, and that, as a result, an IDEA evaluation would not be conducted. There is documentation that the complainants were provided with written notice of the IEP team's decisions and of the procedural safeguards (Docs. d-g).
4. On January 4, 2012, in further response to the concerns raised by the student's mother in her November 18, 2011 correspondence, a team was also convened pursuant to Section 504 to determine whether the student qualifies as a student with a disability under Section 504. At the meeting, the team determined that, based on her medical and mental health conditions, the student has a disability requiring the provision of accommodations, and a 504 Plan was developed (Doc. h).
5. School staff report that the complainants did not express concerns about the student's memory or her ability to understand instruction during the 2011-2012 school year. There

³ There is a due process complaint pending to resolve the complainants' dispute about the evaluation. This Letter of Findings does not address the evaluation procedures (Docs. a and b).

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is no indication in the documentation of the IEP team or 504 team meetings, nor in other documents within the student's educational record, that these concerns were raised by the complainants (Docs. d-h, interviews with the WCPS staff, and review of the student's educational record).

Discussion/Conclusions:

Upon receipt of a written referral for evaluation under the IDEA, the public agency must determine whether it suspects the student of having a disability under the IDEA based on a review of the information contained in the referral and the data that exists at the time of the referral. If, based on this review, the public agency decides that it does not suspect a disability under the IDEA and, therefore, that an evaluation is not required, it must ensure that the parent is provided with proper written notice of this decision (COMAR 13A.05.01.04).

In this case, the complainants allege that they began requesting an evaluation to determine whether the student is a student with a Specific Learning Disability under the IDEA during the 2011-2012 school year, and that the school system has not responded to these requests in a timely manner. They assert that, during the 2011-2012 school year, when the IEP team convened, it rejected their request for testing for a Specific Learning Disability, and focused on the student's medical and mental health conditions (Doc. a).

Based on the Findings of Facts #1 – #5, the MSDE finds that there is no documentation that the complainants expressed concerns about the student having difficulty with her memory or learning during the 2011-2012 school year. Based on those same Findings of Facts, the MSDE finds that the IEP team considered the complainants' concerns about the student's educational needs as a result of her chronic health conditions, as well as information from the student's teachers about her classroom performance, and provided written notice of the decision that the student was not suspected of being a student with a disability under the IDEA.

Based on the Finding of Fact #3, the MSDE finds that, at that time, the complainants were provided with notice of the procedural safeguards, which includes the right to file a due process complaint to dispute the IEP team's decision. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #2: 2012-2013 SCHOOL YEAR

Findings of Facts:

6. On September 6 and 17, 2012, the student's mother sent school staff a correspondence requesting testing based on her concerns that the student may have a "learning problem." There is no documentation that the complainants requested that the student be tested for learning problems previously during the school year (Doc. i and review of the student's educational record).

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7. On September 18, 2012, in response to the request of the student's mother, school staff obtained written consent for psychological and educational assessments to be conducted (Doc. j).
8. On October 12, 2012, the psychological assessment was conducted, as well as one of the components of the educational assessment (Docs. k and l).
9. The correspondence between the parties documents that they arranged for the second component of the educational assessment to be conducted on another date. The correspondence also documents that this testing had to be rescheduled as a result of the student's unavailability due to multiple absences from school. The assessment was subsequently completed on November 7, 2012 (Docs. f and l, and on-site review of correspondence between the student's mother and school staff).
10. An IEP team meeting was scheduled for December 10, 2012 to consider the completed assessment data, but this meeting was rescheduled at the complainant's request due to the unavailability of the family's educational advocate on that date. The evaluation was completed on January 14, 2013 (Docs. m-o).

Discussion/Conclusions:

Upon receipt of a written referral for evaluation under the IDEA, the public agency must determine whether it suspects the student of having a disability under the IDEA based on a review of the information contained in the referral and the data that exists at the time of the referral. If, based on the information and existing data, the public agency suspects that the student is a student with a disability, it must determine the additional evaluation data that is needed, and promptly request parental consent to assess the student in all areas related to the suspected disability (COMAR 13A.05.01.04 and .05).

The public agency must ensure that assessment procedures are administered as needed, and that the IEP team completes the evaluation within sixty (60) days of parental consent for assessments and ninety (90) days of the receipt of the written referral. However, there are exceptions to this requirement, such as if the student is not available for assessments (COMAR 13A.05.01.06).

In this case, the complainants allege that, during the 2012-2013 school year, they again began requesting an evaluation to determine whether the student is a student with a Specific Learning Disability under the IDEA, in August 2012, and that the school system delayed conducting an evaluation in response to their requests. The complainants further assert that there was a month delay in completing the educational assessment after testing began (Doc. o).

Based on the Findings of Facts #6 – #10, the MSDE finds that an evaluation under the IDEA was conducted in response to the complainants' request for testing for a "learning problem." Based on those same Findings of Facts, the MSDE finds that, while there was a delay in completing assessments, this delay resulted from the student's unavailability for testing. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

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Please be advised that both the complainants and the WCPS 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 complainants 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: Jerry B. Wilson
John B. Gaddis
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Dori Wilson
Anita Mandis
Christine Hartman