



Karen B. Salmon, Ph.D.
State Superintendent of Schools

November 15, 2019

Ms. Jessica Williams
Education Due Process Solutions, LLC
711 Bain Drive #205
Hyattsville, Maryland 20785

Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
P.O. Box 2770
La Plata, Maryland 20646

RE: [REDACTED]
Reference: #20-033

Dear Parties:

The Maryland State Department of Education (MSDE), Early Intervention Division and Special Education Services, 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 September 20, 2019, the MSDE received correspondence from Ms. Jessica Williams, hereafter “the complainant,” on behalf of Mr. [REDACTED] and Ms. [REDACTED] and their son, the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The CCPS did not follow proper procedures when evaluating the student to determine if he is a student with a Specific Learning Disability requiring special education and related services, since December 2018, in accordance with 34 CFR §§300.8, .301, .304 and .311 and COMAR 13A.05.01.04 - .06.
2. The CCPS did not follow proper procedures in response to a referral for an evaluation on June 21, 2019, in accordance with 34 CFR §§300.301 and .503 and COMAR 13A.05.01.04 - .06.

BACKGROUND:

The student is nine (9) years old and attends [REDACTED] a private school where he is parentally placed. On October 9, 2019, he was identified as a student with a Specific Learning Disability under the IDEA.

ALLEGATION #1 PROPER PROCEDURES WHEN CONDUCTING AN INITIAL EVALUATION SINCE DECEMBER 2018

Findings of Facts:

1. On December 19, 2018, the student's mother completed a CCPS IEP referral requesting an IDEA evaluation for her son, a third grade student who was experiencing academic challenges in the areas of written expression, written language mechanics, difficulty with organization, reading comprehension, and fine motor and visual motor skills, such as grasping objects and copying from the board.
2. On February 5, 2019, the IEP team met to consider the concerns of the student's mother regarding her son's academic progress. The documentation reflects that she shared with the IEP team that her son was having difficulty copying information from the board, including reversing letters and numbers, and was experiencing difficulty understanding math concepts and evaluating math application problems. The IEP team considered the student's private school teacher's report that she provides him with a speech-to-text accommodation, multiple choice spelling tests, reduced handwritten workload and that she excludes spelling from graded content work. The teacher also reported concerns about the inefficient way the student processes information and his overall "somber demeanor."
3. The documentation reflects that based on the concerns of the student's mother and teacher, the IEP team recommended an evaluation be conducted to include cognitive and educational assessments. The IEP team agreed that the classroom observation would be completed by the private school staff. Consent to conduct the evaluation was provided by the student's mother.
4. On March 26, 2019, documentation reflects that the IEP team met to review reading, math, and written language, psychological and classroom observation assessment reports conducted by the CCPS to determine whether the student was a student with a Specific Learning Disability (SLD). The IEP team documented that it determined that the student did not meet the criteria for identification as a student with a SLD under the IDEA. However, there is no documentation that the IEP team considered the required factors for determining the existence of a SLD.
5. At the March 26, 2019 IEP team meeting, the student's mother expressed her disagreement with the results of the assessments conducted, stated her belief that the test results were "inconclusive" and informed the IEP team that she would have an evaluation conducted at [REDACTED] ([REDACTED]) on June 20, 2019.

6. At the March 26, 2019 IEP team meeting in response to the parent's disagreement with the IEP team's decision, and her continued concerns about the student's academic performance in school, the IEP team recommended additional tests in the areas of cognitive functioning, visual motor skills, written language performance and an occupational therapy screening. The student's mother provided consent for the CCPS to conduct the additional assessments.
7. On June 4, 2019, the IEP team convened to review the results of the new assessments. There is documentation that based on those results, the IEP team again determined that the student did not meet the criteria for eligibility for identification as a student with a SLD under the IDEA. There is no documentation of the basis for the eligibility determination and that the IEP team considered the required factors for the determination of a SLD. The student's mother again expressed her disagreement with the results of the assessments and reiterated her decision to have the student evaluated at [REDACTED]
8. Again, due to the parent's disagreement, the IEP team decided to conduct additional assessments that would provide more in depth and specific information in the areas of cognition, occupational therapy, and academics at the June 4, 2019 IEP team meeting. However, the student's mother declined consent for the CCPS to conduct additional assessments.

Conclusions:

Based on Findings of Facts #1 - #8, the MSDE finds that the CCPS did not complete the evaluation of the student within the required timelines, in accordance with 34 CFR §§300.301 and COMAR 13A.05.01.06.

Further, based on Findings of Facts #4 - #8, the MSDE finds that there is no documentation that, at either the March 26, 2019 or June 4, 2019 IEP team meetings, the team considered the required factors to determine whether the student was a student with a Specific Learning Disability under IDEA, in accordance with 34 CFR §§300.8, .301, .304 and .311 and COMAR 13A.05.01.04 - .06. Therefore, the MSDE finds violations with respect to this allegation.

ALLEGATION #2 RESPONSE TO A REFERRAL FOR AN INITIAL EVALUATION IN JUNE 2019

Findings of Facts:

9. On June 21, 2019, the complainant contacted the CCPS to request an IEP team meeting to review an evaluation conducted privately by [REDACTED]
10. On July 15, 2019, an IEP team meeting was held to review the results of an evaluation conducted privately at [REDACTED]. The CCPS determined that the evaluation results from XX were invalid, because the same assessments were used within a one (1) year span, causing

the results to be invalidated due to the “practice effects” associated with repeated assessments.¹

11. According to the IEP team summary, even though the IEP team did not accept the private evaluation reports, the documentation reflects that the student’s mother emphasized that the assessment reports identified concerns such as Dyslexia, mirror imaging,² depression, and anxiety and off-task behaviors. The student’s mother also shared that the student is often off-task when academics are difficult and that the student had previously received occupational therapy during the past two summers.
12. There is documentation that the IEP team considered the reports of depression, anxiety and off task behaviors as “newly identified concerns and information.” The IEP team decided to consider the existence of an Other Health Impairment due to an Attention Deficit Disorder (ADD) and SLD and recommended different assessments in the areas of executive functioning, neurological processing, and orthographical processing and a classroom observation.
13. On October 9, 2019, the IEP team met to review assessments and determined the student eligible for special education and related services under the IDEA due to the conditions of Dyscalculia and Dysgraphia that underlie a SLD determination. The SLD Eligibility Checklist, a form created and used by CCPS, documented the presence of a severe discrepancy between academic achievement and cognitive abilities, a processing disorder and a pattern of strengths and weaknesses. However, the CCPS SLD checklist does not include the written certification of each IEP team member as to whether they agree or disagree with the decision, and if they disagree, a separate statement presenting the disagreeing member’s conclusions.

Conclusion:

Based on Findings of Facts #9 - #13, the MSDE finds that while an evaluation was conducted in response to the June 21, 2019 referral, the CCPS did not complete the evaluation of the student within the required timelines, in accordance with 34 CFR §§300.301 and COMAR13A.05.01.06.

Further, based on the Finding of Fact #13, the MSDE also finds that the IEP team members did not certify their agreement with the determinations made regarding that the student was a student with a Specific Learning Disability under IDEA, in accordance with in accordance with 34 CFR §§300.8, .301, .304 and .311 and COMAR 13A.05.01.04 - .06. Therefore, this office finds that violations occurred.

¹ Practice effects refer to changes in test performance attributed to increasing familiarity with and exposure to test instruments, paradigms and items (<https://www.ncbi.nlm.nih.gov>).

² Mirror imaging is the expectation that others are viewed through the lens of the assessor’s own environment and experiences and biases (<https://www.jhu.edu>).

CORRECTIVE ACTIONS/TIMEFRAME:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner.³ This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the timeframes below may not be met, or if either party requires technical assistance they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.⁴ Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the CCPS to provide documentation by February 1, 2020 that the IEP team has convened and taken the following actions:

- a. Completed the eligibility determination to include the written certification of each IEP team member as to whether they agree or disagree with the decision, and if they disagree, a separate statement presenting the disagreeing member's conclusions.
- b. Developed an appropriate IEP.
- c. Determined compensatory services to remediate the violations identified to be provided if the student is enrolled in CCPS during the 2019-2020 school year.

School-Based

The MSDE requires the CCPS to provide documentation by March 1, 2020, of the steps that have been taken, including staff training, to ensure that the [REDACTED] School staff properly implement the requirements in the areas of noncompliance identified through this investigation. The documentation must include a description of how the CCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

³ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

⁴ The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

System-Based

The MSDE requires the CCPS to provide documentation by February 1, 2020 that the system wide procedures for the eligibility determination of students with Specific Learning Disabilities include the written certification of each IEP team member as to whether they agree or disagree with the decision, and if they disagree, a separate statement presenting the disagreeing member's conclusions.

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

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainants 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 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.

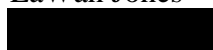
Sincerely,

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

MEF/sf

c:


LaWan Jones



Dori Wilson

Anita Mandis

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Nancy Birenbaum