



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

December 19, 2019

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Dr. Kristin Mentges
Supervisor of Special Education Services
Talbot County Public Schools
12 Magnolia Street
Eason, Maryland 21601

RE: XXXXX
Reference: #20-046

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention 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 October 31, 2019, 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 Talbot County Public Schools (TCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The TCPS has not ensured that proper procedures have been followed to provide the student with a Free Appropriate Public Education (FAPE), since his transfer to and enrollment in the TCPS in September 2019, in accordance with 34 CFR §§300.101, .103, .323 and .324.
2. The TCPS did not ensure the provision of Prior Written Notice of the decisions made by the Individualized Education Program (IEP) team at meetings held on September 13 and 27, 2019, in accordance with 34 CFR §300.503.

BACKGROUND:

The student is thirteen (13) years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education and related services.

The student attended XXXXX Middle School (XXXX MS), from September 9, 2019 until October 4, 2019, when the TCPS disenrolled him based on its determination that the complainant was not “a bona fide resident of Talbot County.”

FINDINGS OF FACTS:

1. The parties agree that, on September 4, 2019, the complainant met with the school staff to enroll the student at XXXXXX MS. At the time, the student had an IEP in effect, dated April 12, 2019, developed by Pennsylvania that required the provision of special education and related services (PA IEP). The complainant completed the TCPS McKinney-Vento Form listing her living situation as “temporarily living with family or friends due to loss of housing, economic hardship, or similar reasons.” The form was also signed by the school staff on the same date.
2. The TCPS McKinney-Vento Form documents the complainant’s temporary residence in Talbot County. The form also documents that, until July 2019, the complainant’s last permanent residence was in York, Pennsylvania,¹ where the student last attended school at a public school in the School District of the City of York in Pennsylvania.
3. The school staff documented that, on September 4, 2019, the student “has been enrolled on the basis of the information provided by the parent/guardian.”
4. On September 9, 2019, the student began attending XXXX MS and school forms for the student’s participation in science classroom procedures were sent home for a required parent/guardian signature. While the forms were returned to school, they were not signed by the complainant; rather, they were signed by the complainant’s aunt as “parent/guardian.”
5. On September 13, 2019, the school staff requested the student’s educational records from the Pennsylvania school where he previously attended.
6. Also on September 13, 2019, the IEP team convened to review the PA IEP and determine the student’s eligibility for special education services in Maryland. The IEP team documented that the student “recently moved to XXXXX from York, PA.” The complainant reported that the student “has been in 6 different schools over the past 3 years.” The IEP team reviewed the PA IEP, developed a Maryland IEP for the student, and agreed to reconvene on September 27, 2019 to review the student’s progress.

¹ The student’s educational record contains a Pennsylvania driver’s license issued to the complainant on September 6, 2018.

7. There is documentation that the school staff developed a prior written notice document (PWN) of the decisions made at the September 13, 2019 IEP meeting, and that the PWN was mailed to the complainant on September 19, 2019, along with the completed IEP.
8. On September 27, 2019, the IEP team reconvened, with the complainant's participation by telephone. The IEP team discussed that the student was engaging in interfering behaviors, including not remaining in his assigned location and not attempting to complete work. They agreed to implement "an incentive plan" and to reconvene on October 11, 2019 to review his progress again.
9. While there is documentation that the school staff developed a PWN of the decisions made at the September 27, 2019 IEP meeting, there is no documentation that it has been provided to the complainant.
10. On October 3, 2019, the school system staff documented, through an email exchange, that they "discovered that mom is in fact living in York, PA." The email reflects that the complainant has been informed that the school system has "proof that she is in York" and that the student will be unenrolled as of October 4, 2019.
11. On October 4, 2019, the school system staff withdrew the student from the TCPS.
12. On October 8, 2019, the complainant sent an electronic mail message to the school system's legal counsel following their conversation the previous day. The complainant expressed concern that the student had been disenrolled and was being denied a FAPE, and her disagreement with the information that the school system reportedly relied upon as the basis for deciding that her residency was in Pennsylvania. The complainant informed counsel that on October 7, 2019 she had given Power of Attorney to her aunt over the student, and was also in the process of completing paperwork to request Kinship Care "despite our temporary living arrangement." In addition, the complainant requested information about how her aunt could enroll the student.
13. On October 16, 2019, the school system's legal counsel sent correspondence to the complainant stating the following:

"Based upon the school system's phone conversations with the school in York, Pennsylvania, as well as conversations with the York County Children Youth and Families Office, Family Preservation Unit, we have come to the conclusion that [the student] does not meet the eligibility requirements for residency to attend public schools in Talbot County, Maryland. Per both of these organizations, your legal residence is in York, Pennsylvania. For that reason he has been un-enrolled from the school. There is no further need to contact the school about this."
14. The TCPS requires proof of residency that a parent/guardian of a student lives in Talbot County, and identifies specific documents that can be used to establish proof of residency. The TCPS also requires that "if the parent/guardian cannot produce proof of residency because they are living with someone else, then both the parent and the resident must complete a Residency Verification Form. The parent enrolling the child must show

two proofs of residency - driver's license, I.D. card, voter registration, pay check stub, etc." There is no documentation that the complainant or N.C. completed a Residency Verification Form.

15. On October 17, 2019, the complainant's aunt filed a Petition for Guardianship of the student which is currently pending with the Circuit Court for Talbot County.
16. On October 22, 2019, the Board of Education of Talbot County submitted a Motion to Intervene and Intervenor's Answer in the student's guardianship case. In its pleadings, the Board of Education of Talbot County represented to the Circuit Court for Talbot County that the TCPS conducted an investigation and determined that neither of the student's parents is a resident of Talbot County.

CONCLUSIONS:

Allegation #1 Provision of FAPE

Based on the Findings of Facts #1 - #8, the MSDE finds that the TCPS followed proper procedures to ensure that the student received a FAPE following his transfer to and enrollment in TCPS on September 4, 2019, in accordance with 34 CFR §§300.101, .323 and .324. Therefore, this office does not find a violation with respect to this allegation.

Based on the Findings of Facts #10 - #16, the MSDE also finds that the TCPS followed its procedures when it withdrew the student from the TCPS on October 4, 2019, following its investigation and determination that the complainant did not meet the residency requirements for the student to attend school in Talbot County.

Allegation #2 Written Notice of IEP Team Decisions

Based on the Findings of Facts #6 - #9, the MSDE finds that, while there is documentation that the complainant was provided with written notice of the decisions made at the IEP meeting convened on September 13, 2019, there is no documentation that the school staff provided the complainant with written notice of the decisions made at the September 27, 2019 IEP meeting, in accordance with 34 CFR §300.503. Therefore, this office finds a violation with respect to this allegation.

CORRECTIVE ACTION/TIMELINES:

Student-Specific

The MSDE requires the TCPS to provide documentation by February 1, 2020, that they have provided the complainant with the PWN document of the decisions made at the September 27, 2019 IEP meeting.

School-Based

The MSDE requires the TCPS to provide documentation by February 15, 2020, of the steps it has taken, including training, to ensure that the XXXX Middle School staff comply with the IDEA requirements for ensuring that parents are provided with prior written notice of decisions made at IEP team meetings.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur.

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. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timeframes reported in this Letter of Findings.

The parties 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 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
and Special Education Services

MEF/ksa

c:	Kelly L. Griffith	XXXXXX
	David Burkhouse	Dori Wilson
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