



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

February 6, 2020

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Mr. Michael Thatcher
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXX
Reference: #20-070

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 December 11, 2019, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The HCPS did not follow proper procedures, from January 2019 to November 2019, to fulfill its Child Find obligation to ensure that the student was evaluated and identified as a student with a disability under the IDEA, in accordance with 34 CFR §§300.8 and .111. and COMAR 13A05.02.13.
2. The HCPS has not ensured that the student is in the Least Restrictive Environment (LRE) in which the IEP can be implemented, since November 2019, in accordance with §34 CFR §§300.114 - .116.

3. The HCPS has not ensured that proper procedures were followed when disciplinarily removing the student from school, since January 2019, in accordance with COMAR 13A.08.01.11.

BACKGROUND:

The student is six (6) years old and attends the XXXXXX/XXXXX Elementary School (XXXXXX/XXXXX ES). At the start of the investigation period, the student was not identified as a student with a disability under the IDEA.

On November 15, 2019, the student was identified as a student with Multiple Disabilities under the IDEA, including an Emotional Disability (ED) and an Other Health Impairment (OHI). In December 2019, after considering additional data, the student's disability coding was changed to a Developmental Delay. The HCPS subsequently developed an IEP for the student that requires the provision of special education and related services.

ALLEGATION #1 CHILD FIND PROCEDURES

FINDINGS OF FACTS:

January 2019 - May 2019

1. In January 2019, the student was being provided with behavioral supports in the general education program and her behaviors were tracked daily. These behaviors included noncompliance, physical aggression, disruption, and elopement.
2. On January 9, 2019, the school staff reported, via an electronic mail (email) message to the complainant, that the student knocked over chairs, was running and crawling around the classroom, being disrespectful, and not following directions. The school staff agreed to consult with the student's private behavior therapist since the complainant had provided her written consent. There is no documentation that the school staff attempted a consultation.
3. Also on January 9, 2019, the complainant reported that the student had been "upset" due to stressful conversations with a social worker about her upcoming adoption.
4. The Daily Behavior Data sheets that were collected over eleven (11) days in January 2019 document the following approximate frequency of the student's interfering behaviors:
 - Non-compliance: 58 times
 - Physical Aggression: 7 times
 - Disruption: 7 times
 - Elopement: 8 times
5. On February 27, 2019, the school staff sent an email to the complainant reporting that the student was grabbing materials, running around the classroom, laying on the floor and "getting physical" with the school staff.

6. Also on February 27, 2019, the complainant informed the school staff that she was in the process of requesting an evaluation of the student by the Kennedy Krieger Institute (KKI), and that she hoped that the evaluation would be helpful “to get her an IEP.”
7. On March 15, 2019, the school staff sent an email to the complainant reporting that the student was biting, kicking, hitting, crawling on the floor, scratching teachers, and having difficulty focusing.
8. On March 16, 2019, the complainant sent an email to the student’s teacher reporting that, after consultation with a psychiatrist at KKI, the student was referred within KKI for a psychological evaluation and they were waiting for an appointment. She also stated her belief that the student needs supports in order to be successful, “whether it be in the form of a 504 plan, an IEP or something else,” and asked to “get the process started” in order to have them in place before starting kindergarten the next school year.
9. The Daily Behavior Data sheets that were collected over twelve (12) days in March 2019 document the following approximate frequency of the student’s interfering behaviors:
 - Non-compliance: 73 times
 - Physical Aggression: 42 times
 - Disruption: 22 times
 - Elopement: 3 times
10. On April 17, 2019, the school staff documented that “concerns for this case have grown over the past several months,” and on the following day, the student was referred to the SST.¹
11. The Daily Behavior Data sheets that were collected over fifteen (15) days in April 2019 document the following approximate frequency of the student’s interfering behaviors:
 - Non-compliance: 102 times
 - Physical Aggression: 26 times
 - Disruption: 7 times
 - Elopement: 10 times

¹ The HCPS Special Education Handbook states that, “For children enrolled or registered in a Harford County Public School, teacher concerns are first considered via the school based Student Services Team (SST) Referral process. The SST, which typically meets on a monthly basis, reviews the student’s strengths, needs, and the provision of intervention supports prior to the IEP process.”

“The Student Services Team (SST) is a multidisciplinary school-based group that meets regularly to collaborate and provide assistance to identified students who are having difficulties at school or are in need of access to an accelerated curriculum. The SST uses a problem-solving approach to identify, implement, and evaluate strategies/interventions developed to address a student’s needs within the arena of general education.”

12. On May 8, 2019, the SST convened. The team considered the referral form completed by the school staff documenting concerns that the student is disruptive to others, defiant/noncompliant, disrespectful/rude, inattentive, nervous, refuses work, has difficulty with transition, and is physically and verbally aggressive. The referral form also documents current strategies being used, that include preferential seating/teacher proximity, breaks, fidgets, visual schedule, quiet area in the classroom, choices, frequent praise, and a visual timer.
13. The SST also considered a questionnaire completed by the complainant on April 24, 2019, documenting concerns about the student's emotional regulation, impulse control, defiant behavior, and aggressive behavior, and the complainant's belief that "she needs a 504 or IEP" to support her social, emotional and behavioral needs. The questionnaire documents that the student has been diagnosed with an Attention Deficit Hyperactivity Disorder (ADHD).
14. At the May 2018 SST meeting, the school staff reported an increase in the student's physical behavior, that her "behaviors are impacting her focus, and that she is more distracted. They also reported that, while the student did not need accommodations "on a good day," she does require accommodations "on her worst day." The complainant again reported that the student was scheduled for an upcoming evaluation at the KKI.
15. The SST discussed the possibility of having a psychologist conduct a Functional Behavior Assessment (FBA) "in the future," but documented that "the team could not approve [the FBA] since a psychologist is not a part of the student services team." The team decided that the student, who was in preschool at the time, would begin kindergarten with the same behavior supports that are available to her peers, and "if needed, an individual plan can be developed for [the student] in the future." The team agreed to monitor the student and reconvene an SST meeting in Fall 2019.
16. The Daily Behavior Data sheets that were collected over twenty-one (21) days in May 2019 document the following approximate frequency of the student's interfering behaviors:
 - Non-compliance: 111 times
 - Physical Aggression: 36 times
 - Disruption: 43 times
 - Elopement: 2 times

2019 - 2020 School Year

17. On September 20, 2019 the SST reconvened. While the school staff reported that the student is "a sweet child," a good helper, and has not displayed anger or sadness, they also reported that the student struggles with peer interactions and following directions, gets restless on carpet, "constantly" plays with her shoes, and "at times" is defiant and refuses to work. The complainant reported that the student is taking two (2) ADHD medications, sees a private behavior specialist, displays aggressive behavior at home, and is scheduled for a psychological evaluation by the KKI on October 9 and 16, 2019.

18. On September 20, 2019, the SST decided to “update/modify the Student Intervention Plan.” However, the school staff acknowledge that a “Student Intervention Plan” was not developed for the student.
19. On October 4, 2019, the school staff documented that the student exhibited inappropriate behavior that included climbing on furniture, hiding under the teacher’s desk, banging on the computer, standing in front of the teacher while she is teaching and deliberately interrupting learning, throwing objects, trying to put her fingers in electrical outlets, and eloping from the classroom.
20. October 11, 2019, the complainant sent an email to the school staff requesting an IEP meeting to determine the student’s eligibility for special education services under the IDEA, and an FBA.
21. On October 14, 2019, the school staff started using a new behavior chart for the student to earn rewards for following directions and sitting in her assigned space.
22. On October 31, 2019, the IEP team convened an emergency meeting to determine the need for an FBA, discuss concerns about the student’s behavior, develop a crisis plan/behavior protocol, and get an update on the status of the KKI evaluation report.
23. The IEP team discussed that the student had been exhibiting interfering behaviors that were escalating and that have had a negative impact on her learning and the learning of others; at the time of the meeting, the student had been suspended on three (3) occasions since the start of the 2018 – 2019 school year for inappropriate behavior. The behaviors included noncompliance, wandering, climbing on furniture, leaving her assigned location, banging on adult electronics, trying to climb the wall, pushing, throwing objects at staff and peers, laying in the bathroom sink, throwing instructional materials, interrupting instruction. The IEP team also discussed that, while several interventions had been previously attempted with the student, they had not been effective in consistently reducing the interfering behaviors.
24. The student’s father attended the October 2019 IEP meeting. He informed the school staff that, while the private evaluation by the KKI had been conducted, a report of the results of the evaluation was not yet available. The written summary of the meeting documents that the IEP team was “waiting for the reports from Kennedy- Krieger before determining eligibility.”
25. The IEP team determined that additional information was needed due to concerns about the student’s social, emotional behavior skills, and recommended an FBA.
26. There is documentation that, during the period from October 23, 2019 to November 14, 2019, the student did not remain in the assigned area 53 times and was “noncompliant” 99 times.
27. On November 15, 2019, the IEP team reconvened. The team reviewed the October 31, 2019 KKI report of a psychological evaluation documenting that the student has been diagnosed with a Persistent Depressive Disorder, ADHD, Oppositional Defiant Disorder and a

Generalized Anxiety Disorder. The IEP team also considered behavior data, formative and summative data, teacher reports, and parental input. Based on the data, the IEP team determined that the student is a student with Multiple Disabilities under the IDEA, including an ED and OHI, eligible for special education services.

28. On December 12, 2019, the IEP team convened and developed an initial IEP for the student to address her identified needs in the areas of self-management, social interaction, and social, emotional behavior skills.

CONCLUSION:

Based on the Findings of Facts #6 - #25, the MSDE finds that, while the complainant made a referral for an IDEA evaluation on February 27, 2019, the IEP team did not convene within timelines; the IEP team did not initially convene until October 2019, eight (8) months after the complainant's first (1st) request for an IDEA evaluation, in accordance with 34 CFR § 300.301 and COMAR 13A.05.01..04 - .06. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #1 - #28, the MSDE further finds that, on May 8, 2019, and again on September 20, 2019, the SST delayed obtaining data to address the student's needs in the general education program or making a referral for an IDEA evaluation to ensure that the Child Find obligation was met, in accordance with 34 CFR §§300.8 and .111. and COMAR 13A05.02.13. Therefore, the MSDE finds a violation with regard to the allegation.

ALLEGATION #2 LRE DETERMINATION

29. The December 2019 IEP reflects that the student requires sixteen (16) hours per month of specialized instruction in a separate special education classroom to learn how to appropriately manage her behaviors. It also reflects that she requires an additional sixteen (16) hours per month of specialized instruction in a general education classroom to address generalization of behavior strategies in a large group setting.
30. However, the December 2019 IEP states that the student "does not require removal from the general education setting at this time," and that "no other options were considered when placing [the student] in the general education setting." It also states that "the IEP team decided that it is in the best interest for [the student] to remain in the general education setting with access to her peers," and that she "will participate in all activities with non-disabled peers."

CONCLUSION:

Based on the Findings of Facts #29 and #30, the MSDE finds that the IEP is not written clearly with respect to the IEP team's decision about placement in the LRE in which the IEP can be implemented, in accordance with 34 CFR §§300.114 - .116 and .324. Therefore, the MSDE finds a violation with regard to this allegation.

ALLEGATION #3 DISCIPLINARY REMOVALS

FINDINGS OF FACTS:

Suspensions

31. The HCPS has developed a “Central Office Suspension Checklist” (Suspension Checklist) to be used when students up to second (2nd) grade are suspended. The Suspension Checklist requires an administrator to complete the form after consultation with a school psychologist about whether behavior amounts to an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports. The HCPS procedure requires an administrator to file the Suspension Checklist in the student’s discipline record, and email the Suspension Checklist to the HCPS Office of Student Support Services staff. The HCPS Office of Student Support Services is then required to attach the Suspension Checklist to a copy of the suspension letter to be sent to the HCPS Executive Director of Elementary Instruction and Performance.
32. The Suspension Checklist states that “imminent threat of serious harm means a significant physical or mental injury to other students or staff which does, or reasonably may, require medical or mental health treatment. It does not include extreme disruption or chronic disruption of school or instruction in and of themselves.”
33. On October 4, 2019, the student was removed from her classroom for one-half (½) of the school day for disruptive behavior. There is no documentation that the student was provided instruction during her removal to a “separate in-school setting,” or that a Suspension Checklist was completed.
34. On October 14, 2019, the student received an out-of-school suspension for three (3) days for an “attack on an adult.” While there is documentation that the school staff completed a Suspension Checklist for the suspension, which documents a consultation with a psychologist or mental health professional, the school system staff acknowledge that it was not sent to the HCPS Office of Student Support Services staff or the HCPS Executive Director of Elementary School Instruction and Performance, as required by the HCPS procedure.
35. On October 24, 2019, the student was removed from her classroom for one-half (½) of the school day for disruption. There is no documentation that the student was provided instruction during her removal to “a separate in-school setting,” or that a Suspension Checklist was completed.
36. On October 28, 2019, the school staff contacted the complainant and requested that she pick up the student from school before the completion of the school day following a referral for disruptive and disrespectful behavior.

37. On November 21, 2019, the student received a one (1) day suspension due to an attack on an adult and disruption. There is no documentation that a Suspension Checklist was completed.

CONCLUSIONS:

Based on the Finding of Fact #34, the MSDE finds that there is documentation that, prior to the student's suspension on October 14, 2019, the school administration consulted with a school psychologist or other mental health professional, and determined that there was an imminent threat of serious harm to other students or staff that could not be reduced or eliminated through interventions and supports, in accordance with COMAR 13A.08.01.11. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

However, based on the Findings of Facts #31, #32 and #34, the MSDE finds that there is no documentation that the Suspension Checklist pertaining to the decision to suspend the student on October 14, 2019 was sent to the HCPS Central Office staff, as required by the HCPS procedures. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #33, and #35 - #37, the MSDE finds that there is no documentation that a school administrator consulted with a psychologist or mental health profession prior to any of the decisions on October 4, 24 and 28, 2019 and November 21, 2019, to suspend the student, in accordance with COMAR 13A.08.01.11. Therefore, the MSDE finds violations with respect to these aspects of the allegation.

Based on the Findings of Facts #31 - #33, #35 and #36, the MSDE further finds that each of the student's suspensions on October 4, 24 and 28, 2019 was due to disruptive behavior, but the HCPS suspension procedures state that "imminent threat of serious harm does not include extreme disruption or chronic disruption of school or instruction in and of themselves." Therefore, the MSDE finds that the HCPS procedures were not followed, and, as a result, finds a violation with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMEFRAMES:

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. 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 seeks 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. Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

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

1. Reviewed and revised the IEP, as appropriate, based on current data, to ensure that it is written clearly with respect to the provision of specialized instruction in the placement that is in the LRE in which the IEP can be implemented. The documentation must reflect the data that was used as the basis for determining the student's LRE.
2. Determined the amount and nature of compensatory services or other remedy due to the violation related to the delay, from February 2019 to November 2019, in identifying the student as a student with a disability under the IDEA. The team must also develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the HCPS to provide documentation by April 15, 2020, of the steps it has taken, including training, to ensure that the XXXXX/XXXXXX ES staff comply with the IDEA requirements related to each of the violations identified in this Letter of Findings

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.

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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 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
and Special Education Services

MEF/ksa

c: Sean Bulson
Colleen Sasdelli
XXXXXXXX
Dori Wilson
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