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October 17, 2016

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Ms. Christina Harris
Supervisor of Special Education
Calvert County Public Schools
1305 Dares Beach Road
Prince Frederick, Maryland 20678

RE: XXXXX
Reference: #17-022

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 August 18, 2016, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, the student's stepfather and mother, hereafter, "the complainants," on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Calvert County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the CCPS did not follow proper procedures when responding to the complainants' request for an Independent Educational Evaluation (IEE), in July 2016 in accordance with 34 CFR §300.502.

INVESTIGATIVE PROCEDURES:

1. On August 18, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Christina Harris, Supervisor of Special Education, CCPS.

XXX

Ms. Christina Harris

October 17, 2016

Page 2

2. On August 22, 2016, the MSDE sent correspondence to the complainants 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 school system review the alleged violation.
3. On August 23, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the student's stepfather, and identified the allegation for investigation.
4. On August 26, 2016, Mr. Loiacono contacted the CCPS staff to request documents.
5. On September 15, 2016, the CCPS provided the MSDE a response to the complaint and documents to be considered.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Prior Written Notice, dated November 25, 2015;
 - b. Prior Written Notice, dated December 15, 2015;
 - c. Prior Written Notice, dated June 6, 2016;
 - d. Prior Written Notice, dated August 25, 2016;
 - e. Parent request for an IEE, dated December 23, 2015;
 - f. CCPS response to the request for an IEE, dated January 13, 2016;
 - g. Parent request for an IEE, dated July 22, 2016;
 - h. CCPS response to the request for an IEE, dated August 15, 2016;
 - i. Correspondence from the complainants containing an allegation of violation of the IDEA, received by the MSDE on August 18, 2016; and
 - j. The CCPS response to the State complaint, received by the MSDE on September 15, 2016.

BACKGROUND:

The student is nine years old and attends XXXXXXXXXXXXXXXXXXXX. He is not identified as a student with a disability under the IDEA (Docs. a-d).

Prior to December 2015, the student was identified with a Speech/Language Impairment under the IDEA, and had an Individualized Educational Program (IEP) requiring the provision of special education services (Doc. a).

XXX

Ms. Christina Harris

October 17, 2016

Page 3

There is documentation that the complainants participated in the education decision-making process and were provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-d).

FINDINGS OF FACTS:

1. On November 24, 2015 and December 15, 2015, the IEP team conducted a reevaluation and determined that the student no longer meets the criteria for identification as a student with a disability under the IDEA (Docs. a and b).
2. On December 23, 2015, the complainants made a request for an IEE in the following areas:
 - Academic performance: reading, written language, and math;
 - Communication: expressive and receptive language;
 - Neuropsychological evaluation to include cognitive, emotional, social, behavior development, attention; and
 - Assistive technology (Doc. e).
3. On January 13, 2016, the CCPS agreed to fund an IEE in the specific areas requested (Doc. f).
4. On July 22, 2016, before the IEP team had considered the independent assessments requested on December 23, 2015, the complainants requested an IEE in the areas of "Auditory Processing Disorder and Language Processing Disorder" (Doc. g).
5. On August 15, 2016, the CCPS staff sent correspondence to the complainants, denying the request. The CCPS explained that, because the school had not yet conducted testing in the area requested, the request for an IEE was premature (Doc. h).
6. On August 25, 2016, the IEP team completed its review of the independent assessments and recommended additional testing in the area of "Central Auditory Processing" be conducted by the CCPS. The complainants provided consent (Doc. d).

DISCUSSION/CONCLUSIONS:

An IDEA evaluation must be sufficiently comprehensive to assess the student in all areas related to the suspected disability, and must identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified (34 CFR §300.304).

A parent has the right to an IEE, at public expense, if the parent disagrees with an evaluation obtained by the public agency. Upon request for an IEE, the public agency must, without unnecessary delay, either grant the request for an IEE, or file a due process complaint to request

a hearing to demonstrate that its evaluation is appropriate. If a parent requests an IEE, the public agency may ask for the parent's reason for objecting to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to defend the public evaluation (34 CFR §300.502).

When an IDEA evaluation is conducted and a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs (United States Department Of Education Office Of Special Education And Rehabilitative Services, *Letter to Baus*, February 23, 2015).

In this case, the parent made a request for an IEE in an area that had not been assessed during an evaluation of the student. Based on Findings of Fact #5, the MSDE finds that the CCPS denied this request without filing a due process complaint. Therefore, based on Findings of Facts #1-6, the MSDE finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the CCPS to provide documentation that by November 1, 2016 that they have properly responded to the parent's request for an IEE by either:

- 1) Denying the parent's request and filing a due process complaint; or
- 2) Granting the IEE request.

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

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the CCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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.

XXX

Ms. Christina Harris

October 17, 2016

Page 5

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. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions 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 and 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:gl

c: Daniel Curry
Nancy Gregory
XXXXXX
Dori Wilson
Anita Mandis
Gerald Loiacono
Nancy Birenbaum