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February 14, 2018

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Ms. Cheryl A. O'Neal
Supervisor of Special Education
Somerset County Public Schools
7982A Tawes Campus Drive
Westover, MD 21871

RE: XXXXX
Reference: #18-062

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 December 18, 2017, the MSDE received a complaint from Ms. XXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Somerset County Public Schools (SCPS) 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 SCPS did not ensure that the eligibility determination made as a result of an IDEA evaluation was consistent with the data, when conducting an evaluation during the 2017-2018 school year, in accordance with 34 CFR §300.306.

BACKGROUND:

The student is 10 years old and attends XXXXXXXXXXXXXXXXXXXXXXXX. An evaluation was conducted and the student is not identified as a student with a disability under the IDEA. He has been found eligible for a 504 Accommodations Plan (504 Plan).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards.

FINDINGS OF FACTS:

1. On June 9, 2017 the complainant made a referral to the SCPS for an IDEA evaluation of the student. Her referral identified concerns related to the student's behavior difficulties and Attention Deficit Hyperactivity Disorder (ADHD).
2. On July 13, 2017, the IEP team met in response to the complainant's request and decided to conduct educational, speech and language, and occupational therapy assessments to determine if the student qualified as a student with a disability under the IDEA. The team also recommended that an assessment be conducted to determine if the student had a disability, such as Autism, that would account for the student's difficulty with social interactions.
3. On September 15, 2017,¹ the IEP team reconvened to review the following assessment results:
 - The educational assessment, which indicated that the student was above average in reading fluency, on grade level in math calculation and written language expression, and "slightly" below grade level in reading comprehension, and that his overall abilities are on grade level. The assessment report included recommendations for positive reinforcement, task prioritization, response variations, breaks, and consequence reinforcement.
 - The speech/language assessment, which indicated that the student's pragmatic language could not be determined due to his refusal to complete that portion of the assessment. The report also indicated that the student demonstrated strong receptive language skills, with scores ranging from "slightly" below average to above average, but his expressive language abilities are impacted by his social language weaknesses. The report further indicated that, while the student demonstrated difficulties with communicating, it was unclear whether the difficulties were the result of a pragmatic deficit or "behavioral manipulations of his environment."
 - The occupational assessment, which indicated that the student demonstrated strengths in the area of sensory integration but had difficulties in the area of fine motor skills. The assessment report included recommendations to assist the student with fine motor and body coordination and suggestions for the classroom, such as typing, slanted surfaces, movement breaks, transition warnings, visual schedules, and organizational assistance.

¹ The IEP team meeting was scheduled for an earlier date but was moved to this date at the complainant's request.

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- The cognitive portion of the psychological assessment was deemed invalid and was not considered in the eligibility determination as a result of the student's behavior interfering with the "optimal performance of the task." The social emotional/behavior portion of the assessment indicated that the student was below expectation with regard to social affects, and at expected level for restrictive and "repetitive" behaviors. The assessment report included recommendations for the student to be provided with short and frequent breaks, reduced distractions, preferential seating, and computer-aided instruction to assist with memory.
 - The Autism portion of the psychological assessment indicated that the student's "Social Affect" score is consistent with Autism Spectrum but that he does not demonstrate restricted and repetitive behavior associated with Autism.
4. Based on that review, the IEP team determined that, although the student has behavioral difficulties and ADHD, he does not require specialized instruction, and can access the general education curriculum with the provision of the recommended accommodations.

CONCLUSION:

Based on the Findings of Facts #1 - #4, the MSDE finds that, when evaluating the student under the IDEA, the IEP team considered the results of the assessments and the complainant's concerns. While the IEP team acknowledged that the student has behavior difficulties and ADHD, based on the results of the assessments, the IEP team determined that the student does not require specialized instruction, in accordance with 34 CFR §300.306. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

TIMELINE:

Please be advised that both the complainant and the SCPS 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. 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

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. 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 Special Education/Early Intervention Services

MEF:ac

c: John B. Gaddis
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Dori Wilson
Anita Mandis
Albert Chichester