



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

May 1, 2018

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Ms. Michelle Concepcion
Director of Instruction and Student Performance
Frederick County Public Schools
191 South East Street
Frederick, Maryland 21701

RE: XXXXX
Reference: #18-111

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 March 2, 2018, the MSDE received a complaint from Ashley S. VanCleaf, Esq., hereafter, “the complainant,” on behalf of the above-referenced student, and his parents Mr. XXXXX and Mrs. XXXXXXXX. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the FCPS did not ensure that proper procedures were followed when conducting an IDEA evaluation. Specifically, it was alleged that the student was not assessed in all areas of need, and that the Individualized Educational Program (IEP) team did not appropriately apply eligibility criteria in accordance with 34 CFR §§300.304-.306.

BACKGROUND:

The student is ten (10) years old, and attends XXXXXXXXXXXXXXXXXXXX. He has not been identified as a student with a disability under the IDEA.

FINDINGS OF FACTS:

1. On October 17, 2017, the student's parents requested an IDEA evaluation for the student, expressing concern regarding the student's reading needs.
2. On November 8, 2017, the IEP team met, reviewed the student's data, and determined that assessments were necessary to complete a evaluation. The team recommended, and the student's parents provided consent for, an educational assessment, a psychological assessment, and a classroom observation.
3. The IEP team convened on January 25, 2018 to complete the evaluation for the student. The results of the assessments were as follows:
 - Educational assessment: The results of the educational assessment indicated that the student performed at the "low average" to "high average" range on each subtext administered with the exception of "low" in spelling. The composite score for reading, math and written language each indicated that the student performed in the "low average" to "average" range.
 - Psychological assessment: The results of the psychological assessment indicated that the student had overall relative strengths in visual processing and verbal reasoning and weaknesses in visual spatial index. The student performed in the "low average" to "high average" ranges in subtests and corresponding composite score areas on the tests for intelligence. In tests administered to measure phonological processing, the student performed on the "average" range in individual subtests and composite scores.
4. There is no documentation that the IEP team reviewed a classroom observation of the student conducted by the school staff.
5. The IEP team noted that the student was reading one grade below grade level. The IEP team discussed some of the variability in the student's abilities, particularly his spelling subtext score. The team noted that a low score on one subtext was not sufficient to meet the criteria for a Specific Learning Disability. The team concluded that the student did not qualify as a student with a disability, under the IDEA.

DISCUSSION/CONCLUSIONS:

A Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that manifests itself in the imperfect ability to listen, think, speak, read, write, spell, or perform math calculations (34 CFR §300.8 and COMAR 13A.05.01.03). The IEP team may determine that a student has a Specific Learning Disability if the student does not achieve adequately for the student's age or meet State-approved grade-level standards in specific areas when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards.

This determination can be made based on either of the following criteria:

- The student does not achieve adequately for his or her age or meet State-approved grade-level standards despite the provision of appropriate instruction and the provision of scientific, research-based interventions targeted to the needs of the student; or
- The student does not achieve adequately for his or her age or meet State-approved grade-level standards despite the provision of appropriate instruction and the student demonstrates a pattern of strengths and weaknesses in performance achievement, or both, relative to age, based on appropriate assessment data (34 CFR §300.309).

IEP teams may, in conjunction with the above criteria, look for a “severe discrepancy” between the student's intellectual ability and achievement (MSDE Technical Assistance Bulletin, *Specific Learning Disability and Supplement*, November 7, 2016) In any case, the IEP team must consider data from a variety of sources. Although the IEP team may use the “severe discrepancy” approach and use a statistically sound formula to measure when there is a severe discrepancy between aptitude and achievement, it may not rely solely upon a single statistical formula as the sole criteria for determining eligibility (34 CFR §300.304, *Letter to Zirkel*, United States Department of Education, Office of Special Education Programs, 2007, 47 IDELR 268).

When determining whether a student meets the criteria for identification as a student with a Specific Learning Disability, the IEP team must consider information from an observation of routine classroom instruction and from the monitoring the student's performance that occurred before the referral for evaluation. Alternatively, at least one (1) member of the team, other than the student's regular education teacher, must observe the student in the student's learning environment and provide information to the team about the student's academic performance and behavior in the areas of difficulty (34 CFR §300.310 and COMAR 13A.05.01.05).

In this case, the complainant alleges that the IEP team did not assess the student in all areas of concern, did not perform a classroom observation involving the student in the area of difficulty, and did not apply the appropriate criteria in determining the student's eligibility as a student with a disability.

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Based on Findings of Facts #1-#3 and #5, the MSDE finds that the IEP team appropriately assessed the student in all areas of need and applied the appropriate criteria when determining that the student was not eligible under the IDEA, in accordance with 34 CFR §§300.304-306.

However, based on Findings of Fact #4, the MSDE finds that the IEP team did not consider the results of a classroom observation that involved the student's areas of difficulty and that, as a result, the evaluation was not sufficiently comprehensive, in accordance with 34 CFR §300.304. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the FCPS to provide documentation, by July 15, 2018, that the IEP team has completed the evaluation, following proper procedures, and developed an IEP for the student if he is identified as a student with a disability.

If the student is identified as a student with a disability, the MSDE further requires the FCPS to ensure that the IEP team determines the compensatory services, or other remedy for the delay in identifying the student under the IDEA.

School-Based

The MSDE requires the FCPS to provide documentation by the start of the 2018-2019 school year, of the steps it has taken to ensure that XXXXXXXXXXXXXXXXXXXX staff properly implements the requirements for using data from classroom observations when conducting an evaluation for a Specific Learning Disability. The documentation must include a description of how the FCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does not recur.

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 FCPS 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

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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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents 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 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/gl

c: Theresa Alban
Carol S. Breeze
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