



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

October 22, 2018

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Ms. Bobbi Pedrick
Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: XXXXX
Reference: #19-042

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 October 2, 2018, the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE identified the allegation for investigation that the data did not support the IDEA eligibility determination made as a result of the reevaluation, in accordance with 34 CFR §300.306.

BACKGROUND:

The student is 13 years old and attends XXXXXXXXXXXXXXXXXXXX. Until June 13, 2018, the student was identified as a student with a disability under the IDEA.

On June 13, 2018, a reevaluation was conducted and the student was determined to no longer meet the criteria for identification as a student with a disability under the IDEA.

On August 13, 2018, a 504 Accommodations Plan¹ was developed for the student after he was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 related to Autism Spectrum Disorder and Attention Deficit Hyperactivity Disorder (ADHD).

On August 30, 2018, the IEP team reconvened to consider the complainant's concerns about the IDEA eligibility determination,² and affirmed its June 13, 2018 determination.

FINDINGS OF FACTS:

1. On February 28, 2018, the IEP team convened to conduct the annual IEP review. At the complainant's request, the IEP team decided to conduct a reevaluation for the student, who was identified as a student with an Other Health Impairment under the IDEA related to ADHD. The team recommended that assessments be conducted in the areas of cognition, social, emotional, and behavioral functioning, academic performance, fine motor skills functioning, and the need for assistive technology.
2. On May 9, 2018, the IEP team reconvened to consider assessment data, but did not have sufficient time to complete the reevaluation.
3. On June 13, 2018, the IEP team convened again and completed the reevaluation.
4. During the reevaluation, the IEP team considered the following data:
 - a. XXXXXXXXXXXXXXXXXXXX diagnosed the student with a Disorder of the Central Nervous System, unspecified; Autism Spectrum Disorder without accompanying Speech/Language Impairment, and ADHD, Combined Type.
 - b. The student's private medical and mental health providers reported that the student made "great progress in regulating his emotions and apprising challenging situations more calmly and rationally." They recommended school-based accommodations including support for inattention, impulsivity, pragmatic communication, social skills, and frustration tolerance.
 - c. The school psychologist conducted seven observations of the student, four of which were in the classroom setting, and three in nonacademic settings, including the hallway, cafeteria, and during "lunch bunch," and observed consistently on-task behaviors.

¹ Under Section 504 of the Rehabilitation Act of 1973, students who require accommodations without the need for special education instruction, are provided with an Accommodations Plan.

² This action was required by the MSDE following an investigation of a previous State complaint filed by the complainant (#18-162), in which this office found that the AACPS did not ensure that the complainant was provided with documents within required timelines prior to the June 13, 2018 reevaluation.

- d. The results of cognitive testing reflect that the student is functioning in the “average” range.
- e. A behavior rating scale specific to executive functioning skills reflects that the student is functioning in the “average” to “above average” range. The rating scale completed by the student’s teachers reflects that the student is functioning in the “typical” range for inattention and hyperactivity/impulsivity. The rating scale completed by the student’s mother reflects that the student is functioning at the “significantly elevated” level for somatic complaints, and at the “at risk” scale for anxiety, attention, and social problems. The rating scale completed by the complainant reflects that the student is functioning in all areas within the “clinically significant” range.
- f. A measure of potential Autism Spectrum characteristics was rated as “slightly elevated” by four of the student’s teachers, “elevated” by one of his teachers and his mother, and “very elevated” by the complainant.
- g. The results of an educational assessment reflect that the student scored in the “average” range in reading, the “average” to “high average” range in written language, and the “low average” to “high average” range in mathematics. The assessment report contains recommendations for the use of a calculator, organizers to sequence ideas, a computer for lengthy writing assignments, and extended time for instructional and testing purposes.
- h. The results of a fine motor skills assessment reflect that the student demonstrates “typical” performance in all areas and is able to meet classroom expectations without supports.
- i. The results of a speech/language assessment reflect that the student is functioning in the “average” range. The assessment report states that, “based on formal assessment and teacher report, the student’s performance in the area of pragmatic language would not negatively impact his performance in the classroom,” consistent with information from the XXXXXXXXXXXXX.
- j. The results of an assistive technology assessment reflect that the student’s written output “significantly increased” when using a word processor. The report includes a recommendation for the use of a word processing device with spell and grammar check. It also includes recommendations for the provision of pre-writing organizers and diagrams, writing checklists, and word lists.
- k. The student had an IEP that included annual goals to continue to develop social understanding skills while working with peers, write for a specific purpose using targeted organization and analysis and structuring event sequences, and apply mathematical operations in a variety of contexts. In addition, the IEP included a goal for the student to be able to identify perseverating thoughts, differentiate between flexible and rigid behaviors in himself, and manage unexpected events

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and disruptions of his routine in order to remain engaged in instructional activities. The student had achieved these goals.

1. The school staff reported that the student had not experienced any instances of “atypically high emotional arousal” and did not need to utilize his break pass during the 2017-2018 school year.
5. Based on the data, the team decided that, when provided with learning experiences and instruction appropriate for his age and State approved grade level standards, the student achieves adequately in all areas. The team determined that, based on the data, the student no longer meets the criteria for identification as a student with a disability under the IDEA because he no longer demonstrates the need for special education instruction. However, the team decided to refer the student to a Section 504 team in order to address his need for continuing accommodations.
6. On August 30, 2018, the IEP team reconvened and considered the complainant’s concern that the student continues to require special education instruction. The IEP team documented that, based on the fact that no new data was provided, it affirmed its earlier decision that the student no longer meets the criteria for identification as a student with a disability under the IDEA.

CONCLUSION:

Based on the Findings of Facts #1 - #6, the MSDE finds that there is data to support the IEP team’s IDEA eligibility determination, in accordance with 34 CFR §300.306. Therefore, this office does not find that a violation occurred.

ADDITIONAL DISCUSSION:

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate IEP, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. The SEA may not, however, overturn an IEP team’s decisions when proper procedures have been followed and there is data to support the team’s decisions. The OSEP indicates that parents may challenge an IEP team’s decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

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This office understands that the complainant disagrees with the IEP team's IDEA eligibility determination. However, because there is data to support the team's decisions, this office is unable to overturn those decisions. The complainant is reminded of his right to request mediation or to file a due process complaint if he continues to disagree with the IEP team's decisions.

TIMELINE:

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.

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 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/am

c: George Arlotto
Alison Barmat
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Dori Wilson
Anita Mandis