



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

April 1, 2019

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Ms. Linda Chambers
Acting Director of Special Education,
Compliance, and Student Support
Frederick County Public Schools
191 South East Street
Frederick, Maryland 21701

RE: XXXXX
Reference: #19-099

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education 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 January 24, 2019, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of the above-referenced student. 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 has not followed proper procedures when conducting an IDEA evaluation since October 2018, in accordance with 34 CFR §§300.304 - .306, and .323.

BACKGROUND:

The student is twelve (12) years old, attends XXXXXXXXXXXXXXXXXXXX, and is not identified as a student with a disability under the IDEA.

FINDINGS OF FACTS:

October 2018 Referral and IEP Team Meeting

1. On October 11, 2018, the Individualized Education Program (IEP) team convened, in response to a referral made by the complainant for an IDEA evaluation of the student. The referral identified the complainant's concerns about the student's executive functioning skills. The complainant provided the IEP team with a letter from an independent psychologist.
2. The independent psychologist's letter, dated October 8, 2018, reflects that the student has "significant impairment in multiple areas of executive functioning, and significant symptoms of anxiety and depression." The letter includes a recommendation for a 504 Plan¹ to address executive function problems, such as frequent redirection, assistance with organization, flexibility in deadlines, increased communication between teachers and parents, extended time, and preferential seating. The complainant reported that the student began having anxiety concerns in elementary school and has since been seeing an independent psychologist.
3. The student's teachers reported that the student participates in class, has a great sense of humor, and had A's and B's in all of his classes. The teachers also reported that, although the student internalizes things and does not share his feelings, he does not demonstrate the need for classroom accommodations. The complainant reported that the student currently did not have academic or behavior concerns, but does not have many friends outside of school, with the exception of his recreational sport team.
4. Based on that review, the IEP team determined that no additional assessments were required and that the student did not meet the criteria for identification of a student with a disability. The IEP team stated that the student would be referred to the Section 504 team to determine if he required classroom accommodations.

November 2018 Referral and IEP Team Meeting

5. On November 9, 2018, the IEP team convened in response to the complainant's request for an educational assessment and an observation of the student. The complainant also reported that, although the student's psychological evaluation remained incomplete, she received information from the independent psychologist, who reported to her that the student demonstrated a slow processing speed and issues with executive functioning, and that may have resulted in a decrease in the student's math grade when he matriculated between grade levels. In response, the IEP team agreed to assess the student for suspected disabilities under Other Health Impairment (OHI) and Specific Learning Disabilities (SLD). The complainant provided consent for assessments at the meeting.

¹ A 504 Plan is an accommodations plan under Section 504 of the Rehabilitation Act of 1973.

6. On January 3, 2019, the IEP team reconvened to review the following assessment results and teacher input:
 - The educational assessment, dated December 3, 2018, indicates the student's broad scores in reading is 114 (high average), math is 115 (high average), and written language is 115 (high average). The report includes recommendations for the student to request for help with math concepts and for him to advocate for himself when he feels he is behind on assignments.
 - The independent neuropsychological assessment, dated December 2, 2018 and provided by the complainant, indicates that the student's IQ is 118, and he demonstrates strength in nonverbal conceptualization/reasoning and working memory. However, he demonstrates a weakness in processing speed, fine motor coordination, sustaining attention, emotional control, and depression. The report indicates a diagnosis of "Attention Deficit-Hyperactivity Disorder (ADHD), and Major Depressive Disorder, mild to moderate, single episode with anxious distress." The report also includes the recommendation of a 504 Plan with accommodations to support the student in the general education environment and to address his emotional, cognitive, and behavioral weakness.
 - The OHI eligibility determination, dated January 3, 2019, indicates that the student's ADHD does not adversely affect his educational performance, that he is performing on grade level, and that his teachers report no atypical concerns nor any need for classroom accommodations. The team determined that the student did not meet the criteria for identification of a student with a OHI.
 - The student observation report, dated November 29, 2018, which was conducted in his math class, indicates that the student's behavior rating scale did not identify problems, with the exception of math reasoning, and that the behavior was "only observed after the scores were finalized with a 55%."
 - The SLD eligibility determination, dated January 3, 2019, indicates that the student is performing on grade level, and scored in the "level 4" range on the math and English Statewide assessments. The team determined that the student did not meet the criteria for identification of a student with a SLD.
 - Teachers reported that the student completes classwork when he is in the school setting, but does not do homework or finish assignments that need to be completed at home. It further states that the student's teachers do not "see any issues" with the student in class.
7. Based on that review, the IEP team determined that the student did not meet the criteria for identification of a student with an OHI or a SLD under the IDEA.

8. There is documentation that, on January 18, 2019, the complainant expressed concern to the FCPS central office staff that the school-based members of the IEP team did not consider an Emotional Disability, based on the diagnosis of Major Depressive Disorder in the independent neuropsychological assessment provided by the complainant, during the IEP team meeting held on January 3, 2019. In response, the FCPS central office staff recommended that the IEP team reconvene to review the independent neuropsychological assessment again, and to obtain consent from the complainant for the school staff to conduct a Functional Behavioral Assessment (FBA), based on concerns of the student's incomplete homework submission, an Occupational Therapy Assessment, based on his fine motor skill weakness, and an assistive technology (AT) observation to consider word processing tools for the student to use for class notes and other communication needs.
9. On February 1, 2019, the IEP team reconvened to review information provided by the complainant, and to discuss required assessments. The complainant provided a "revised" independent neuropsychological assessment, dated December 2, 2018, which reflects the recommendation for "special education services," rather than a 504 Plan. The school staff reviewed information in the independent neuropsychological assessment related to the student's depression and anxiety, and indicated that the report contained "only one teacher's report of the student demonstrating anxiety and/or depression." The team recommended that all of the student's teachers complete Behavior Assessment System for Children (BASC)² rating scales to determine if the student demonstrates symptoms of depression and anxiety. The complainant requested an Independent Educational Evaluation (IEE) in order for the rating scales to be interpreted by her independent psychologist, rather than the school psychologist.
10. At the same IEP team meeting, the school staff reported that the student has refused to retake classroom assessments after making corrections, and that he is not receptive to 1:1 support by staff. In addition, he does not complete corrections or homework, and states that "he forgets to take assignments home or forgets to complete the corrections at home." The school staff reported that there is evidence of a concern with the student's lack of work completion, and recommended that a FBA be conducted to gather data regarding the lack of work completion. The complainant provided consent for the assessment at the meeting.
11. At the same IEP team meeting, the team reviewed work samples by the student and information from the independent neuropsychological assessment related to the student's fine motor functioning. The report indicated that the student demonstrated a weakness in his fine motor coordination. Based on this review, the team recommended an occupational therapy assessment, and the complainant provided consent at the meeting.

² On February 8, 2019, the FCPS agreed to the complainant's request that the BASC rating scales be interpreted by an independent evaluator at the school system's expense.

12. At the same IEP team meeting, the team recommended that an AT observation be conducted to determine if there were technology resources that the student could access that would support him in the school setting. The team agreed to reconvene at a later date to review assessment results and to determine eligibility under the IDEA.

CONCLUSIONS:

In this case, the complainant alleges that the IEP team's decisions were not consistent with the data.

Based on the Findings of Facts #1 - #4, the MSDE finds that there was data to support the IEP team's October 2018 eligibility determination, in accordance with 34 CFR §§300.303 - .306. and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #5 - #12, the MSDE finds that the FCPS did not ensure that the team considered all of the data when making the eligibility determination following the November 2018 IDEA referral, in accordance with 34 CFR §§300.303 - .306. and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the FCPS to provide documentation by the end of the 2018-2019 school year that the IEP team has determined whether the student meets the criteria for identification as a student with a disability under the IDEA. If the student is determined eligible under the IDEA, the IEP team must also determine the compensatory services for the delay in the provision of a Free Appropriate Public Education (FAPE) to the student.

The FCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the FCPS to provide documentation by the end of the 2018-2019 school year of the steps taken to ensure that the violation does not recur at XXXXXXXXXXXXXXXX
XXXXXX.

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.

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 timelines reported in this Letter of Findings.

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 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/Special Education Services

MEF/ac

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