



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: #19-100

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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.

**ALLEGATIONS:**

On January 24, 2019 and February 27, 2019, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX, 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 following allegations:

1. The FCPS did not follow proper procedures when responding to referrals for IDEA evaluations in August 2018 and November 2018, in accordance with 34 CFR §§300.304 - .306, and .323.
2. The FCPS did not ensure the confidentiality of the student’s educational record in February 2019, in accordance with 34 CFR §§300.610 - .622.

**BACKGROUND:**

The student is six (6) years old and attends the XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXX) where she is in kindergarten. She is not identified as a student with a disability under the IDEA.

**ALLEGATION #1 RESPONSES TO REFERRALS FOR AN IDEA EVALUATION**

**FINDINGS OF FACTS:**

August 2018 Referral and IEP Team Meeting

1. On August 7, 2018, the complainant referred the student for an IDEA evaluation.
2. On August 23, 2018, the IEP team convened and considered the results of a June 2018 psychological assessment that the complainant privately obtained due to concerns that the student has difficulty listening to and following directions, and exhibits “oppositional and disrespectful behaviors and aggression towards her peers at school.”
3. The report of the private psychological assessment states that the student was diagnosed with an Oppositional Defiant Disorder (ODD) and Attention Deficit Hyperactivity Disorder (ADHD). The report contains information from the student’s private preschool teachers that the student “often” cannot wait for demands to be met, destroys the belongings of others, disturbs other children, hits others, and physically attacks people, and that she “sometimes” has angry moods, temper tantrums, and is uncooperative.
4. The private evaluator recommended that the student receive academic support through either an IEP or a 504 Plan.<sup>1</sup> Other recommendations included strategies to obtain the student’s attention, such as repeated directions and reduced distractions, checks for understanding, preferential seating, breaking tasks into smaller steps, short breaks, and the use of “fidgets.” The private evaluator also recommended a behavior management program for home use.
5. The IEP team also considered the complainant’s concern that the student makes statements threatening self-harm and suicidal ideation when she is stressed, that she tends not to follow directions, and that she has become “physically combative” with the complainant.
6. The IEP team decided that the student was not suspected of having a disability and, as a newly enrolled kindergarten student, would be provided with interventions in the general education program, but did not identify the data used as a basis for the decision.

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

### November 2018 Referral and IEP Team Meeting

7. On November 12, 2018, another referral was made for an IDEA evaluation for the student due to the complainant's concerns about the impact of the student's behavior on her education as well as her peers.<sup>2</sup>
8. On November 20, 2018, the IEP team convened. The school staff reported that, while the student had recently demonstrated some disruptive behaviors in the classroom, she was meeting grade level expectations in reading and math, working on meeting expectations in writing, has friends, and that her social development was "age-appropriate." Based on this information, the team decided that the student was not suspected of having a disability, and that additional supports would be provided in the general education program. The team also decided to reconvene to consider the student's progress with those supports.

### January 2019 IEP Team Meeting

9. On January 29, 2019, the IEP team reconvened to consider the student's progress with the interventions provided in the general education program.<sup>3</sup> The documentation reflects that, based on information that there had been additional behavioral incidents in the classroom, the IEP team suspected that the student may have a disability and that an IDEA evaluation would be conducted.<sup>4</sup> The IEP team recommended an educational assessment, a classroom observation, a speech and language assessment, a Functional Behavior Assessment (FBA),<sup>5</sup> and an assessment of the student's fine motor skills, and the complainant provided written consent for them to be conducted. The IEP team was scheduled to convene on March 29, 2019 to review the results of assessments.

### **CONCLUSIONS:**

Based on the Findings of Facts #1 - #6, the MSDE finds that, because the IEP team did not document the basis for not suspecting a disability at the August 23, 2018 IEP team meeting, there is no documentation that the team's decision was consistent with the data, in accordance with 34 CFR §§300.304 - .306. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

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<sup>2</sup> The request was made on the complainant's behalf by her educational advocate.

<sup>3</sup> There is documentation that the school staff made attempts to schedule the meeting for earlier dates in December 2018 and January 2019.

<sup>4</sup> The suspected disabilities included an Other Health Impairment (OHI) due to ADHD, a Specific Language Disability (SLD), a Speech/Language Impairment, and an Emotional Disability.

<sup>5</sup> On February 14, 2019, the FCPS agreed to the parent's request that the FBA be conducted by an independent evaluator at the school system's expense.

Notwithstanding the violation, based on the Findings of Facts #7 - #9, the MSDE finds that there was data to support the IEP team's subsequent decisions, including its decision on November 20, 2018 that the student was not suspected of having a disability, in accordance with 34 CFR §§300.304 - .306. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation and finds that the identified violation had no impact on the student. Therefore, no student-specific corrective action is required.

**ALLEGATION #2                      CONFIDENTIALITY OF THE STUDENT'S  
PERSONAL IDENTIFIABLE INFORMATION (PII)**

**FINDINGS OF FACTS:**

10. During the week of February 18, 2019, the complainant went to the XXXXXXXXXXXX to pick up rating scales forms that were provided for the school staff to complete as part of the psychological assessment being conducted by an independent evaluator.
11. The complainant was given a large envelope that included three (3) sealed envelopes containing the forms completed by the school staff as well as photocopies of the forms.
12. On February 26, 2019, the complainant sent an email to the school staff asking where photocopies of the completed forms were being maintained. In its email response on the same date, the school staff explained that she did not have any copies, and also confirmed that the school staff who completed the forms do not have copies.
13. There is no documentation that copies of the rating scales forms completed by the school staff have been disclosed to unauthorized individuals.

**CONCLUSION:**

Based on the Findings of Facts #10 - #13, the MSDE finds that there is no documentation that the student's PPI contained in the rating scales forms completed by the school staff has been disclosed to unauthorized individuals, in accordance with 34 CFR §§300.610 - .622. Therefore, the MSDE finds that the documentation does not support the allegation, and does not find a violation occurred.

**CORRECTIVE ACTION/TIMELINE:**

The MSDE requires the FCPS to provide documentation by the end of the 2018-2019 school year of the steps it has taken to ensure that the XXXXXXXXXXXX staff comply with the IDEA requirements for responding to requests for IDEA evaluations.

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The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education 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.

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 complainants [parents] 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/ksa

c: Theresa Alban  
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