



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

May 21, 2019

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Ms. Rebecca Rider  
Director of Special Education  
Baltimore County Public Schools  
The Jefferson Building  
105 West Chesapeake Avenue  
Towson, Maryland 21204

RE: XXXXX  
Reference: #19-135

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.

**ALLEGATION:**

On March 22, 2019, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXX, hereafter “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the BCPS did not ensure that proper procedures were followed when conducting an initial evaluation of the student in April 2018, in accordance with 34 CFR §§300.301 - .306 and COMAR 13A.05.01.04 - .06.

**BACKGROUND:**

The student is twelve (12) years old and attends the XXXXXXXXXXXXXXXX where he in the sixth (6th) grade. He is not is identified as a student with a disability under the IDEA who requires specialized instruction.

The student attended the XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX ES) during the time period covered by the investigation.

**FINDINGS OF FACTS:**

1. On April 3, 2018, the IEP team convened to review information that the complainants privately obtained and a classroom observation conducted by the school staff in order to determine the student's eligibility under the IDEA.
2. At the time of the April 2018 IEP meeting, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973, due to Attention Deficit Hyperactivity Disorder (ADHD), and had a "504 Plan" requiring accommodations.
3. The IEP team discussed the classroom observation that was conducted by the school counselor. The counselor reported that the student followed the routine for getting started and writing down the homework assignment and following directions. During the lesson, the student put his head on his desk at times, but followed the teacher's reminder to the whole class to have their heads up. The student got out of his seat a couple times. He participated in direct interactions with the classroom teacher. While he did not interact when the activity was student to student partner discussion, he raised his head when his group was called on for discussion.
4. The IEP team also considered the report of an Independent Educational Evaluation (IEE) that was privately obtained by the complainants.
5. The IEE reflects that the student achieved a full scale intelligence (IQ) score of 92 based on achieving scores in the "average" range on each index contributing to the overall IQ.<sup>1</sup> However, the evaluator noted that the student's cognitive processing skills are "characterized by variability," and reported that the overall scores on the indexes "may be misleading" or "less reliable" due to "significant variability" in the student's performance on subtests.
6. The IEE reflects that, in the area of processing speed, the student achieved a standard score of 89 indicating his functioning in the "low average" range.<sup>2</sup>
7. The IEE reflects that the student is functioning in the "average" range in broad reading and broad math. It also reflects that the student is functioning in the "average" range in broad written language. However, the evaluator also assessed the student's writing skills using two (2) subtests on another testing instrument, the Test of Written Language (TOWL). On this assessment, the student was required to write a story based on a picture.

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<sup>1</sup> The student earned standard scores of 100 on the verbal comprehension index, 97 on the visual spatial index, 97 on the fluid reasoning index, and 94 on the working memory index.

<sup>2</sup> The evaluator noted this as a "mild relative weakness" for the student.

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- The student's performance on the two (2) subtests of the TOWL reflects that, while his skills fall in the "average" range in spelling and the written language mechanics, his skills for complex written expression fall in the "below average" range. Based on these subtest scores on the TOWL, the student achieved a writing composite standard score of 84 representing his functioning in the "below average" range in expressive writing skills.
8. The evaluator diagnosed the student with a Specific Learning Disorder (SLD) in written language. The IEE states that the student's "writing is impaired by difficulty with organizing and elaborating his ideas" and that his ability is "significantly below expected levels" for his grade for producing organized written expression.
  9. The IEE reflects that the student has "significant weakness" and is functioning in the "poor range" in the area of visual-motor integration skills based on his achieving a standard score of 79. The evaluator diagnosed the student with Dysgraphia due to the "degree of relative weakness and poor efficiency" in his graphomotor skills. He also noted that the student is "at risk for difficulty with lengthier writing tasks and note taking due to his weaknesses in organization, executive function and written production (handwriting) difficulties."
  10. The student's executive functioning was also assessed by the IEE. The rating scales completed by the complainants and a teacher indicate "significant problems" in all areas of executive functioning, including emotional regulation.
  11. The student's social and emotional functioning was also assessed in the IEE. The testing in this area included self-report measures of anxiety and depression. The student reported feeling "depressed about being adopted," "feeling alone many times," and "worry" about death and the future. In addition, the student's responses on an inventory assessing mood and depression indicate "clinically significant" scores specifically in the areas of emotional problems and negative self-esteem, and an overall score "at the border" of the "clinically significant" range. However, the student's self-reporting responses on a rating scale measuring anxiety were in the "normative" range and did not indicate clinical levels of anxiety.
  12. The evaluator noted that the student "may have difficulty modulating his mood and emotions, thus he may escalate (or "shut down") when he is confronted with stressful or threatening situation.
  13. The evaluator reported that the student struggles with inconsistent focus and attention, organization and impulsivity, and that his attention appears "highly unreliable" with "mundane or less rewarding" activity. He also stated that "the reliability of [the student's] attention may also be impacted by emotional factors including low mood and negative beliefs about himself or his abilities."
  14. Based on the results of the IEE, the evaluator concluded that the student's "pattern of strengths and vulnerabilities can perhaps be understood best as spanning several

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diagnostic constructs” and diagnosed the student with ADHD combined with executive function deficits, an SLD in written language, an unspecified neurodevelopmental disorder with deficits in auditory working memory, an adjustment disorder with depressed mood, and a developmental coordination disorder due to Dysgraphia. The evaluator recommended that the student be considered eligible for an IEP based on an Other Health Impairment (OHI).

15. The IEP team also considered the report of an observation by a private educational advocate obtained by the complainants. The advocate reported observing the student struggling in the general education classroom due to his “significant difficulties” in the areas of attention and focus, executive functioning, self-regulation and social emotional regulation. The advocate concluded that these areas have “such an extreme” impact on the student that he requires specialized instruction. The IEP team did not agree with the report of the advocate’s observation due to differing reports by school staff who were also present during the observation.
16. The IEP team also considered correspondence from the student’s private therapist stating that the student meets the criteria for ADHD, an adjustment disorder with mixed depression and anxiety, and Tourette Syndrome. The private therapist recommended an academic setting that includes therapeutic services to address the student’s emotional needs.
17. The IEP team agreed with the IEE diagnosis of ADHD combined with executive function.
18. The IEP team did not accept the IEE diagnosis of an SLD in written language. The IEP team discussed that the evaluator only used certain subtests on the TOWL testing instrument that was used as the basis for this diagnosis, which “interferes with identifying areas in need of support and providing an overall score.” The IEP team also discussed that other data in the IEE documents that the student has “average” written language skills, as does data from the student’s classroom performance.
19. The IEP team did not accept the IEE diagnosis of Dysgraphia. The IEP team considered student writing samples demonstrating “very legible handwriting.” The school staff reported that they do not observe the student exhibiting any difficulty with writing, but that he does rush through completing his work which may cause hand fatigue.
20. A review of the audio recording of the IEP meeting documents that the IEP team also discussed the student’s performance on a “speed of copy” test that was given by the school staff to obtain additional information about his writing ability. The school staff explained that the student was given this test due to the concerns about the student’s errors in visual motor planning and integration which were the basis for the Dysgraphia diagnosis in the IEE. The school staff reported that the student’s performance on this test indicates his motor control functioning is “well above average” and that there are no concerns about his functionality in the classroom. The IEP team also discussed that the

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student completes written work in the classroom by hand and by typing on a computer.

21. A review of the audio recording of the IEP meeting documents that the complainants expressed concern that the student was given the speed of copy test without their consent. There is no documentation that the complainants provided written consent for this assessment.
22. The IEP team documented a discussion about the IEE diagnosis of an adjustment disorder with depressed mood. The school staff noted that this is “not meant to be a long-term diagnosis but is usually short-lived after a change occurs.” The complainants reported that the student feels different every day and is struggling internally, and that his emotional and mental issues have been documented in previous assessments.
23. A review of the audio recording of the IEP meeting reflects reports by the school team that the student has not been demonstrating emotional difficulty over a long period of time or difficulty remaining in the classroom, and that he is making academic progress. However, the audio recording the meeting is unclear with respect to whether the IEP team determined whether the student has an Emotional Disability (ED).
24. The meeting summary documents that the IEP team discussed that the school counselor and the student’s private therapist have had communications about the student’s ADHD and self-esteem, and cognitive behavior strategies to change “unhelpful thoughts to helpful thoughts” in the school setting.
25. The IEP team determined that the student qualifies as a student with a disability due to ADHD. The team also decided that the student’s “writing and anxiety needs have to be addressed.” The written summary of the meeting documents that “the team considered whether specialized instruction was required and determined that these needs can be supported through a 504 Plan rather than specialized instruction through an IEP.” The IEP team documented that a team would convene to update the student’s 504 accommodations plan based on the information in the IEE.
26. The complainants disagreed with the team’s decision. They expressed concern that the student is “fragile” about his feelings for himself, and their belief that he needs an IEP and a “more supportive and therapeutic environment.”

### **CONCLUSIONS:**

Based on the Findings of Facts #1 - #16 and #20, the MSDE finds that the IEP team reviewed existing data on the student from a variety of sources, in accordance with 34 CFR §§300.301 - .306. Based on the Findings of Facts #3 - #21 and #24, the MSDE finds that the information considered by the IEP team included data privately obtained by the complainants documenting several diagnoses, including an adjustment disorder with depressed mood and anxiety, as well as data obtained from classroom observations and the student’s classroom performance.

Based on the Findings of Facts #3 - #25, the MSDE finds that the IEP team identified that the student has an OHI under the IDEA related to ADHD, but decided, based on the data, that the student does not require specialized instruction as a result of the OHI disability, in accordance with 34 CFR §§300.305 and .306

Based on the Findings of Facts #11 - #13, #16, #22, #23 and #26, the MSDE finds that the complainants expressed concern that the student has an ED requiring special education services. Based on the Findings of Facts #1 - #26, the MSDE finds that the IEP team did not document the team's eligibility determination in this area, in accordance with 34 CFR §§300.305 and .306. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #20 and #21, the MSDE finds that the BCPS conducted an evaluation without obtaining parental consent. Therefore, the MSDE finds a violation occurred with respect to this aspect of the allegation.

### **CORRECTIVE ACTION/TIMELINES:**

#### **Student-Specific**

The MSDE requires the BCPS to provide documentation, by the start of the 2019 – 2020 school year, that the IEP team has convened and made a determination of whether the student has an ED and the basis for the decision. If the IEP team determines that the student has an ED, the team must also determine whether he requires specialized instruction as a result of the disability. Further, if the IEP team finds the student is eligible under the IDEA, the team must develop an IEP, and determine compensatory services or other remedy to redress the delay in eligibility and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

#### **School-Based**

The MSDE requires the BCPS to provide documentation, by the start of the 2019 - 2020 school year, that training has been conducted at the Hampton ES to ensure that the school staff comply with the IDEA requirements for obtaining parental consent prior to conducting an assessment to obtain information for an evaluation, and for providing proper written notice of IEP team decisions.

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.

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**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, 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 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/ksa

c: Verletta White  
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