




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

December 12, 2019




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

RE: 
Reference: #20-042

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 October 15, 2019, the MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of her grandson, the above-referenced student. In that correspondence, the complainant 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 following allegations:

1. The BCPS has not ensured that written notice was provided of the Individualized Education Program (IEP) team’s decision denying the request for the student to participate in an electronic-learning program, since October 15, 2018, in accordance with 34 CFR §300.503.
2. The BCPS has not ensured parent participation in IEP team meetings convened since July 11, 2019, in accordance with 34 CFR §300.322.

3. The BCPS has not ensured the development of an IEP that is designed to enable the student to make progress in the general curriculum, since July 11, 2019, in accordance with 34 CFR §300.101, .320, .323 and .324.
4. The BCPS did not ensure that the student was provided with the transportation services required by the IEP, from September 3, 2019 to September 20, 2019, in accordance with 34 CFR §§ 300.101 and .323.

BACKGROUND:

The student is thirteen (13) years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education and related services.

At the start of the investigation period, the student was enrolled at [REDACTED] Middle School ([REDACTED] MS). Following the complainant's request on November 12, 2019 to provide the student with home instruction, the student was withdrawn from [REDACTED] MS.

ALLEGATION #1 ELECTRONIC-LEARNING PROGRAM REQUEST

FINDING OF FACT:

1. There is no documentation since October 2018 that, through the IEP process, the complainant requested that the student be permitted to participate in an electronic-learning (eLearning) program.

CONCLUSION:

Based on the Finding of Fact #1, the MSDE finds that the documentation does not support the allegation, and therefore does not find a violation with respect to this allegation.

**ALLEGATIONS #2 AND #3 PARENT PARTICIPATION AND IEP
DEVELOPMENT SINCE JULY 2019**

FINDINGS OF FACTS:

2. The IEP in effect at the start of the investigation period was developed on January 22, 2019, and was determined to be appropriate by the Maryland Office of Administrative Hearings (OAH) in July 2019.
3. On August 26, 2019, the school staff notified the complainant via email that an IEP meeting was scheduled for September 11, 2019 to conduct the annual review of the student's IEP. There is documentation of five (5) earlier attempts by the school staff prior

- to this time to schedule a meeting, but that the complainant was unavailable on the proposed dates.
4. On September 4, 2019, via overnight mail, the school staff sent the complainant documents that were expected to be discussed at the IEP meeting scheduled for September 11, 2019.
 5. On September 5, 2019, the complainant sent correspondence to the school staff acknowledging her receipt of written notification of the IEP team meeting scheduled for September 11, 2019, and confirmed her attendance at the meeting.
 6. On September 11, 2019, the IEP team convened with the complainant and conducted an annual review of the student's education program.
 7. At the September 11, 2019 meeting, the team discussed that the student did not attend school for most of the fourth (4th) quarter of the 2018 - 2019 school year, and that his final grades for the 2018 - 2019 school year included two (2) Cs, two (2) Ds, and five (5) Es. A review of the audio recording of the meeting documents that the complainant explained that the student was unable to attend school during this period due to a medical condition, but that her application for Home and Hospital Teaching (HHT) instruction had been denied. The IEP team specifically discussed that, during the 2018 - 2019 school year, the student had been "referred for behavior management services 101 times totaling 3,384 minutes."
 8. The IEP team also discussed that the student had not yet attended school for the 2019 - 2020 school year. As a result, the IEP team explained that they had not been able to obtain current data on the student's levels of performance. The IEP team discussed the student's continued history of "significant non-compliance when expected to follow classroom and school rules," as well as his continued struggle with appropriate peer interactions, managing conflict, and understanding how his behavior affects others. They also discussed that when corrected or redirected, the student responds with verbally combative, oppositional and disruptive behaviors that interfere with completing his work. The IEP team determined that the student continues to have needs in the area of social, emotional and behavior skills relating to self-regulation, compliance and peer interactions.
 9. At the September 11, 2019 meeting, the IEP team reviewed and revised the BIP, including adding a strategy to provide the student with the opportunity to earn rewards at each level of a four (4) level behavior system.
 10. In addition, the September 11, 2019 revised IEP reflects that the IEP team also decided to continue the same behavior goals that were in effect the previous year and expected to have been achieved by March 2019, but revised the criteria for achieving mastery of the goals, from 3 out of 4 trials to 60% accuracy.

11. A review of the audio recording of the September 11, 2019 meeting documents that the IEP team discussed the Social Emotional Learning (SEL) Program¹ at length and the intensive supports that are available through the program. The team revised the IEP to reflect that the student requires an increased amount of specialized instruction in a separate special education classroom to approximately eighty (80) hours per week, a decrease in the amount of specialized instruction in a general education classroom to approximately five (5) hours per week, and an increase in the frequency of social skills instruction to every other day. A review of the audio recording of the meeting documents the complainant's disagreement with the team's decision based on her belief that the student requires a less restrictive setting. The IEP team explained that the student continues to need the consistency, structure and supports of the SEL Program, and for a greater portion of the school day, in order to improve his behavior skills.
12. The IEP revised on September 11, 2019 and the team summary of the September 11, 2019 IEP meeting document that the complainant participated in the meeting, that the IEP team was responsive to her concerns during the meeting, and that the IEP team made revisions to the IEP based on the complainant's input. In addition, a review of the audio recording of the September 11, 2019 IEP meeting further documents that the complainant actively participated in the meeting, as did the complainant's friend who accompanied her to the meeting.
13. On September 30, 2019 the school staff referred the student to "Pupil Personnel Services" because he had not begun attending school.
14. On October 11, 2019, the school system staff sent correspondence to the complainant informing her of the referral due to the student's lack of attendance, and requesting that the complainant contact the school system staff to discuss a plan of action to improve the student's attendance.
15. On October 14, 2019, the student began attending school.
16. On November 8, 2019 IEP the school staff developed reports of the student's progress towards mastery of the IEP goals based on his performance on 18 of the 45 school days

¹ The SEL Program supports "students whose significant social, emotional, behavioral, and learning difficulties adversely impact their ability to be successful in the general education setting." The SEL Program "provides behavioral and academic support in a more structured learning environment through the implementation of a positive behavior system model" that uses a variety of behavior management interventions "to assist students with learning to manage their behavior and emotions appropriately" (2019 – 2020 ██████████ Middle School Social Emotional Learning SEL Program Handbook).

that he attended school during the reporting period. The progress reports state that the student was making sufficient progress towards achieving the IEP behavior goals.²

17. However, the November 8, 2019 progress reports also state that “during the school day, the student demonstrates poor self-management by leaving a setting, present with non-compliant behaviors - refusing to comply with staff directions/school rules and refusing to complete work.” In addition, the document that the student was referred for inappropriate behavior “18 times totaling 842 minutes” during which he “received behavior intervention services.”
18. The student’s report card reflects that his grades consisted of two (2) Bs, three (3) Ds, and one (1) E for the first (1st) quarter of the 2019 - 2020 school year.
19. On November 12, 2019, the BCPS received an application from the complainant requesting to provide the student with home instruction, which was approved on the same date.
20. On November 18, 2019, the school staff sent correspondence to the complainant confirming its notification that the student is being provided with home instruction and informing her that the student will be withdrawn from ██████████ MS.

CONCLUSIONS:

Allegation #2 Parent Participation

Based on the Findings of Facts #3 - #6, #11 and #12, the MSDE finds that there is documentation of the complainant’s participation in the September 11, 2019 IEP team meeting, in accordance with 34 CFR §300.322. Therefore, this office does not find a violation with respect to this allegation.

Allegation #3 IEP Development

Based on the Finding of Fact #2, the MSDE finds that the IEP in effect at the start of the investigation period was designed to provide the student with a Free Appropriate Public Education (FAPE).

Based on the Findings of Facts #8, #15, #16 and #18, the MSDE finds that, while the student received low grades during the first (1st) quarter of the 2019 - 2020 school year, he only attended school on 18 out of the 45 school days during the marking period. In addition, based on the

² The progress reports state that, of the 46 total days in the 1st quarter reporting period, the student only attended school 18 days, and that “this data may not be an accurate measure of progress” because the student was “absent 63% of the quarter and only present for 39% of the quarter.”

Finding of Fact #16, the MSDE finds that, during the same period of time, the student was able to make sufficient progress towards achieving the IEP behavior goals.

Based on the Findings of Facts #3 - #20, the MSDE further finds that, since July 11, 2019, the IEP team has convened and made revisions to the IEP to address the student's ongoing behaviors that continue to interfere with his ability to progress through the general curriculum, in accordance with 34 CFR §§300.101, .320, .323 and .324. Therefore, this office does not find a violation with respect to this allegation.

ALLEGATION #4 TRANSPORTATION SERVICES

FINDINGS OF FACTS:

21. There is documentation that the student was assigned to a bus route for transportation services for the 2019 - 2020 school year, and that the day care address listed as his pick-up location is the address that the complainant provided.
22. There is also documentation that on August 20, 2019, the school staff sent an electronic mail (email) message to the complainant identifying the student's bus number, as well as the pick-up and drop off times.
23. The GPS tracker system documents that the bus to which the student was assigned stopped at his day care location on several days between September 3, 2019 and September 20, 2019.

CONCLUSION:

In this case, the complainant alleges that the bus was not sent to the student's day care in order to transport him to school for the period from September 3, 2019 to September 20, 2019.

Based on the Findings of Facts #21 - #23, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find a violation with respect to this allegation.

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 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

Ms. Rebecca Rider
December 12, 2019
Page 7

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: Darryl Williams
Daniel Martz
Conya Bailey
Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum



Ms. Rebecca Rider
December 12, 2019
Page 8