




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

January 17, 2020




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

RE: 
Reference: #20-060

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 November 21, 2019, the MSDE received a complaint from Mr.  hereafter “the complainant,” on behalf of his son, 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 the Individualized Education Program (IEP) has addressed the student’s social, emotional and behavioral needs that impede his ability to access instruction and progress through the general curriculum, since November 21, 2018, in accordance with 34 CFR §§ 300.101, .320 and .324.
2. The BCPS has not ensured that the student’s Behavior Intervention Plan (BIP) has consistently been implemented, since November 21, 2018, in accordance with 34 CFR §§300.301 and .323.

3. The BCPS has not ensured that the IEP has been implemented, since November 21, 2018, in accordance with 34 CFR §§ 300.101 and .323. The complainant specifically alleged that:
 - a. The student has not consistently been provided with the counseling services required by the IEP; and
 - b. The school staff has not consistently provided the home school communications required by the IEP.
4. The BCPS did not ensure that proper procedures were followed when amending the IEP on March 5, 2019 to remove compensatory services, in accordance with 34 CFR §300.324.
5. The BCPS did not ensure that the June 10, 2019 IEP meeting included the required participants, in accordance with 34 CFR §300.321.

BACKGROUND:

The student is sixteen (16) years old and attends ██████████ High School (██████████ HS). He is identified as a student with an Other Health Impairment (OHI) under the IDEA relating to Attention Deficit Hyperactivity Disorder (ADHD). He has an IEP that requires the provision of special education and related services.

ALLEGATIONS #1 AND #2

**ADDRESSING THE STUDENT’S SOCIAL,
EMOTIONAL AND BEHAVIORAL NEEDS
IMPACTING HIS PROGRESS THROUGH THE
GENERAL CURRICULUM, AND BIP
IMPLEMENTATION**

FINDINGS OF FACTS:

1. The IEP in effect at the start of the investigation period was developed on February 28, 2018. The IEP identifies that the student’s behavioral needs relate to his on-task behaviors, impulse control, and peer relationships. It states that the student’s “OHI, specifically ADHD, makes it difficult for him to concentrate in his classes and to learn grade level curriculum.” The IEP also states that, while the student “most times” complies with rules, expectations and engages in class “without incident,” there are times when he is off-task, fails to follow directions, and is “very provocative in his interactions with adults and peers.”

2. The IEP documents that the student, who was in the eighth grade at the time, was functioning at the fourth grade level in reading comprehension, writing and math. The IEP includes annual goals in each of these academic areas, which were expected to be achieved by February 2019.
3. The IEP also includes two (2) behavioral goals that were expected to be achieved by February 2019. The behavior “work habits” goal requires that the student “actively work on the assigned task(s), using attentive posture (e.g. sitting up), and will refrain from off-task behaviors (e.g. disrupting other student, daydreaming, walking around) for the duration of the activity (e.g. 10 minutes).” The behavior “problem solving” goal requires that the student will use a “break card” and “remain calm (e.g. refrain from yelling, cursing and/or being verbally/physically aggressive) when a perceived problem arises (e.g. disagree with teacher, presentation of difficult task, change in routine, argument with peer) and will accept assistance from an adult to problem solve in structured setting on (4) out of (5) opportunities.”
4. The IEP reflects that the student has a Functional Behavior Assessment (FBA) dated February 28, 2018. The FBA identifies two (2) interfering behaviors, specifically that the student “elopes” from the classroom and cafeteria, and that he has “inappropriate peer interactions” that include cursing, yelling, and calling out.
5. The IEP also reflects that the student requires a BIP because of his “very impulsive behavior” that impacts his academic performance and social skills. The BIP, which was developed on February 28, 2018, includes two (2) goals that require the student to “engage in socially appropriate behaviors when angered or frustrated,” and to “increase his safety and time” in class by participating in instruction and remaining in assigned areas. The BIP requires the use of numerous strategies, including the following:
 - Positive attention and feedback for appropriate behavior and continuous work performance, including praise;
 - Assign leadership or helping responsibilities in the classroom;
 - Offer choices whenever possible;
 - Prompting to use self-management strategies and “cool down” area of classroom;
 - Posted visuals of classroom rules and reference to the rules in a positive manner;
 - Private counseling with the student about inappropriate behavior, and redirect to task in a positive, calm manner when showing signs of distraction or inattention;
 - Avoid “power struggles and verbal arguments/confrontations” with the student, including negative messages and confrontational tone;
 - Intermittent monitoring during independent seat work;
 - Checks for understanding of task requirements and directions;
 - Chunking of assignments;
 - Frequent reminders on how to request a break during instruction, and offering the option of moving to a quiet area to work;

- Use of preferred activities as incentives and rewards for performing less preferred tasks;
 - Clearly communicate of behavior expectations and consequences;
 - Provide two (2) choices with a time limit for the student to comply with directions, and positive reinforcement for “good” choices; and
 - Provide a change of setting with support staff to assist with the use of coping strategies and behavior self-management techniques to process a problem.
6. The BIP also outlines a “response plan” that requires teacher redirection, prompting to use self-management strategies, prompting to use the “cool down” space in the classroom, and the provision of a different setting with support staff to help the student use coping strategies and self-management techniques to process a problem. The BIP also requires that the parent be notified when the “response plan” is needed.
 7. The BIP reflects that data collection is required in order to monitor its effectiveness. It specifically identifies that the monitoring of the BIP will be determined based on a record review, informal assessments, anecdotal records, point sheets/behavior charts, classroom performance and observation.
 8. The IEP requires accommodations and supplementary supports to assist the student. These include frequent breaks, reduced distractions, extended time, crisis intervention, preferential seating, a daily point sheet, and altered/modified assignments.
 9. To assist the student with achieving the goals, the IEP requires seven and one-half (7.5) hours per week of specialized instruction in a general education classroom, provided primarily by a general education teacher. It also requires that the student receive two (2) half hour sessions per month of social work services.
 10. In November 2018, the school staff documented that the student was not making sufficient progress towards mastery on two (2) of the IEP goals. The reports state that the student was “frequently too distracted to complete his work, which negatively impacts his learning,” and that he “has not completed enough classwork to determine if progress has been made.” The November 2019 progress reports also state that the student “has not responded positively to behavioral interventions and supports,” and that he “continues to distract and incite others regardless of interventions such as reseating, verbal prompting, proximity control, time away and parent conference.”
 11. The student’s report card for the first quarter of the 2018 - 2019 school year reflects that he failed two core academic courses.

December 12, 2018 IEP Meeting

12. On December 5, 2018, the complainant sent an electronic mail (email) message to the school staff requesting an IEP meeting due to concerns about the student’s grades and emails that he was receiving about the student’s behavior, grades, and class participation. On the same date, the school staff offered to convene on December 11 or 12, 2018.

13. On December 12, 2018, the IEP team convened. While there is no documentation that the complainant agreed to convene with the team on this date, the written summary of the meeting reflects that the complainant “attended the meeting in person.”
14. Although the complainant was present at the December 12, 2018 IEP meeting, he did not want to waive his right to receive at least ten (10) days advance notice of a meeting. Therefore, the IEP team did not move forward with the meeting and the parties agreed to reconvene after winter break.

February 2019 IEP Team Meetings

15. On February 7¹ and 14, 2019, the IEP team convened (collectively, the February 2019 IEP meeting) and conducted the annual review of the student’s education program.
16. At the February 2019 IEP meeting, the school staff reported that the student “rarely” completes work, “rarely attempts work assigned,” does not turn in homework assignments and does not participate in class. The school staff also reported that the student “frequently” shouts inappropriate comments and profanity during class, is distracting to himself and others in class, “occasionally” makes inappropriate sexual comments, and does not follow teacher directions. They further reported that the student struggles with engaging in healthy relationships with his peers and appropriate behavior with the school staff, and that “several incidents” of his behavior had resulted in his removal from the classroom.
17. At the February 2019 IEP meeting, the team discussed that the student was functioning approximately four (4) years below his actual/assigned grade level, specifically at grade levels 4.5 in reading, 4.2 in writing, and 4.9 in math. When compared to the student’s levels of functioning identified a year earlier in the February 2018 IEP, these levels represent some improvement in the student’s reading skills (0.5 grade level increase) and math skills (0.9 grade level increase), but also represent that the student did not make any improvement in his writing skills for a full year.
18. The IEP team considered the reports of the student’s progress towards mastery of the IEP goals. The reports reflect that, during the first quarter of the 2018 – 2019 school year, the student did not make sufficient progress towards mastery on two (2) of the IEP goals. The reports also reflect that the student did not make sufficient progress towards mastery on any of the five (5) IEP goals during the second quarter of the school year. The IEP team also discussed that the student was failing four (4) core academic courses.

¹ There is documentation that the parties were unsuccessful in their attempts to schedule the meeting on a mutually agreeable date prior to February 7, 2019.

19. There is no documentation that the student achieved any of the IEP goals that he was expected to have achieved as of the time of the IEP meeting. Based on the reported progress, the IEP team revised the goals and added a supplementary support requiring teachers to send weekly email communications to the complainant.
20. The IEP team also made revisions to the BIP, which include a requirement that teachers provide weekly email reports to the complainant, the use of a school-wide incentive system for reward opportunities as an additional strategy, and a requirement that the student complete a reflection sheet as part of the “response plan.”
21. The IEP team increased the amount of specialized instruction that the student requires in a general education classroom to fifteen (15) hours per month. They also determined that the student requires an additional forty-five (45) hours per month of specialized instruction, to be provided in a separate special education classroom with a lower student to teacher ratio.
22. At the February 2019 IEP meeting, the complainant expressed concern that the student was not engaged in academic activities. He also expressed concern about the student’s “current placement at [REDACTED] and the ability of BCPS to provide appropriate services.” The complainant requested a nonpublic school placement for the student. The IEP team agreed to reconvene with the participation of a representative from the BCPS Office of Special Education to discuss the request.

April 26, 2019 IEP Team Meeting

23. On April 26, 2019, the IEP team convened to review the student’s progress and to discuss a possible change in placement. The team included a representative from the BCPS Office of Special Education.
24. The IEP team discussed that the student was making sufficient progress towards mastery of all of the IEP goals. They also discussed that, while the student failed two (2) core academic courses during the third marking period of the 2018 - 2019 school year, he also received passing grades in two (2) core academic courses.
25. The written summary of the April 2019 IEP meeting states that “The representative from the Office of Special Education was in attendance, and informed the team that the current IEP does not fully reflect all of the student’s behaviors and/or needs,” and that the school system staff would revise the IEP and send a draft to the complainant.
26. The complainant expressed his continued concern that the student needs a more restrictive placement in a nonpublic school because his placement at [REDACTED] HS does not meet his unique needs. The IEP team agreed to reconvene to discuss a possible change in placement after the IEP was revised.

June 10, 2019 IEP Meeting

27. On June 10, 2019, the IEP team reconvened. The IEP team updated the student's academic levels of present performance to reflect his functioning at the 5.0 grade level in reading and math, and at the 3.5 grade level in writing. While this data represents some improvement in the student's reading and math skills since February 2019, it also documents a decrease in the student's writing skills. These levels also document that the student was functioning approximately three (3) years below his assigned grade level in reading and math, and approximately five (5) years below his assigned grade level in writing.
28. The IEP team also updated information in the IEP about the student's present levels of functioning in the area of behavior, which reflect that the student struggles with redirection, paying attention to instruction and tasks, participating in class discussions, asking for assistance, and has difficulty with "accepting responsibility for his actions and managing his emotions." The updated information further reflects reports by some teachers that the student does not engage in appropriate peer or adult interactions, is disruptive, "elopes" from class, is off-task, is "disrespectful," and becomes "easily" distracted by others around him."
29. At the June 2019 meeting, the IEP team also reviewed the June 2019 progress reports which reflect that the student was making sufficient progress towards mastery of all of the IEP goals.
30. Based on the updated data about the student's functioning, the IEP team revised the reading goal, and added a supplementary support allowing the student the use of a word processor to support his spelling and grammar.
31. At the June 2019 IEP meeting, the complainant expressed concern that the student's class sizes are too large and that he needs special education services in "a much smaller environment."
32. The IEP team discussed placement options and determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a public high school, and that his placement would continue at ██████████ HS. The IEP team documented the complainant's disagreement with this decision.
33. There is no documentation that the IEP team addressed the complainant's concern that the student needs smaller class sizes at the June 2019 meeting.
34. The student's year-end report card for the 2018 - 2019 school year reflects that he failed two (2) core academic courses.

2019 – 2020 School Year

35. On October 1, 2019, the school staff documented that “for quite some time,” the student has not been “paying attention and refuses to do work in my class.”
36. The student’s report card for the first quarter of the 2019 - 2020 school year reflects that he failed one (1) core academic course.
37. On November 4, 2019, the school staff developed progress reports that document that the student was not making sufficient progress towards mastery of one (1) of the IEP goals. The reports include statements from some of the student’s teachers that the student is “actively engaged” in class, participates in class, is “very attentive” in class, and “works well” with peers. However, they also include statements by some of the student’s teachers that is not completing “a majority of assignments,” is frequently on his phone, and frequently “speaks over” his peers and the teacher during class time.

November 21, 2019 IEP Meeting

38. On November 21, 2019, the IEP team convened at the complainant’s request. The social worker reported that the student was participating in more than the twice a month sessions that the IEP requires. The written summary of the meeting documents that, after the complainant agreed to allow the social worker to leave the meeting, he requested an increase in the student’s social work services. The IEP team documented that the school staff would consult with the social worker about the request.
39. At the November 2019 IEP meeting, the complainant requested a reevaluation of the student. The IEP team agreed to the request and the complainant provided written consent. The IEP team agreed to reconvene before February 18, 2020 to review the results of the reevaluation.
40. There is documentation that, following the November 2019 IEP meeting and continuing through December 8, 2019, the school staff sent numerous emails to the complaint reporting that the student was continuing to display interfering behaviors that included walking out of the classroom, not completing classwork, being “disruptive,” and refusing to follow directions.
41. There is some documentation that, at times during the investigation period, some of the school staff have utilized some of the strategies that are required by the BIP.

CONCLUSIONS:

Allegation #1

IEP That Addresses the Student’s Social, Emotional and Behavioral Needs

Based on the Findings of Facts #1 - #40, the MSDE finds that, while the IEP includes goals and supports and requires interventions through a BIP to improve the student’s behavior, the student

has not been responsive to these behavioral supports and interventions and the IEP team has not addressed this, in accordance with 34 CFR §§ 300.101, .320 and .324.

Based on the Findings of Facts #31, #33 and #38, the MSDE further finds that there is no documentation that the IEP team has considered the complainant's requests for an increase in social work services and smaller classes for the student, in accordance with 34 CFR §300.324. Therefore, the MSDE also finds violations with respect to this allegation.

Allegation #2 BIP Implementation

Based on the Findings of Facts #7, #12 - #39 and #41, the MSDE finds that, while there is documentation that some of the BIP requirements were implemented by some of the school staff, there is no documentation that the school staff have monitored the effectiveness of the BIP through the data collection that the BIP requires, in accordance with 34 CFR §§300.301 and .323. Therefore, this office finds a violation with respect to this allegation.

ALLEGATION #3 PROVISION OF SOCIAL WORK SERVICES AND HOME-SCHOOL COMMUNICATIONS

FINDINGS OF FACTS:

Social Work Services

42. Since November 21, 2018, the IEP has required that the student receive social work services twice a month.
43. There is no documentation that the student was provided with social work services from November 21, 2018 through February 13, 2019.
44. On February 14, 2019, the IEP team agreed to provide the student with social work services twice a week, from February 14, 2019 to March 29, 2019, as compensatory services for the "missed sessions from the beginning of the school year." There is documentation of the provision of these services during this time period.
45. There is documentation that, since April 2019, the student has received social work services twice a month.

Home-school Communications

46. The IEP developed by the team on February 7, 2019 includes a supplementary support that requires "weekly email communications from classroom teachers." In clarifying this support, the IEP states that "the father will receive weekly progress reports."

47. At the April 26, 2019, June 10, 2019, and November 21, 2019 IEP meetings, the complainant reported that he was not receiving weekly communications from teachers.
48. There is no documentation of weekly email communications from the school staff to the complainant, from November 21, 2018 to November 21, 2019. However, there is documentation, since November 22, 2019, of regular email communications from the school staff to the complainant.

CONCLUSIONS:

Social Work Services

Based on the Findings of Facts #42 and #43, the MSDE finds that, from November 21, 2018 through February 13, 2019, the BCPS did not ensure that the student was provided with the social work services required by the IEP, in accordance with 34 CFR §§ 300.101 and .323. Therefore, the MSDE finds a violation for this time period with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #44, the MSDE finds that the BCPS determined and provided compensatory services to the student for the missed social work services, and therefore does not require any student specific corrective action.

Home-School Communications

Based on the Findings of Facts #46 - #48, the MSDE finds that there is no documentation that the school staff provided the complainant with weekly email reports required by the IEP from November 21, 2018 to November 21, 2019, in accordance with 34 CFR §§ 300.101 and .323. Therefore, the MSDE finds a violation for this time period with respect to this aspect of the allegation.

ALLEGATION #4

IEP AMENDMENT

FINDINGS OF FACTS:

49. On February 14, 2019, the IEP team revised the IEP to reflect the additional social work services twice a week, from February 14, 2019 to March 29, 2019, that the IEP team determined were required as compensatory services.
50. On March 5, 2019, the school staff developed a form requesting the consent of the complainant to amend the IEP without a team meeting in order to remove the compensatory social work services from the IEP. There is no documentation that the complainant agreed to the IEP amendment. However, the school staff revised the IEP to remove the compensatory social work services from the IEP.

CONCLUSION:

Based on the Findings of Facts #49 and #50, the MSDE finds that the BCPS did not ensure that proper procedures were followed when the IEP was revised outside of an IEP meeting without agreement of the complainant, in accordance with 34 CFR §300.324. Therefore, the MSDE finds a violation.

Notwithstanding the violation, based on the Finding of Fact #44, the MSDE finds that the student received the social work services compensatory services.

ALLEGATION #5 IEP TEAM PARTICIPANTS AT THE JUNE 2019 MEETING

FINDINGS OF FACTS:

51. On June 10, 2019, the IEP team convened to review the student's progress. The complainant expressed concern that the student's class sizes are too large and requested "a much smaller environment" for his educational setting.
52. During the meeting, the IEP team discussed the complainant's request that the team include a representative from the BCPS Central Office to address his request for a nonpublic placement for the student. The written summary of the meeting documents the complainant's "disappointment" that the IEP team did not include a representative from central office staff.
53. There is documentation that the IEP team discussed placement options for the student, and determined that the LRE in which the IEP could be implemented is a public school.
54. There is no documentation that there were placement concerns or placement options that the IEP team participants were unable to address at the June 10, 2019 meeting.

CONCLUSION:

In this case, the complainant alleges that the June 10, 2019 IEP meeting did not include the participation of school system staff from the Office of Special Education as a required member who was necessary to make decisions regarding the student's placement.

Based on the Findings of Facts #51 - #54, the MSDE finds that the facts do not support the allegation, and therefore does not find a violation.

CORRECTIVE ACTION/TIMEFRAMES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including

technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner. This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the timeframes below may not be met, or if either party seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the BCPS to provide documentation by April 1, 2020 that the IEP team has done the following:

- a. Collected data regarding the effectiveness of the BIP, consistent with the requirements of the BIP and has reviewed and revised the IEP and BIP, as appropriate, based on the data, and considered positive behavior interventions; and
- b. Considered the complainant's request for smaller class size and increased social work services and reviewed and revised the IEP consistent with the data.

The MSDE also requires the BCPS to provide documentation by March 1, 2021 that the IEP team has convened at the end of each quarter, beginning with the fourth quarter of the 2019 – 2020 school year and continuing each quarter until March 2021. The documentation provided must reflect that, at each meeting, the IEP team has reviewed and revised the IEP and BIP, as appropriate, consistent with the ongoing data collection regarding the effectiveness of the BIP and the student's progress towards achievement of the annual IEP goals.

School-Based

The MSDE requires the BCPS to provide documentation by April 1, 2020, of the steps it has taken to ensure that the [REDACTED] HS staff comply with the IDEA requirements for addressing behavior that interferes with a student's access to instruction and academic achievement, addressing parental concerns and requests, amending the IEP outside of a team meeting, and IEP implementation.

Ms. Rebecca Rider

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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.

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 timeframes 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 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

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