

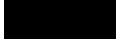


Karen B. Salmon, Ph.D.
State Superintendent of Schools

January 24, 2020




Dr. Debra Brooks
Director of Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204 B
Baltimore, Maryland 21202

RE: 
Reference: #20-062

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.

ALLEGATIONS:

On November 27, 2019, the MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of daughter, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the student has been provided with scribe and text to speech accommodations, as required by the Individualized Education Program (IEP), since March 2019, in accordance with 34 CFR §§ 300.101 and .323.
2. The BCPS did not ensure that a language interpreter was provided for the IEP team meeting held in March 2019, in accordance with 34 CFR §300.322.

3. The BCPS did not provide written notice of the IEP meetings held in June 2019, in accordance with 34 CFR §§300.322, .501, and COMAR 13A.05.01.07.
4. The BCPS did not provide the required documents at least five (5) business days before the scheduled IEP team meeting held in June 2019, in accordance with COMAR 13A.05.01.07.
5. The BCPS has not ensured that the IEP addresses the student's assistive technology (AT) needs since June 2019, in accordance with 34 CFR §§300.101 and .324.
6. The BCPS did not provide an IEP within five (5) business days of the March 2019 and November 2019 IEP team meetings, in accordance with COMAR 13A.05.01.07.

BACKGROUND:

The student is eight (8) years old and is identified as a student with an Other Health Impairment under the IDEA, related to attention deficit and limited physical mobility. She attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: SCRIBE AND TEXT TO SPEECH ACCOMMODATIONS

FINDINGS OF FACTS:

1. The IEP in effect since March 2019, has required that the student be provided with the accommodation of a scribe for instruction in math, science, government, and English.
2. The documentation provided by the BCPS does not reflect that the student has been consistently provided with a scribe for instruction in math, science, government, and English, since March 2019.
3. On November 11, 2019, the IEP team reviewed classroom assessments, progress reports, and parental and teacher input, and revised the IEP to include text to speech as an accommodation. The team also determined that the student did not receive all of her special education instruction and support required by the IEP, from March 2019 to November 2019. The BCPS offered compensatory services to remediate the violation. The meeting summary reflects that the complainants accepted the compensatory service offer; however, the parties report that the services have not been provided because of the disagreement on how the services are to be provided.
4. The documentation does not demonstrate that the provision of text to speech has been consistently provided to the student since November 2019.

CONCLUSION:

Based on the Findings of Facts #1 - #4, the MSDE finds that the BCPS has not ensured that the student has been consistently provided with the scribe as required by the IEP, since March 2019, and text to speech since November 11, 2019, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation. Notwithstanding the violation, based on the Finding of Fact #3, the MSDE finds that the BCPS has offered compensatory services for the lack of the provision of special education instruction and support from March 2019 to November 2019.

ALLEGATION #2: AN INTERPRETER FOR THE MARCH 2019 IEP TEAM MEETING

FINDING OF FACT:

5. On March 18, 2019, the IEP team, which included the complainants, convened to review and revise the student's IEP, as appropriate. The IEP meeting notice reflects that an interpreter was invited to attend the meeting in order for the student's father to participate. The school staff reported having difficulties securing an interpreter for the meeting. There is no evidence to support that an interpreter participated in the meeting. There is documentation that an interpreter has been provided in past IEP team meetings for the student's father, as well as in IEP meetings held subsequent.

CONCLUSION:

Based on the Finding of Fact #5, the MSDE finds that an interpreter was not provided for the March 18, 2019 IEP team meeting, in accordance with 34 CFR §300.322. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #5, the MSDE finds that both parents attended the IEP team meeting. In addition, the IEP team convened in a subsequent meeting and provided an interpreter for the student's father. Therefore, no student-specific corrective action is required.

ALLEGATIONS #3 AND #4: PARTICIPATION IN THE JUNE 2019 IEP TEAM MEETING AND THE PROVISION OF REQUIRED DOCUMENTS

FINDINGS OF FACTS:

6. There is documentation that on June 3, 2019, the school staff mailed the complainants the written notice of a June 6, 2019 IEP team meeting, and the IEP documents to be considered at the meeting, which included the student's AT assessment and progress reports.

7. The school communication log, IEP, and team meeting sign-in sheet, dated June 6, 2019, reflect that the student's mother participated in the June 6, 2019 IEP team meeting by telephone. There is also documentation that the complainants participated in IEP meetings held subsequent.

CONCLUSIONS:

Allegation #3: Participation in the June 2019 IEP Team Meeting

In this case, the complainants alleged that they were not provided with written notice to participate in the June 2019 IEP team meeting.

Based on the Findings of Facts #6 and #7, the MSDE finds that there is documentation that the complainants were provided with written notice to participate in the June 2019 IEP team meeting. However, based on the Findings of Facts #6, the MSDE finds that the documentation does not support that the written notice was provided to the complainants in the timeframe required by law, in accordance with 34 CFR §§300.322, .501, COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #7, the MSDE finds that there is documentation to support that the student's mother participated in the meeting and that the complainants participated in subsequent IEP team meetings. Therefore, no student-specific corrective action is required.

Allegation #4: Provision of Documents in Advance of the June 2019 IEP Team Meeting

In this case, the complainants alleged that they were not provided with the AT assessment prior to the June 6, 2019 IEP team meeting.

Based on the Finding of Fact #6, the MSDE finds that there is documentation that the complainants were provided with the required documents to be discussed at the June 2019 IEP meeting. However, based on the Findings of Facts #6, the MSDE finds that the documentation does not support that the required documents were provided to the complainants in the timeframe required by law, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #6 and #7, the MSDE finds that the complainants have been provided with the documents, and have had the opportunity to address concerns through participating in subsequent IEP team meetings. Therefore, no student-specific corrective action is required.

ALLEGATION #5: ADDRESSING THE STUDENTS ASSISTIVE TECHNOLOGY NEEDS

FINDINGS OF FACTS:

8. The June 6, 2019 IEP team meeting summary reflects that the team reviewed the student's AT assessment results. The assessment report states that the student "is functioning at a written expression level which is commensurate with her reading level. She does display

some deficits in fine motor skills that are being addressed in occupational therapy. She was also able to communicate verbally with good intelligibility. No assistive technology services are recommended at this time."

9. On November 15, 2019, the IEP team convened to discuss the student's progress, and to review and revise the IEP, as appropriate. The IEP reflects that the complainants requested an AT trial for the student, and that the team decided to permit the student to use AT devices on a trial basis.

CONCLUSION:

Based on the Findings of Facts #8 - #9, the MSDE finds that the IEP team has addressed the student's AT needs since June 2019, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #6: THE PROVISION OF DOCUMENTS FOLLOWING THE MARCH 2019 AND NOVEMBER 2019 IEP TEAM MEETINGS

FINDINGS OF FACTS:

10. On March 18, 2019, the IEP team convened to review and revise the student's IEP, as appropriate. There is documentation that, on April 1, 2019, the BCPS mailed the complainants the IEP that was developed at the meeting.

11. On November 15, 2019, the IEP team convened to review and revise the student's IEP, as appropriate. There is documentation that, on December 3, 2019 the BCPS mailed the complainants the IEP that was developed at the meeting.

CONCLUSION:

Based on the Findings of Facts #10 and #11, the MSDE finds that the BCPS did not provide an IEP within five (5) business days of the March 2019 and November 2019 IEP team meetings, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the same Findings of Facts, the MDSE finds that the complainants were subsequently provided with the IEP for the March 2019 and November 2019 IEP team Meetings. Therefore, no student-specific corrective action is required.

CORRECTIVE ACTIONS/TIMELINES:

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 time frames below to ensure that noncompliance is corrected in a timely manner.¹ 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 time frames 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.² Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the BCPS to provide documentation by March 31, 2020 that the IEP team has convened and determined whether the violation related to the lack of provision of scribe and text to speech, from November 11, 2019 to January 2020, had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The BCPS must ensure that the complainants are provided with written notice of the team's decisions. The complainants maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

School-Based

The MSDE requires the BCPS to provide documentation by March 31, 2020 of the steps taken to ensure that the violations do not recur at [REDACTED] Elementary School.

TECHNICAL ASSISTANCE:

Technical assistance is also available to the parties by contacting Dr. Nancy Birenbaum.

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 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/Special Education Services

MEF:ac

c: Sonja B. Santelises
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