




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

February 3, 2020




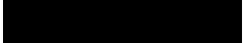
Ms. Rebecca Rider  
Director of Special Education  
Baltimore County Public Schools  
The Jefferson Building  
105 West Chesapeake Avenue  
Towson, Maryland 21204

RE:   
Reference: # 20-063

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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.  and Mr.  hereafter the “complainants.” 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 their son, the above-referenced student.

While there is a sixty (60) day timeline for completion investigation process, the parties were notified on January 24, 2020 that the timeline for completion of this Letter of Findings was extended, which was necessary to permit the MSDE to review documentation provided by the complainants on January 23, 2020. This correspondence is the report of the final results of our investigation.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that Individualized Education Program (IEP) team meetings convened between November 27, 2018 and the end of the 2018-2019 school year, included the required participants, in accordance with 34 CFR §§300.321;
2. The BCPS did not provide written invitations to IEP team meetings, held between November 27, 2018 and the end of the 2018-2019 school year, that contained information about the purpose of the meetings, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D;
3. The BCPS did not ensure that accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the IEP team meetings, from November 27, 2018 to the end of the 2018-2019 school year, were provided at least five (5) business days before each scheduled meeting, in accordance with COMAR 13A.05.01.03B(9);
4. The BCPS did not provide proper written notice of the IEP team's decisions from the IEP team meetings held between November 27, 2018 and the end of the 2018-2019 school year, in accordance with 34 CFR §300.503;
5. The BCPS did not ensure the provision of reports of the student's progress towards achievement of the annual IEP goals, based on the data collection method required by the IEP, from November 27, 2018 through the second quarter of the 2018-2019 school year, in accordance with 34 CFR §§300.101 and .323;
6. The BCPS has not ensured that the student's need to improve communication and self-advocacy skills has been addressed since November 27, 2018, in accordance with 34 CFR §§300.101, .320 and .324; and
7. The BCPS did not interview the student following an incident on November 29, 2018, as required by the IEP, in accordance with 34 CFR §§300.101 and .323.

**BACKGROUND:**

The student is eleven (11) years old and attends [REDACTED]. During the 2018-2019 school year he attended [REDACTED]. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education services.

**ALLEGATIONS #1 - #4: IEP TEAM MEETINGS:**

**Finding of Facts:**

**November 29, 2018 IEP Team Meeting to Review Progress**

1. On November 29, 2018, the IEP team convened in response to the complainants' request to review the student's progress. The Parent Notification of IEP Team Meeting stated the purpose of the meeting was to "review and revise the IEP."
2. The documentation of the IEP meeting reflects that the team discussed that the teacher had Not measured progress in the manner described by the IEP and, therefore, the team did not review progress reports. Instead, they agreed to reconvene at a later date to develop an appropriate reporting system. There is no evidence that the team considered any other documents at this meeting.
3. The documentation of the meeting further indicates that the team included the complainants, the speech/language pathologist, general and special education teachers of the student, and a representative of the public agency.
4. The documentation of the team's decisions was provided to the complainants on November 30, 2018.

**April 5, April 23, and June 14, 2019 IEP Team Meetings to Conduct Annual IEP Review**

5. On April 5, 2019, the IEP team began developing Present Levels of Academic Achievement and Functional Performance (PLAAFP).
6. On April 23, 2019, the team reconvened and developed accommodations, goals and services. A decision was also made to reconvene again to complete the annual review subsequent to input from the complainants' advocate and parent review of the draft IEP.
7. On June 14, 2019 the IEP team met and finalized the IEP. Additionally, the team reviewed the Behavior Intervention Plan (BIP) in preparation for the student's move to middle school.
8. On each day of the IEP team review, the team included the complainants, general and special education teachers of the student, and a representative of the public agency.
9. There is no documentation that a written invitation was sent to the complainants for the April 5, 2019 IEP date. However, the parents participated in the meeting.

10. The notification of IEP team meeting for April 23, 2019 states the purpose was to “conduct annual review of IEP and discussion of need for extended school year service.” The notification of IEP team meeting for June 14, 2019 states that the purpose was to review and revise the IEP.
11. There is documentation that the complainants were provided with a draft IEP and teacher reports five (5) business days before the team reviewed them on April 5, 2019 and April 23, 2019.
12. There is no documentation that a Behavior Intervention Plan (BIP) was provided to the complainants five (5) days before it was reviewed on June 14, 2019.
13. There is documentation that written notice of the decisions made on April 5, 2019 was given to the parents on that date.
14. There is documentation that written notice of the decisions made on April 23, 2019 was sent to the complainants on April 29, 2019.
15. There is no documentation that written notice of the decisions made on June 14, 2019, including decisions about the revisions to be made to the IEP and BIP, was provided to the complainants.

### **Discussion/Conclusions:**

In this case, the complainants allege that procedural safeguards were violated with respect to required participants at IEP team meetings, IEP team meeting notifications and stated purposes, relevant documents to be provided at IEP team meetings, and prior written notice requirements.

#### **Allegation #1: IEP Team Participants**

Based on the Findings of Facts #3 and #8, the MSDE finds that all required participants were present at each IEP team meeting held between November 27, 2018 and the end of the school year, in accordance with 34 CFR §§300.321. Therefore, no violation occurred with respect to this allegation.

#### **Allegation #2: Written Invitations to the IEP Team Meetings**

Based on the Finding of Facts #1 and #10, the MSDE finds that for the IEP meetings held on November 29, 2018, April 23, 2019 and June 14, 2019, written invitations were provided to the complainants, which stated the purpose of the IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.

However, based on Finding of Fact #9, the MSDE finds that for the IEP meeting held on April 5, 2019, there was no written invitation provided to the complainants. Therefore, a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #5, the MSDE finds that the violation did not impact the complainants' ability to participate in the IEP review because the review was continued on subsequent dates and they were provided with written notice of the purpose for those dates. Therefore, no student-based corrective action is required.

**Allegation #3: Provision of Documents Prior to IEP Team Meetings**

Based on the Findings of Facts #2, the MSDE finds that there were no documents considered by the IEP team on November 29, 2018 to be provided to the complainants. Therefore, this office does not find a violation with respect to this aspect of the allegation.

Based on Finding of Fact #11, the MSDE finds that the complainants were provided with a copy of a draft IEP and teacher reports five (5) business days before they were considered by the IEP team on April 5, 2019 and April 23, 2019, in accordance with COMAR 13A.05.01.03B(9). Therefore, no violation occurred with respect to this aspect of the allegation.

Based on Finding of Fact #12, the MSDE finds that there is no documentation that the complainants received an accessible copy of a draft BIP that was reviewed at the IEP team meeting dated June 14, 2019, in accordance with COMAR 13A.05.01.03B(9). Therefore, a violation occurred with respect to this aspect of the allegation.

**Allegation #4: Provision of Prior Written Notice of IEP Team Meetings**

Based on the Finding of Facts #4, #13 and #14, the MSDE finds that written notice of the decisions made at the November 29, 2018, April 4, 2019 and April 23, 2019 IEP team meetings was provided to the complainants. Therefore, no violation occurred with respect to these aspects of the allegation.

Based on the Finding of Fact #15, the MSDE finds that written notice of the decisions made at the June 14, 2019 IEP team meeting was not provided to the complainants, in accordance with 34 CFR §300.503. Therefore, the MDSE finds that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION #5: PROGRESS REPORTS**

**Findings of Facts:**

16. There is documentation that, when preparing for an IEP team meeting to review the student's progress on November 29, 2018, the [REDACTED] staff discovered that the student's case manager had not collected data to measure progress towards achievement of the annual IEP goals in the manner described in the IEP. As a result, a new case manager was assigned.
17. There is documentation that progress was not measured appropriately between the November 29, 2018 IEP team meeting and the end of the second quarter.
18. Subsequent to the assignment of a new case manager for the student, there is documentation of communication between the special education teacher, parent and adult aid regarding new documentation strategies and reporting tools.

**Discussion/Conclusion:**

In this case, the complainant alleges that the BCPS did not report progress through observation records as stated in the IEP.

Based on the Finding of Facts #16-#17, the MSDE finds that the IEP team did not provide progress reports in the manner set forth in the IEP, from November 27, 2018, through the second quarter of the 2018-2019 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Facts #18, the MSDE finds the special education teacher, parent and adult aid have taken steps to ensure that progress is measured and reported properly in the future. Therefore, no further corrective action is required.

**ALLEGATION #6: COMMUNICATION AND SELF ADVOCACY SKILLS**

**Findings of Facts:**

19. The IEP requires consultation between a speech/language pathologist and the student's teachers to assist the student with social communication skills. It also requires that the student participate in a social skills group to support his social skills development.
20. The BIP in effect at the time of this investigation, dated May 11, 2018, required that the student participate in "lunch bunches" and be "provided with conflict resolution opportunities when situations arise."

21. There is no documentation that the student has exhibited difficulty in socializing with peers at school, and he participates in a drama club.
22. During the 2018-2019 school year, the complainants filed a report of an incident of bullying, which was investigated by the school staff and found to be unsubstantiated.

**Discussion/Conclusion:**

In this case, the complainants allege that the student's self-advocacy and communication needs were not met with respect to peer interactions.

Based on the Findings of Facts #19 - #22, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find a violation with respect to this allegation.

**ALLEGATION #7:**                      **STUDENT INTERVIEW**

**Finding of Fact:**

23. The student was interviewed following the filing of a report of bullying. However, this interview was not required by the IEP nor does the IEP require supports to be provided outside of normal school activities.

**Discussions/Conclusions:**

In this case, the complainant alleges that the BCPS did not ensure that the student was provided with the IEP supports when he was interviewed as part of the investigation of a reported bullying incident.

Based on Finding of Fact #23, the MSDE finds that the IEP does not require the student be provided with IEP supports as part of any investigation of a bullying report. Therefore, the MSDE does not find that violation occurred with respect to this allegation.

**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 any corrective actions listed below.

The MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> This office will follow up with the public agency to support it in working toward completion of required actions.

If the public agency anticipates that any of the timeframes below may not be met, it should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770.

**Student Specific:**

The MSDE requires the BCPS to provide documentation by March 1, 2020 that it has provided the complainants with a copy of the IEP and BIP that were finalized at the June 14, 2019 IEP team meeting.

**School-Based:**

The MSDE requires the BCPS to provide documentation by March 1, 2020 of the steps taken to ensure that proper procedures are followed at the [REDACTED] with respect to providing documents in advance of IEP team meetings, notifications of IEP team meetings at least ten (10) calendar days in advance of a meeting, and written notice of the decisions made at IEP team meetings.

**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

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) requires that the public agency correct noncompliance in a timely manner, which is as soon as possible within one (1) year from the date of identification of the noncompliance, unless providing additional time is appropriate, such as for example when it is appropriate to provide compensatory services to a student over a period of more than one (1) year. 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.

<sup>2</sup> 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.



  
Ms. Rebecca Rider  
February 2, 2020  
Page 9


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 and Special Education Services

MEF:dee

c: Darryl L. Williams  
Dan Martz  
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Diane Eisenstadt  
Nancy Birenbaum