



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

February 3, 2020

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

RE: XXXXX  
Reference: #20-065

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 December 5, 2019, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter “the complainant,” on behalf of her son, 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 student.

The MSDE investigated the allegation that the BCPS has not ensured that the student has been offered an appropriate program and placement that addresses his academic, social, emotional needs, since December 5, 2018, in accordance with 34 CFR §§300.101, .114 - .116, .320 and .324.

**BACKGROUND:**

The student is nine (9) years old and is identified as a student with Autism under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX (XXXXXXX ES) and has an IEP that requires the provision of special education and related services.

## **FINDINGS OF FACTS:**

### **December 2018 IEP**

1. The IEP in effect on December 5, 2019 was developed on December 4, 2018. It identifies that the student has needs in the areas of math calculation, math problem solving, reading phonics, reading comprehension, written language expression, receptive and expressive speech and language, social, emotional behavior skills, and cognitive skills.
2. The IEP, which was developed when the student was in mid-2nd grade, documents that the student was performing at the early 1st grade level in reading phonics and at the early kindergarten level in reading comprehension, which were unchanged since the year prior. The report of the educational assessment considered when developing the IEP reflects that the student is functioning in the “low” range in reading, and that his “standard score of 74 in broad reading suggests that [he] may have a presumed achievement gap of approximately 2 years.”
3. The IEP also documents that the student was performing at the mid-kindergarten level in math calculation, and the early kindergarten level in math problem solving. It includes information from the report of the educational assessment considered when developing the IEP, that the student is functioning in the “very low” range in math, and that his “standard score of 48 in broad reading suggests that [he] has at least a 2 year presumed achievement gap.”
4. In the area of written language expression, the IEP documents that the student was performing at the pre-primer grade level. It includes information from the report of the educational assessment considered when developing the IEP, that the student is functioning in the “very low” range in math, and that his standard score of 47 in broad written language “suggests that [he] may have an achievement gap of at least 2 years.”
5. The IEP states that the student “demonstrates characteristics of an Intellectual Disability,” with cognitive skills functioning below a standard score of 69 and concurrent delays in adaptive skills where his “greatest delays” are in communication and managing his frustration.
6. The IEP states that the student “frequently engages in unsafe behaviors such as tantruming (throwing objects, screaming, hitting others/self, swearing, kicking, flopping), running away from the class or teacher, eloping or attempting to elope from the building,” and that he loses instructional time as a result of interfering behaviors, which the IEP notes has been a concern since the student was participating in a Head Start program.

7. The IEP also states that the student is “easily” distracted, needs “constant monitoring and redirection to stay on task and keep himself safe,” and “concrete rewards or incentives” as motivations for completing simple tasks. It further states that the student has difficulty with transitions, and will curse, run away, hit, kick or fall to the floor and refuse to move when the school staff attempt to facilitate transitions.
8. The IEP reflects that a Functional Behavior Assessment (FBA) was conducted on October 10, 2018. The FBA identifies “striking” other students, running away from class, refusing to follow directions to stop, return or wait, and verbally screaming “no ” or cursing as the student’s interfering behaviors, which, again, have been noted since the student’s Head Start participation. The FBA reflects that, while several interventions had been previously attempted with the student, they were not effective. The FBA identifies that the function of the behaviors are to gain access to/use an activity, object, or event.
9. The IEP also reflects that the student has a Behavior Intervention Plan (BIP) that was revised on December 4, 2018. The replacement behavior described in the BIP is for the student to transition between certain activities without running away or fighting with other students. The BIP identifies the criteria for success as 50% decrease in running away or fighting, 80% decrease in throwing objects and hitting peers, and 100% decrease in “elopements.” The BIP requires preventative and teaching strategies that include “customized social stories,” “if-then” directions, rewards for appropriate behaviors, and choices of activities. It also requires response strategies that include ignoring behavior unless it is “aggressive,” reminders of expectations, providing positive attention for appropriate behavior, and walks to the behavior specialist office for “time-outs.”
10. The IEP requires several accommodations, including verbatim reading, small group instruction, frequent breaks, reduced distractions and extended time. It also requires many supplementary supports to assist the student, which include reduced writing, repetition of directions, visual supports, monitoring independent work, modified assignments, positive/concrete reinforcers for behavior, and a home-school communication system.
11. The IEP includes annual goals to improve the student’s reading and math skills. In addition, the IEP includes an annual goal to improve the student’s social and emotional behavior skills. All of the IEP goals are expected to be achieved by November 2019.
12. The IEP does not include an annual goal to improve the student’s needs in the area of written language. The IEP states that writing is “highly non-preferred task for [the student] and can result in tantrum behaviors,” and that written assignments should be reduced “to avoid these behaviors and keep him on task.”
13. The IEP reflects that the student requires twenty-five (25) hours per week of specialized instruction in a separate special education classroom “to address his deficits across all academic content areas.” It also requires thirty (30) minutes per week of social work services to address transitioning.

14. There is documentation that, at the meeting when the December 2018 IEP was developed, the complainant expressed concern about the student's lack of progress as a result of the recent decline in behavior. The school staff reported that the student's "pattern of maladaptive behaviors continue to pose a danger to himself and others within the school setting." As a result, the IEP team determined that the student requires a "Therapeutic Behavior Aide" (TBA) to provide "full maximum support" to address his behavior, ensure safety, and assist with BIP implementation.

### **January 2019 Progress**

15. In January 2019, the school staff documented that, while the student was making progress towards achievement of the IEP academic goals, progress on the IEP social and emotional behavior goal was "not measurable."
16. The TBA logs for January 2019 document that the student demonstrated interfering behavior approximately 39 times.

### **February 27, 2019 IEP**

17. On February 27, 2019, the IEP team convened and conducted an annual review. The IEP team updated information about the student's present levels of performance based on recent data.
18. The IEP developed on February 27, 2019 reflects that the team decided that the student no longer has needs in the area of written language.
19. The IEP team also decided to discontinue social work services as a related service due to the support that the TBA was providing the student each day during transitions.
20. The IEP developed on February 27, 2019 reflects that the IEP team discontinued the supplementary support that required weekly home-school communication system, as well as the instructional and testing accommodations that required reduced distractions to the student and to others. The IEP team did not document the basis for the removal of these supports.
21. The IEP team continued all of the academic goals, but extended the time for their expected achievement to February 2020. In doing so, the team decided that the student would need more than one (1) year's time to achieve the same goals that, prior to this meeting, were expected to be achieved by November 2019.
22. The IEP developed at the February 2019 meeting reflects that the IEP team decided to discontinue the behavior goal, and determined that restraint and/or seclusion may be required as part of the BIP. Although the IEP team did not document the basis for either decision, the parent provided her consent for the use of restraint and/or seclusion.
23. The TBA logs for March 2019 document that the student demonstrated interfering behavior approximately 49 times.

### **April 2019 - June 2019 Progress**

24. On April 9, 2019, the school staff documented that the student was making sufficient progress towards mastery on the IEP academic goals.
25. The TBA logs for May 2019 document that the student demonstrated interfering behavior approximately 56 times.
26. On June 20, 2019, the school staff documented that the student was making sufficient progress towards mastery on the IEP math goals. However, they also documented that the student was not making sufficient progress towards achievement on the IEP reading goals, and that the IEP team needs to meet to address his “insufficient” progress.
27. The student’s report card for the 2018 - 2019 school year documents that the student received a “poor” final grade in math and language arts courses.

### **2019 - 2020 School Year**

28. In September 2019, the student received fourteen (14) referrals for inappropriate behavior that included hitting other students, throwing items, and refusing to follow directions.
29. On October 1, 2019, the school staff sent the complainant an electronic message (email) to inform her of an IEP meeting scheduled for October 31, 2019.
30. The TBA logs document that, in October 2019, the student demonstrated interfering behaviors approximately 284 times.

### **October 31, 2019 IEP Meeting**

31. On October 31, 2019, the IEP team convened and conducted an annual review of the student’s program. At the time of the meeting, the IEP team had available to it the October 31, 2019 progress reports documenting that the student was not making sufficient progress to achieve any of the IEP goals.
32. The IEP team updated information about the student’s levels of performance based on recent data, but continued to document that the student’s levels of performance had remained unchanged for the last two (2) years. At this time, the student, who was now in the 3rd grade, was functioning at skill levels more than two (2) grades below his assigned grade level in reading phonics, and three (3) grades below his assigned grade level in reading comprehension, math calculation, and math problem solving. The IEP team also determined that the student has needs in the area of reading fluency and developed a goal in this area for him to read grade-appropriate sight words.
33. The IEP developed in October 2019 continues to document that the student was losing instructional time due to interfering behaviors, engaging and that, while “his TBA has helped to manage these behaviors, but they still persist.” However, the IEP revised at the October 2019 meeting reflects the team’s decision that the student no longer has needs in

- the area of social, emotional behavior skills. The IEP team did not document the basis for this decision.
34. The IEP team added reduced distractions to the student and to others as accommodations required by the IEP. Also added was an accommodation requiring a human reader due to the student's below grade level skills in reading phonics and comprehension. The team also revised the IEP to clarify that the student should be provided praise on a daily basis to assist with his behavior management.
  35. The IEP team revised the reading comprehension goal as well as the math goals. They also discontinued the reading phonics goal, but the October 2019 IEP continued to identify this as an area of need for the student. The IEP team did not document the basis for this decision.
  36. There is documentation that, at the October 2019 IEP meeting, the complainant expressed concern about a "regression" in the student's behavior at school. The school staff reported that the student's "behavior is attributed to the inconsistency in TBA staffing." The complainant also expressed her belief that the student requires more support to address his academic and behavior needs.
  37. The IEP team decided to request assistance from the BCPS Central Office staff on how to address the student's academic and behavioral needs.
  38. The student's report card for the 1st quarter of the 2019 - 2020 school year documents that he received "unsatisfactory" grades in language arts and math courses, and includes teacher comments that the student's "conduct interferes with learning."
  39. On November 8, 2019, a social worker conducted a "clinical observation" of the student during which the student demonstrated interfering behaviors including roaming around the classroom, hitting students, using profanity, falling to the floor, refusing to following directions, yelling and screaming, attempting to hit the school staff, and difficulty with transition. The social worker documented that "per reports from his teachers, TBA and this writer's observation, it has become increasingly difficult to manage [the student's] behaviors within this school setting."
  40. On December 6, 2019, the school staff made a referral to the BCPS Central Office staff. The BCPS central office staff observed the student on December 9, 2019. The school staff report that they are waiting for a final observation report from the BCPS central office staff.

### **CONCLUSIONS:**

Based on the Findings of Facts #1 - #14, the MSDE finds that the December 2018 IEP included annual goals, interventions and supports to address the student's academic and social, emotional and behavior needs.

Based on the Findings of Facts #15 - #22, the MSDE finds that that, at the February 2019 meeting, while the IEP team had information available to it that the student's progress on the IEP behavior goal was not measurable and that he was continuing to demonstrate interfering behaviors, the IEP team removed the IEP behavior goal, accommodations for reduced distractions, and the support for a weekly home-school communication system. Based on the same Findings of Facts, the MSDE finds that the team did not document the basis for these decisions and that there is no data to support the team's decisions, in accordance with 34 CFR §§ 300.324 and .503. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #24 - #31, the MSDE finds that, while there is documentation that in June 2019, the student was not making sufficient progress on the IEP reading goals, was not making progress through the general curriculum, and was continuing to demonstrate interfering behaviors, there was a delay in the IEP team's convening to address his lack of progress until October 31, 2019, in accordance with 34 CFR §§ 300.101, .320 and .324. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #31 - #33, and #36 the MSDE finds, when the IEP team convened on October 31, 2019, there was documentation that the student was continuing to demonstrate ongoing behaviors that were interfering with his ability to access instruction, and that he was not making sufficient progress on any of the IEP goals. However, based on the Findings of Facts #28 - #33, #36 and #37, the MSDE finds the IEP team decided that the student no longer has needs in the area of social, emotional behavior skills, did not document the basis for this decision, and that there is no data to support this decision, in accordance with 34 CFR §§ 300.324 and .503. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #1 - #40, the MSDE finds that the student has not been available to access instruction since December 2018 because he has not been responsive to the IEP supports and interventions to address his ongoing interfering behaviors, and that there has been no increase in his academic or behavior skills for the last two (2) years.

Based on the Findings of Facts #1 - #40, the MSDE finds that the BCPS did not ensure that the IEP team addressed the student's interfering behaviors since December 2018, in accordance with 34 CFR §§ 300.101, .320 and .324. Therefore, the MSDE finds a violation occurred and that the student was denied a Free Appropriate Public Education (FAPE) during this time period.

### **CORRECTIVE ACTION/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 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 March 15, 2020 that the IEP has taken the following actions:

- a) Reviewed and revised the IEP, as appropriate, to identify and address the student's interfering behaviors that are negatively impacting his ability to access instruction, based on all data; and
- b) Determined the amount and nature of compensatory services or other remedy to be provided to the student for a loss of a FAPE since December 2018, and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

The MSDE also requires the BCPS to convene an IEP team meeting at the end of the fourth (4<sup>th</sup>) quarter of the 2019 – 2020 school year, and continuing at the end of each quarter of the 2020 – 2021 school year. The documentation provided must reflect that, at each meeting, the IEP team has reviewed the student's progress towards achievement of the annual IEP goals, and reviewed and revised the IEP, as appropriate, consistent with the data.

### **School-Based**

The MSDE requires the BCPS to provide documentation by April 1, 2020 of the steps it has taken, including training, to ensure that the XXXXXXXX ES staff implement the IDEA requirements for addressing behavior that interferes with a student's access to instruction and academic achievement, development of IEPs that are consistent with the data, documenting the basis for IEP team decisions, and addressing lack of progress in a timely manner.

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 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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