



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

May 1, 2020

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Mr. Nicholas Shockney  
Director of Special Education  
Carroll County Public Schools  
125 North Court Street  
Westminster, Maryland 21157

RE: [REDACTED]  
Reference: #20-105

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 March 3, 2020, the MSDE received a complaint from Ms. Nicole Joseph, hereafter, “the complainant,” on behalf of Ms. [REDACTED] Mr. [REDACTED] and their son, the above-referenced student. In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the CCPS did not ensure that the Individualized Education Program (IEP) was implemented from the start of the 2019-2020 school year through January 2020, in accordance with 34 CFR §§300.101 and .323. Specifically, the following was alleged:

- a. The CCPS did not ensure that the student’s teachers and service providers were informed of their responsibilities for implementing the IEP;
- b. The CCPS did not ensure that the student was provided with the supports required by the Behavior Intervention Plan (BIP) including the use of a reward system, visual chart, chill out pass, calming corner, and other behavioral strategies;

- c. The CCPS did not ensure that the student was provided with the opportunity to meet with the school guidance counselor for 30 minutes per week, separate from a crisis situation, to address coping skills and social interaction strategies;
- d. The CCPS did not ensure that home-school communication was provided;
- e. The CCPS did not ensure that the student was provided with opportunities to learn and practice frustration and anger management strategies for difficulties with losing during games or socializing and interacting with peers during physical education; and
- f. The CCPS did not provide quarterly reports on the student's progress toward achieving the annual IEP goals.

### **BACKGROUND:**

The student is twelve (12) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education services.

At the start of the 2019-2020 school year, the student attended [REDACTED]

From January 15, 2020 until the March 16, 2020 statewide closure of all Maryland schools due to the national COVID-19 Pandemic, the student attended [REDACTED] as a result of a change in educational placement made by the IEP team.

### **FINDINGS OF FACTS:**

#### **Teachers and Providers Informed of IEP**

1. On August 29, 2019, prior to the opening of school for students, the student's teachers were provided with a summary of the IEP and BIP for the student, and on September 25, 2019, meetings were held with them to discuss the BIP.

#### **BIP Implementation**

2. The BIP dated December 13, 2018, and revised November 6, 2019 and January 10, 2020, requires the use of consistent response strategies and daily interventions to help the student engage in positive interactions, complete assigned tasks, and maintain self-management skills. The interventions included a visual chart of reward choices, a "chill out pass" or break pass, and calm spots or calming corners within classrooms.
3. The BIP requires that strategies be used throughout the school day, specifically, in advance of schedule changes, during transitions and within the halls, cafeteria, assembly, and gymnasium. The strategies include prompting, ensuring boundaries are clear, concise, and consistent, allowing the student additional personal space boundaries, and providing frequent reminders of rules and expectations.

4. There are observation reports, intervention summary charts, and service logs that document the provision of many of the BIP supports including, student initiated breaks, prompting, allowance of additional personal space, frequent reminders of rules and expectations, and calming corners.
5. There is also documentation that a daily point sheet was created. However, there is no documentation that the point sheet was implemented.

### **Weekly Counseling**

6. The IEP in effect at the start of the 2018-2019 school year requires that the student be provided with thirty (30) minutes of counseling services per week with the school counselor to give the student an opportunity to address coping strategies and social interaction skills. The IEP does not require that the sessions are separate from incidents in which the student was in crisis.
7. The school counselor's log documents that she provided the amount of counseling services required and that she spent approximately two (2) to six (6) hours with the student for several weeks working on coping strategies and social interaction skills. This documentation reflects that the student was meeting with the teacher about his behavioral progress, as well. The log reflects that counseling was often provided following a situation in which the student experienced difficulty with coping and social interactions.

### **Home/School Communication**

8. The BIP requires the provision of consistent home/school communication about the student's behavioral progress. The BIP does not require the home/school communication to be in writing.
9. There is documentation, including service logs, that the school staff maintained consistent communication with the parent.

### **Use of Strategies During Physical Education and Recess**

10. The BIP requires the teachers and the school counselor to teach conflict resolution strategies, provide opportunities to learn and practice techniques to address frustration and anger management strategies especially for difficulties with losing during games, or socializing and interacting with peers during physical education or recess.
11. On November 8, 2019, the student's schedule was changed to remove physical education class from his schedule.
12. There is no documentation that conflict resolution strategies, techniques to address frustration, and anger management techniques have been taught in physical education class or during recess.

### **Quarterly IEP Progress Reports**

13. The IEP requires that reports be made on the student's progress towards achieving the annual goals on a quarterly basis.

14. The IEP progress report, dated November 8, 2019 reflected that the student was not making sufficient progress to meet the social, emotional, and behavioral goal by December 12, 2019.
15. The school staff report that on November 15, 2019, the IEP progress report was sent home via the student's "backpack" along with his report card but there is no documentation of this.
16. The IEP progress report dated January 28, 2020, reflected that since the skill was newly introduced the student's progress on the goal was not measurable at that time.
17. The parent contact log documents that on February 12, 2020, the parent received the IEP progress reports for November 2019 and January 2020 as part of a request for the student's educational record.

## **CONCLUSIONS:**

### **Allegation IEP Implementation**

#### **a. Teachers and Providers Informed of IEP**

In this case, the complainant alleges that the IEP was not provided to staff from the beginning of the school year until the IEP team meeting was held on November 5, 2019.

Based on the Finding of Fact #1, the MSDE finds that there is documentation that the teachers were informed of their responsibilities for implementing the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with this aspect of the allegation.

#### **b. BIP Implementation**

In this case, the complainant alleges that the BIP required specific behavioral strategies for a point system, a visual chart of reward choices, a visual reminder such as a checklist with points earned and reward choices as a reminder of expected behaviors. She alleges that no visual system to document behavior was provided to the student, and no alternatives were discussed, and staff did not assign or monitor "points" for appropriate behavior, nor did they offer behavioral rewards.

Based on the Findings of Facts #2 - #5, the MSDE finds that while there is documentation of the provision of the BIP supports, there is no documentation that the BIP, in its entirety, was implemented, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

#### **c. Weekly Counseling**

In this case, the complainant alleges that the IEP called for 30 minutes of counseling weekly "via the pull out setting to address coping strategies and social interaction skills." She asserts that the time spent with the student responding to crisis situations does not reflect provision of this service.

Based on the Findings of Facts #6, and #7, the MSDE finds that there is nothing in the IEP that prohibits the counselor from providing the services following behavioral incidents, and thus the MSDE finds that the student was provided with the support required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with this aspect of this allegation.

**d. Home/School Communication**

In this case, the complainant alleges that the IEP called for daily consistent home/school communication regarding the student's behavioral progress. She alleges that no written communication regarding behavioral progress was provided to the family until December 2019.

Based on the Findings of Facts #8, and #9, the MSDE finds that the CCPS ensured that consistent home/school communication regarding the student's behavior was implemented, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

**e. Use of Strategies During Physical Education and Recess**

In this case, the complainant alleges that the student was not provided opportunities to learn and practice frustration/anger management strategies, especially to address difficulties with losing during games or socializing and interacting with peers during physical education or recess.

Based on the Findings of Facts #10, #11 and #12, the MSDE finds that the CCPS did not ensure that the opportunities to learn and practice frustration and anger management strategies, within the physical education class, were available from November 8, 2019 through January 15, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, as stated above, this office finds that not all aspects of the BIP were implemented and that a violation occurred with respect to this aspect of the allegation.

**f. Quarterly IEP Progress Reports**

In this case, the complainant alleges that the CCPS did not provide quarterly reports on the student's progress toward achieving the annual IEP goals.

Based on the Findings of Facts #13, - #16, the MSDE finds that there is no documentation that the IEP progress reports were provided to the parents with the frequency required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #17, the MSDE finds that the CCPS did provide the IEP progress reports to the parents on February 12, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, no student-specific corrective action is required with respect to the provision of the progress report.

## **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 (34CFR§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 a reasonable timeframe below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required action 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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770.

### **Student-Specific**

The MSDE requires the CCPS to ensure that the student's BIP is implemented in its entirety. The CCPS must also provide documentation that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to adequately redress the violations identified.

### **School-Based**

The MSDE requires the CCPS to provide documentation of the steps it has taken to ensure that [REDACTED] School staff properly implements the requirements of each student's BIP and for reporting progress with the frequency required by each student's IEP.

Documentation of completion of the 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.

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must correct 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.

<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.

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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 parent and the school system 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 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/sf

c:



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