



September 19, 2023



Ms. Allison Myers
Executive Director, Department of Special Education
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #24-003

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 July 7, 2023, MSDE received a complaint from [REDACTED] hereafter, “the complainant,” on behalf of her daughter. On August 2, 2023, MSDE received additional allegations from the complainant. As a result, MSDE extended the time to complete the investigation. 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 above-referenced student.

MSDE investigated the following allegations:

1. The BCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified academic, behavioral, and social/emotional needs since July 2022, in accordance with 34 CFR §300.324.
2. The BCPS did not provide prior written notice of the IEP team's decisions from the IEP team meeting held on June 1, 2023, in accordance with 34 CFR § 300.503.

BACKGROUND:

The student is 13 years old and is identified as a student with Specific Learning Disability under the IDEA. Since 2019, the student has been privately placed by the parent at the [REDACTED] a private school located in Baltimore County. When the student was enrolled in the BCPS, she had an IEP that required the provision of special education instruction and related services.

ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT'S NEEDS

FINDINGS OF FACTS:

1. The IEP last developed by the BCPS for the student was developed in April 2022, while she was attending the [REDACTED] as a parentally-placed student. The IEP developed in April 2022 required that the student be educated in the general education setting for at least part of the school day if she were to enroll in the BCPS. The complainant disagreed with the IEP developed by the BCPS and continued the student's enrollment for the 2022-2023 school year at the [REDACTED]
2. On November 9, 2022, a neuropsychological evaluation was conducted for the student as a part of an Independent Educational Evaluation, and on December 12, 2022, an occupational therapy evaluation was conducted for the student by the [REDACTED]
3. Results from the private neuropsychological evaluation indicate that the student is identified with "Specific Learning Disorders in Reading, Mathematics and Written Language, with Dysgraphia". The report also states that the student's "Neurocognitive weaknesses were evident on tasks requiring [short-term] retention of verbal material, sustained response speed, and visual motor speed. Weaknesses in [short-term] retention underlie and aggravate her learning disorders." The report did not indicate that the student presents with ADHD or anxiety disorder, but did describe needs in those areas.
4. Results from the occupational therapy assessment reflected that the student's manual dexterity skill level was in the average range. "The student demonstrated functional grasp patterns, bilateral coordination skills, in-hand manipulation skills, and dexterity. The student also scored in the average range for both motor coordination and visual perception subtests. The student scored slightly below average in the visual-motor coordination subtest, and these skills typically manifest with difficulty in handwriting. The student demonstrated functional and legible handwriting throughout all handwriting activities, demonstrating strengths in sizing, spacing, letter formation, and placement along the baseline. The student also demonstrated functional motor planning and postural stability skills, as well as functional fine and visual motor skills." The report did not recommend occupational therapy services for the student.
5. On March 6, 2023, the IEP team met to review the results of neuropsychological and occupational therapy assessments completed for the student. According to the prior written notice generated following the meeting, the neuropsychological examiner shared with the team that the student had needs related to memory recall that interfered with her ability to write and that her fluency and processing speed would make it difficult for her to participate in the general education setting. The examiner also stated that the student was most confident in small group settings. The team reviewed the Occupational Therapy assessment and determined that the student demonstrated "functional and legible handwriting throughout all handwriting activities" and "functional motor planning and postural stability skills[,] as well as "functional fine and visual motor skills." The team agreed that the neuropsychological assessment provided the information needed for educational planning and did not recommend additional assessments. The IEP team agreed to reconvene to complete the development of the student's IEP.

6. On April 20, 2023, the IEP team met to conduct the student's annual review, including discussing Extended School Year services and developing a secondary transition plan. The IEP developed at this meeting provided goals in the areas of Reading Comprehension, Reading Fluency, Math Calculation, Math Problem Solving, Mathematics Fluency, Writing/Spelling (Unfamiliar Words), Writing/Spelling (Familiar Words), and Written Expression. The team agreed to add a section regarding social/emotional/behavior as an area of impact for the student. The team also agreed to include opportunities for small group instruction when the student is receiving remediation and/or intervention to address instructional-level skills. The team also agreed that the student was eligible for Extended School Year services. The IEP drafted for this meeting required that the student have access to assistive technology devices for text-to-speech and speech-to-text and word processing software, in addition to the following instructional and assessment accommodations:
 - o Audio Amplification;
 - o Bookmark (Flag Items for Review);
 - o Blank Scratch Papers;
 - o Eliminate Answer Choice;
 - o General Administration Directions Clarified;
 - o General Administration Direction Read Aloud and Repeated as Needed;
 - o Highlight Tool;
 - o Headphones or Noise Buffers;
 - o Line Reader Mask Tool;
 - o Magnification/Enlargement Device;
 - o NotePad;
 - o Pop-up Glossary;
 - o Redirect Student;
 - o Spell Check or External Spell Check Device;
 - o Writing Tools;
 - o Graphic Organizer;
 - o Audio materials;
 - o Text-to-speech for Mathematics, Science, and Government Assessments (Text and Graphics);
 - o Text to Speech for the ELA/Literacy Assessments;
 - o Calculation Device and mathematics tools (on Calculation Sections of Mathematics Assessments);
 - o Calculation Device and mathematics tools (on NON-calculation Sections of Mathematics Assessments);
 - o ELA/Literacy Selected Response Speech-to-Text;
 - o Mathematics, Science, Government Response Speech-to-Text; and
 - o Extended Time and a Half.

7. The IEP team also determined that the student would receive the following supplemental aids, services, program modifications, and supports:
 - o Allow use of highlighters during instruction and assignments, Daily;
 - o Allow use of organizational aids, Daily;
 - o Provide student with a copy of student/teacher notes, Daily;
 - o Provide Proofreading checklist, Periodically;

- Calculation Devices, Daily;
 - Access to Word Processing Software, Daily;
 - Allow use of manipulatives, Daily;
 - Break down assignments into smaller units, Daily;
 - Chunking of texts, Daily;
 - Altered/modified assignments, Daily;
 - Small group instruction available to student, Daily;
 - Teacher Check-Ins, Daily;
 - Extended Response Time, Daily; and
 - Provide frequent changes in activity or opportunities for movement, Daily.
8. The prior written notice from this meeting states, “The IEP team considered the following service hours for specially designed instruction to address [the student’s] goals: Reading Fluency: outside of the general education setting 1 30-minute session daily; Reading Comprehension: outside of the general education setting 1 45-minute session daily; Mathematics Fluency: outside of the general education setting 1 30-minute session daily; Math Calculations: outside of the general education setting 1 30-minute session daily; Math Problem Solving: outside of the general education setting 1 30-minute session daily; Spelling: outside of the general education setting 1 20-minute session daily; and Written Expression: outside of the general education setting 1 45-minute session daily.” The total service hours provided by this proposal was 14 hours 34 minutes inside general education per week, and 19 hours 10 minutes outside general education per week.¹
9. The complainant and the examiner who conducted the student’s neuropsychological assessment expressed concerns about the student “...potentially changing schools, being with similar peers with dyslexia, and moving to a less restrictive setting.” The school-based team discussed the fact that “[s]ervices for reading comprehension or written language goals,...can be delivered in ELA, History, and/or Science classes...[and] specially designed instruction to address goals can be provided in the outside general education setting in History and Science classes.” Time constraints caused the team to end the meeting and agree to reconvene to “...finish discussing and [determine] service delivery and placement/LRE.”
10. The IEP team reconvened on June 1, 2023, in order to complete the annual review for the student. According to the prior written notice, the school-based team “...discussed that the proposed services are the specially designed instruction that the school anticipates [the student] will require on each goal in order to achieve it within the year of the IEP. School-based participants shared that services are based on [the student’s] current levels of performance, strengths, and needs as documented on the Present Levels of Academic Achievement and Functional Performance (PLAAFP). This data includes results of formal assessments, [including the neuropsychological assessment] and informal assessments conducted by BCPS as well as teacher reports and overall academic progress. The team discussed that specially designed instruction in [the student’s] goal areas can be delivered outside of the general education setting within content areas such as History, Science, English, and Mathematics as well as a Reading Intervention class.”

¹ The student’s IEP dated April 20, 2023, states that the student will receive 14 hours and 34 minutes of instruction inside general education; however, the correct service hours should state 14 hours and 35 minutes of instruction inside general education.

11. The complainant expressed disagreement with the reduction in service hours that the IEP team had proposed stating that the student "...had made minimal/modest progress which does not warrant a reduction from proposed services on [the previous year's] IEP...and the previous IEP was not implemented so there is no reason to reduce that time." In response, the IEP team documented that; "The school-based team participants as educational professionals agreed that the proposed IEP [was] reasonably calculated for [the student] to make appropriate progress in light of her circumstances." The complainant expressed that "...[the student's] progress is due to placement in a specialized school with reading instruction embedded all day with 30 [plus] hours of service, so to propose less hours of specially designed instruction does not make sense...[and the family is concerned] that [the student] is at risk of anxiety and that her anxiety may impact her ability to access instruction at [the public school]." The school-based team proposed that a transition plan could be developed with the student and her family to plan for a successful transition to a new school.
12. During the June 1, 2023, IEP team meeting, the team also determined that the student was eligible for ESY, and this could be "...an opportunity to become acclimated to [the public school] if they choose to enroll her." The prior written notice states that "[t]he family [disagreed] with the proposed IEP and [felt] that [the student] required services outside of the general education setting for her full school day and placement in a private separate day school such as Jemicy in order to make progress in light of her circumstances." The prior written notice also states that "[t]he team-based decisions on current strengths and needs that are documented through informal and formal assessment data and teacher reports and overall academic performance as documented on the Present Levels of Academic Achievement and Functional Performance as well as input from all participants of the IEP team."
13. There is documentation that the complainant chose to continue the student's enrollment at The [REDACTED] for the 2023-2024 school year. There is no documentation that the BCPS contacted the parent regarding ESY, but there is also no documentation that the complainant sought to enroll the student.
14. On August 2, 2023, the complainant received an email from the IEP chair with the "finalized documents from [the student's] team this past spring." This email contained attachments including the prior written notice from the June 1, 2023, IEP team meeting.

DISCUSSION/CONCLUSIONS:

Allegation #1: Development of the Student's IEP

In developing each child's IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. In this case, the prior written notices from the March 3, 2023, April 20, 2023, and June 1, 2023, IEP meetings reflect that the team considered all of these factors. Moreover, to address the student's social/emotional/behavior concerns the team included this as an area of impact with regard to the student's disability, and continued to include supports in this area in the proposed April 20, 2023, IEP.

Based on the Finding of Facts #5 to #12 MSDE finds that BCPS has developed an Individualized Education Program (IEP) that addresses the student's identified academic, behavioral, and social/emotional needs since

July 2022, in accordance with 34 CFR §300.324. Therefore, this office finds that no violation has occurred with respect to the allegation.

Allegation #2 Provision of Prior Written Notice

Written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (34 CFR § 300.503) In this case, the prior written notice was given to the complainant more than two months after the IEP team. This time frame does not reflect one that is “reasonable” as required by law.

Based on the Finding of Facts #12-#14, MSDE finds that the BCPS did not provide prior written notice of the IEP team's decisions from the IEP team meeting held on June 1, 2023, within a reasonable time, in accordance with 34 CFR § 300.503. Therefore, this office finds that a 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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.² This office will follow up with the public agency to ensure that it completes the required actions consistent with 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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

MSDE requires the BCPS to provide documentation by October 30, 2023, that the IEP team has convened and determined whether the violation related to failure to provide the parent with notice of the ESY determination 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.

School-Based:

MSDE requires that the BCPS provide documentation by December 30, 2023, of the steps it has taken to ensure that staff at the student's school properly understands and implements its responsibilities under the

² 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, 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.

³ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

IDEA to provide parents with prior written notice of IEP team decisions following team meetings. The documentation must include professional development and a description of how the BCPS will evaluate the effectiveness of the steps taken and a monitoring schedule to ensure that the violations do not recur.

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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMC/ebh

c: Dr. Myriam Yarbrough
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