

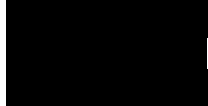


Mohammed Choudhury
State Superintendent of Schools


September 8, 2023

Corrected Copy September 26, 2023

Ms. Kathryn Chib
1901 Sulgrave Avenue
Baltimore, Maryland 21209




Ms. Denise Mabry
Baltimore City Public Schools
200 East North Avenue, Room 204B
Baltimore, Maryland 21202

RE: 
Reference: #24-012

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.

ALLEGATION:

On July 19, 2023, MSDE received a complaint from Ms. Kathryn Chib and Ms. , hereafter, "the complainant," on behalf of 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.

MSDE investigated the following allegations):

1. The BCPS has not followed proper procedures in the identification and evaluation of the student to determine if the student requires special education services under IDEA, in accordance with 34 CFR §§300.111, and .301-.311.
2. The BCPS did not ensure that the parent was provided with accessible copies of each document the IEP team planned to discuss at the March 28, 2023, IEP team meeting at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
3. The BCPS has not provided the student's parent with quarterly reports on progress toward achieving the annual IEP goals since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.320.

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4. The BCPS did not ensure that proper procedures were followed when responding to a request for an independent educational evaluation (IEE) obtained at the public expense on March 28, 2023, in accordance with 34 CFR §300.502 and Maryland Education Article § 8-405.

BACKGROUND:

The student is six years old and is identified as a student with an Other Health Impairment under the IDEA. She attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. On September 22, 2022, the IEP team met to review private Occupational Therapy and speech/language assessments completed for the student and provided to the BCPS by the student's parents. The prior written notice (PWN) generated after this IEP team meeting reflects that the IEP team found the student eligible for special education services as a student with a speech/language impairment. Furthermore, on this date an initial IEP was developed.
2. On November 21, 2022, the IEP team met to review a private "neurological assessment" completed for the student and provided to the BCPS by the student's parents. The PWN generated after this IEP team meeting reflects that the student's disability was changed from speech/language impairment to Other Health Impairment (OHI).
3. On March 28, 2023, the IEP team met to review the student's progress toward her annual speech/language and occupational therapy (OT) goals. The PWN generated after this IEP team meeting reflects that "based on an IEP team decision, the student had mastered her speech and OT goals and objectives therefore, speech and OT were being dismissed. The student will continue being supported through a 504 plan."
4. In their written response to the complaint, the BCPS acknowledged that there is no documentation that the IEP team conducted a thorough reevaluation of the student to determine if she continued to be eligible under the IDEA with an OHI. The BCPS further acknowledged that there was no documentation that the parent received progress reports completed for the student during the 2022-2023 school year, or that the parent appropriately received documents in advance of the IEP team meeting on March 28, 2023.
5. There is documentation that upon being dismissed from the special education services, the student was referred to the 504 team, and a 504 plan was developed for the student on April 20, 2023.
6. On June 8, 2023, the IEP team met to determine if the student was eligible for special education services. The PWN generated after this meeting reflects that the IEP team agreed that additional data was needed to make an appropriate eligibility determination. It further reflects that the IEP team ordered an educational assessment and a Functional Behavioral Assessment (FBA).
7. On June 9, 2023, the parent sent correspondence to the BCPS requesting an IEE for "educational/academic achievement and functional behavior assessment." The correspondence reflects the parent's concerns regarding "the school-based IEP team" dismissing her concerns regarding the student's behavior, and "not addressing her request to do so until three months after



the fact.” In addition, it reflects the parent’s concerns regarding the justification for the student’s dismissal from an IEP and special education services. The parent alleged she “was not given any information or data to review or any other part of the student’s IEP other than verbal descriptions during the meeting.”

8. On July 24, 2023, the BCPS provided the parents with the following response.:

“City Schools has reviewed the student’s records. From the record review, it appears as though the IEP team at [REDACTED] School met on June 8, 2023. At that IEP meeting, the records show that an Academic Performance evaluation was ordered to gather data on the student’s reading, written language, and mathematics performance, as well as a Functional Behavior Assessment (FBA).

City Schools looks to governing federal and state laws and regulations when responding to requests for IEEs. One of the key provisions of those laws and regulations is that a request for an IEE must disagree with the evaluation/s obtained by City Schools.

Your request for an IEE was made on June 8, 2023, before City Schools had an opportunity to complete the Academic Performance and FBA ordered at the June 8, 2023, IEP meeting. As City Schools did not have the opportunity to complete the assessments that were ordered, City Schools is denying your request for IEEs for Educational/Academic Achievement and Functional Behavior Assessment (FBA) at this time.”

9. On August 17, 2023, the IEP team met to complete the evaluation of the student. The PWN generated following this meeting reflects that the “IEP team determined that the student meets the criteria for an Other Health Impairment (OHI) based on ADHD and that there may be an impact on her educationally due to the lack of focus, impulsive behaviors, and other behavioral manifestations as documented in the FBA, but did not agree that the student requires special education (specially designed instruction) in order to access and make progress in the general education curriculum at this time.” It further reflects that the IEP team agreed to collect further data on the student’s written language performance as that information was not available at the last IEP team meeting. In addition, the PWN reflects that “the team proposed to discuss any FAPE (Free Appropriate Public Education) violations when it returns to review written language information.”

CONCLUSIONS:

Allegations #1, #2, and #3:

Proper Procedures in the Identification and Evaluation of the Student, Accessible Copies of Each Document the IEP Team Planned to Discuss, and Provision of Quarterly Progress Reports

Based on Findings of Facts #1- #4, MSDE finds that the BCPS has acknowledged that violations occurred with respect to allegations #1, #2, and #3. MSDE concurs with the BCPS conclusions and appreciates the school system’s response to the investigation.

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Allegation #4:

Response to a Request for an IEE

The complainant's June 9, 2023, request for an IEE was in response to the March 28, 2023, IEP team meeting. In response to the request for an IEE, the BCPS must either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an IEE is provided at the public expense.

Based upon the Findings of Facts #6- #8, the BCPS did not ensure that proper procedures were followed when responding to a request for an IEE obtained at the public expense on June 8, 2023, in accordance with 34 CFR §300.502 and Maryland Education Article § 8-405. Therefore, this finds a violation occurred with respect to allegation #4.

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.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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² 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 September 29, 2023, that the complainant has been provided the completed IEP progress reports for the 2022- 2023 school year and an appropriate response to the complainant's June 9, 2023, request for an IEE. In addition, MSDE requires the BCPS to provide documentation by November 10, 2023, that the written expression evaluation has been completed, the written expression data provided to the parent, and that the IEP team has met to discuss the findings. Furthermore, MSDE requires that the IEP team has convened and determined whether the above violations 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 remedies 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.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency 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, 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 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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School Based

MSDE requires the BCPS to provide documentation by November 1, 2023, of the steps taken to ensure that the violations regarding the lack of following proper procedures in the identification and evaluation of a student, lack of the provision of IEP documents five days prior to an IEP team meeting, provision of completed quarterly progress reports, and appropriate responses to a parent's request for an IEE do not recur at [REDACTED] School. Those steps must include staff development, as well as tools created to document and monitor the provision of IEP documents before IEP team meetings and the provision of quarterly progress reports.

The BCPS must submit to the MSDE a monitoring report reflecting the provision of progress reports to the parents of eligible students with disabilities by **December 8, 2023, March 15, 2024, and June 14, 2024. This would ensure that parents of students with disabilities at [REDACTED] School are receiving progress reports on the same frequency as progress is reported to students without disabilities and in alignment with the required frequency of reporting required by each student's IEP.** Full compliance is required, with regard to the monitoring report.

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.

Sincerely,

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

DMC: sd

c: Sonja Santelises
Christa McGonigal
Alison Barmat
Diane Eisenstadt
Paige Bradford

Rachel Pfeifer
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Gerald Loiacono
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Nicol Elliott