



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

April 11, 2019

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Ms. Rebecca Rider  
Director of Special Education  
Baltimore County Public Schools  
The Jefferson Bldg. 4<sup>th</sup> Floor  
105 W. Chesapeake Avenue  
Towson, Maryland 21204

RE: XXXXX  
Reference: #19-138

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 March 26, 2019, the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son, the above-referenced student. 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.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that the written invitation to the January 8, 2019 Individualized Education Program (IEP) team meeting included information about the purpose of the meeting, in accordance with 34 CFR §300.322.

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2. The BCPS did not ensure that the IEP team that convened on January 8, 2019 included a representative of the public agency, in accordance with 34 CFR §300.321.
3. The BCPS did not ensure that prior written notice of the decisions made by the IEP team on January 8, 2019 was provided, in accordance with 34 CFR §300.503.
4. The BCPS has not ensured that the report of an Independent Educational Evaluation (IEE) conducted by XXXXXXXX is maintained in the student's educational record, in accordance with 34 CFR §300.305, COMAR 13.08.02, and the *Maryland Student Records System Manual*.

### **BACKGROUND:**

The student is fourteen (14) years old and is identified as a student with Autism under the IDEA. He attends XXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services.

### **FINDINGS OF FACTS:**

1. On January 8, 2019, an IEP team meeting was held for the student. The written invitation states that the purpose of the meeting was to "Discuss the results of assessment reports." The IEP team met previously on October 15, 2018, and the invitation to that meeting states that the purpose of the meeting was to "conduct reevaluation planning." The documentation from the October 15, 2018 IEP team meeting states that the IEP team recommended assessments and that the complainant provided written consent for them to be conducted.
2. The written invitation to the January 8, 2019 IEP team meeting names a specific staff member who was expected to attend the meeting as the "Administrator/Designee." It also states that the assistant principal was expected to attend, as well as the student, a special educator, a general educator, the student's parents, the school psychologist, the guidance counselor and the transition facilitator.
3. At the January 8, 2019 IEP team meeting, the individual named as the "Administrator/Designee" served as the public agency representative. There is documentation that all other individuals listed on the meeting invitation participated in the meeting, with the exception of the assistant principal, the transition facilitator, the student, and the student's mother.
4. At the January 8, 2019 IEP team meeting, the complainant expressed concern that the student demonstrates inflexibility as a result of Autism, and that he continues to require an IEP to access instruction as a result of this condition. The school staff reported that, while the student demonstrates some inflexibility, he does not demonstrate the need for

specialized instruction, and that his needs can be met through the provision of accommodations under a 504 Plan.<sup>1</sup>

5. At the January 8, 2019 IEP team meeting, the complainant expressed the belief that the staff member who conducted the psychological evaluation is biased against the student based on his past experience with the staff member.<sup>2</sup> The school psychologist denied the assertion of bias. The complainant also expressed the belief that the IEP team had been directed by the BCPS Central Office to recommend dismissal from IEP services due to the student's application to a magnet school program and interactions that the complainant had with the BCPS Central Office staff. Based on the complainant's belief that the student needed to continue to be identified as a student with a disability under the IDEA, the IEP team agreed to continue the meeting on another date.
6. On January 8, 2019, the complainant requested an Independent Educational Evaluation (IEE) at public expense, for psychological testing.
7. On January 10, 2019, the complainant suggested that, instead of an IEE, the BCPS should obtain another psychological assessment from a different school psychologist, and the BCPS staff agreed to do so.
8. On January 25, 2019, the school staff provided the complainant with a written summary of the January 8, 2019 IEP team meeting.
9. On February 28, 2019, the complainant inspected the student's educational record. Following his review, the complainant sent an electronic mail (email) message to the principal indicating that he did not see in the record a copy of the IEE conducted in 2010 at XXXXXX when the student was five (5) years old.<sup>3</sup> The complainant expressed his belief that, because the document was not in the record for the first school psychologist to review as part of her psychological assessment, the assessment results are not valid.
10. On March 1, 2019, the IEP team reconvened to continue the reevaluation. The "Administrator/Designee," who serves as the IEP team chairperson, as well as the

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<sup>1</sup> A 504 Plan is a plan for the provision of accommodations under Section 504 of the Rehabilitation Act of 1973.

<sup>2</sup> There is documentation that, in the past, the complainant expressed concern about this staff member's participation on an IEP team because she had not previously conducted testing for the student.

<sup>3</sup> The complainant also expressed concern that other documents, including his written input at IEP team meetings and a Letter of Findings issued by the MSDE as a result of a previous State complaint investigation, were not in the record as well. The complainant was informed, in writing, that the MSDE would investigate the allegation that the IEE was not maintained in the record, because the school system is required to maintain such records. However, other documents that are allegedly not in the record are not required to be maintained, and therefore, the complainant was informed that this office will not address those documents when investigating whether the record is being properly maintained.

principal, the assistant principal, the school psychologist, the guidance counselor, the complainant, and general and special education teachers of the student participated in the meeting. At the meeting, the complainant provided written consent for additional psychological testing to be conducted by a different school system psychologist and explained to that psychologist that he is concerned that the student may need additional support to address his anxiety when he transitions to high school the next year. The complainant noted that the student's anxiety was identified in the report of an assessment that was conducted in 2015, and that the problem continues to exist. The student's teachers reported that the student continues to have anxiety with math, but has achieved a goal to improve his self advocacy and demonstrated "tremendous growth" in that area.

11. At the March 1, 2019 IEP team meeting, the complainant also expressed concern that the report of an IEE conducted in 2010 at XXXXXX was not maintained in the educational record. The school staff asked if the complainant wished to provide another copy of the report to be placed in the record. The team documented that, while the complainant expressed concern about the assessment not being considered during the reevaluation, he responded that "he is not sure if he wants to provide it since he feels like it would be cleaning up BCPS' mistake."
12. On March 4, 2019, the complainant withdrew his consent to have additional psychological testing conducted by a different BCPS psychologist and renewed his request for an IEE at public expense.
13. On March 15, 2019, the complainant reviewed the educational record again and observed a copy of the 2010 IEE from XXXXXXXXXX was in the record at that time.
14. On March 22, 2019, the BCPS denied the request for an IEE at public expense.
15. On March 29, 2019, the BCPS filed a due process complaint with the Maryland Office of Administrative Hearings (OAH) to defend its evaluation.

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1            Notice of the Purpose of the January 8, 2019 IEP Team Meeting**

In this case, the complainant asserts that the BCPS was required to inform him prior to the meeting of the recommendations of IEP team members that would be made at the meeting.

Based on the Findings of Facts #1, #4, and #5, the MSDE finds that the BCPS informed the complainant of the purpose of the meeting, in accordance with 34 CFR §300.322, and that there is no requirement to inform a parent of recommendations that will be made by individual IEP team members at an IEP team meeting prior to the meeting. Therefore, this office does not find that a violation occurred with respect to the allegation.

**Allegation #2                      Participation by a Representative of the Public Agency**  
at the January 8, 2019 IEP Team Meeting

In this case, the complainant alleges that “the lone administrator listed on the invite, and the one person with the authority to discuss [his] concerns over a staff member...failed to attend the team meeting.” The complainant asserts that, because the principal did not attend the meeting, he was unable to address his personnel-related concerns about the school psychologist at the IEP team meeting.

Based on the Findings of Facts #1 - #5, the MSDE finds that, while several invitees, including the student and his mother, did not participate in the meeting, there is documentation that the team included a public agency representative and other required members, in accordance with 34 CFR §300.32.

Based on those Findings of Facts, the MSDE also finds that a purpose of the meeting was not to address personnel-related matters, and that the principal was not a required IEP team member, in accordance with 34 CFR §300.321. Therefore, this office does not find that a violation occurred with respect to this allegation.

**Allegation #3                      Prior Written Notice of Decisions Made on January 8, 2019**

Based on the Findings of Facts #1 - #8, the MSDE finds that the BCPS did not propose a change to the identification, evaluation, or educational placement of the student, or the provision of a Free Appropriate Public Education (FAPE) to the student at the January 8, 2019 IEP team meeting.

Based on those Findings of Facts, the MSDE further finds that the BCPS did not refuse the complainant’s request to continue the provision of special education services to the student at the January 8, 2019 IEP team meeting.

Therefore, this office finds that there was no requirement to provide the complainant with written notice of the decision to continue the services prior to doing so, in accordance with 34 CFR §300.321. As a result, no violation is identified with respect to the allegation.

**Allegation #4                      Maintenance of the Educational Record**

Based on the Findings of Facts #9 - #15, the MSDE finds that, while the complainant could not locate the 2010 IEE when he first reviewed the educational record, and believes that the document was removed from the record, there is documentation that it is being maintained, in accordance with 34 CFR §300.305, COMAR 13.08.02, and the *Maryland Student Records System Manual*. Therefore, this office does not find that a violation occurred with respect to the allegation.

**TIMELINE:**

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 school system and the student's parent 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:aam

c: Verletta White  
Daniel Martz  
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