




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

November 4, 2019




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

RE:   
Reference: #20-030

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.

**ALLEGATIONS:**

On September 10, 2019, the MSDE received a complaint from Ms.  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 following allegations:

1. The BCPS has not ensured that the student has been offered an educational placement that addresses his needs, in the Least Restrictive Environment (LRE) in which the Individualized Education Program (IEP) can be implemented, since September 10, 2018, in accordance with 34 CFR §§300.101, .114 - .116, .320 and .324.
2. The BCPS did not ensure that the March 2019 reevaluation was completed within the required timelines, in accordance with 34 CFR §§300.301 and COMAR 13A.05.01.06.
3. The BCPS did not provide a copy of the IEP document within five (5) business days after the IEP team meeting held on March 11, 2019, in accordance with COMAR 13A.05.01.07.

## **BACKGROUND:**

The student is fourteen (14) years old and is identified as a student with Multiple Disabilities under the IDEA, including a Hearing Impairment and an Other Health Impairment (OHI) related to Leukodystrophy.<sup>1</sup>

During the 2017 – 2018 school year, the student attended [REDACTED] ([REDACTED]) where he was enrolled by the complainant, and had an IEP that required the provision of special education and related services.

The student continued to be enrolled at the [REDACTED] from the start of the investigation period until November 28, 2018. There is no documentation that the student has been enrolled in the BCPS.

## **FINDINGS OF FACTS:**

1. The MSD is an independent State agency that provides educational and developmental services for deaf and hard of hearing students. Instruction at the MSD is provided in a visual learning environment through the use of American Sign Language (ASL).
2. On May 14, 2018, the MSD IEP team reviewed and revised the student's IEP. The BCPS school staff participated in the meeting because the student is a Baltimore City resident.
3. At the May 2018 meeting, the IEP team discussed that the student uses spoken English to access instruction. They also discussed that the student's reading comprehension skills had regressed.
4. The IEP team decided that the student requires instruction using a phonetically-based approach to reading and verbal instruction instead of ASL. The team further decided that these were not available at the [REDACTED] and that the [REDACTED] was no longer the Least Restrictive Environment in which the IEP could be implemented. Therefore, the IEP team, which included the BCPS staff, decided that the BCPS would reconvene the team to complete the review of the IEP.
5. In follow-up to the May 2018 IEP meeting, the BCPS staff invited the complainant and her educational advocate to tour a program at [REDACTED] School ([REDACTED] School) in June 2018. However, the BCPS did not convene an IEP team meeting until March 11, 2019 to complete the IEP review.

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<sup>1</sup> Leukodystrophy refers to a progressive degeneration of the white matter of the brain due to imperfect growth or development of the myelin sheath, the fatty covering that acts as an insulator around nerve fibers ([www.ninds.nih.gov/Disorders/All-Disorders/Leukodystrophy](http://www.ninds.nih.gov/Disorders/All-Disorders/Leukodystrophy)).

6. By the time the BCPS convened an IEP team meeting on March 11, 2019, the student had missed seven (7) months of school. The IEP team decided that assessments of his academic performance, fine and gross motor skills, and adapted physical education needs, as well as a classroom observation, were required.
7. The IEP revised on March 11, 2019 reflects that the IEP team decided that the student requires direct instruction using ASL to access the curriculum, and that the educational placement is a school that has access to a Deaf and Hard of Hearing Program. However, the IEP team did not document the basis for this decision, which is inconsistent with the IEP team's decision, in May 2018, that the student requires verbal instruction instead of ASL.
8. In addition, the IEP revised on March 11, 2019 does not reflect that the IEP team decided that the student requires a phonetically-based approach to reading. However, the IEP team did not document the basis for this decision, which is inconsistent with the IEP team's decision, in May 2018, that the student requires a phonetically-based approach to reading.
9. On April 9, 2019, the BCPS informed the complainant that she needed to enroll the student in the BCPS and that he was assigned to the [REDACTED]
10. There is no documentation that the complainant has been provided with the IEP that was revised on March 11, 2019.
11. In April 2019 and May 2019, the BCPS made eight (8) attempts to contact the complainant to have the assessments conducted.
12. While the complainant brought the student to school on one (1) day in July 2019 and assessments were conducted on that date, she did not enroll the student in the BCPS, and the BCPS has not been able to conduct a classroom observation. Further, there is no documentation of any efforts made to convene the IEP team to consider the results of the assessments that were conducted.

### **CONCLUSIONS:**

#### **Allegation #1                      Placement that Meets the Students Needs in the LRE Since September 2018**

Based on the Findings of Facts #1 - #5, the MSDE finds that, from September 10, 2018 to March 11, 2019, the BCPS did not take steps to complete the development of the student's IEP, in accordance with 34 CFR §§300.320 and .324.

Based on the Findings of Facts #4 and #6 - #8, the MSDE finds that on March 11, 2019, the IEP team convened and developed an IEP that requires ASL instruction and does not require a

phonetically based approach to reading. However, based on the same Findings of Facts, the MSDE finds that the IEP team did not document the basis for these decisions which are inconsistent with the team's prior determinations that the student does require verbal instruction instead of ASL and instruction using a phonetically-based approach to reading, in accordance with 34 CFR §§300.101, .114 - .116, .320 and .324. Therefore, this office finds that violations occurred.

### **Allegation #2 Reevaluation Procedures**

Based on the Findings of Facts #5 and #11, the MSDE finds that the classroom observation recommended on March 11, 2019 has not yet been conducted. However, based on the Findings of Facts #8, #10 and #11, the MSDE finds that the complainant has not made the student available to conduct the observation.

Based on the Findings of Facts #5, #10 and #11, the MSDE further finds that the results of the assessments recommended on March 11, 2019 were not considered by the IEP team within the required timeline, in accordance with COMAR 13A.05.01.06, because the complainant did not make the student available for the assessments to be completed until after the timeline expired. Therefore, this office does not find a violation with respect to this aspect of the allegation.

However, based on the Findings of Facts #5 and #11, the MSDE finds that the BCPS has not ensured that the IEP team has convened to consider the results of the assessments that were eventually conducted in July 2019, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the BCPS's delay in convening a meeting since the time that assessments were completed in July 2019.

### **Allegation #3 Provision of IEP Document**

Based on the Findings of Facts #6, #7 and #9, the MSDE finds that there is no documentation that the BCPS has provided the complainant with the IEP that was revised March 11, 2019, in accordance with COMAR 13A.05.01.07. Therefore, this office finds a violation with respect to this allegation.

### **CORRECTIVE ACTIONS/TIMEFRAMES:**

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.<sup>2</sup> This office will follow up with the public agency to support it in working toward completion of 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.<sup>3</sup> Dr. Birenbaum can be reached at (410) 767-7770.

### **Student-Specific**

The MSDE requires the BCPS to provide documentation by December 1, 2019, that the complainant has been provided with a copy of the March 2019 IEP.

The MSDE requires the BCPS to provide documentation by January 1, 2020 that the IEP team has done the following:

- a. Reviewed all of the existing data, including the decisions made by the IEP team in March 2018 and the results of the assessments recommended in March 2019;
- b. Revised the IEP consistent with the data, and to include goals and services designed to accelerate the student's progress and skills growth beyond what would normally be expected to be achieved within one (1) year's time, to be implemented if the complainant enrolls the student in the BCPS during the 2019-2020 school year;
- c. Determined the student's educational placement based on the reviewed and revised IEP;
- d. Determined whether the classroom observation recommended in March 2019 continues to be required; and
- e. Provided the complainant with a revised IEP within five (5) business days of the IEP team meeting.

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<sup>2</sup> The United States Department of Education, Office of Special Education Programs (OSEP) requires that the public agency correct noncompliance in a timely manner, which is as soon as possible within one (1) year from the date of identification of the noncompliance, unless providing additional time is appropriate, such as for example when it is appropriate to provide compensatory services to a student over a period of more than one (1) year. 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>3</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.

The BCPS must also provide documentation by January 1, 2020 that it has provided the complainant with updated information on enrolling the student in the school system following the IEP team meeting.

If the complainant enrolls the student in the BCPS during the 2019-2020 school year, the MSDE requires the BCPS to convene IEP team meetings at the end of each remaining quarter of the 2019-2020 school year and after the first (1<sup>st</sup>) and second (2<sup>nd</sup>) quarters of the 2020-2021 school year. At each meeting, the IEP team must review the student's progress towards achieving the goals within one (1) year of their development and revise the IEP, as appropriate, to address any lack of expected progress. If the IEP team determines that a classroom observation continues to be required, it must also ensure that it is conducted and the results considered by the IEP team in reviewing and revising the IEP.

### **School System-Based**

The MSDE requires the BCPS to provide documentation by January 1, 2020, of the steps it has taken to ensure that proper procedures are followed when determining an appropriate educational program and placement for students transitioning from the MSD to the BCPS. 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.

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties maintain the right to request mediation or to file a due process complaint, if she disagrees with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State

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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

c: Sonja B. Santelises  
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