



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

February 25, 2021

Mark B. Martin, Esq.  
Law Offices of Mark B. Martin, P.A.  
One North Charles Street, Suite 1215  
Baltimore, Maryland 21201

Dr. Kathrine Pierandozzi  
Executive Director of Special Education  
Baltimore County Public Schools  
The Jefferson Bldg. 4<sup>th</sup> Floor  
105 W. Chesapeake Avenue  
Towson, Maryland 21204

RE: [REDACTED]  
Reference: #21-048

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.

**ALLEGATION:**

On January 26, 2021, the MSDE received a complaint from Mark B. Martin, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his parents, Mr. [REDACTED] and Ms. [REDACTED]. 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 students.

The MSDE investigated the allegation that the BCPS has not ensured that a Free Appropriate Public Education (FAPE) has been offered to the student through an Individualized Education Program (IEP), since October 6, 2020, in accordance with 34 CFR §§300.101, .131, .323 and .324.

**BACKGROUND:**

The student is twelve (12) years old and in the seventh (7<sup>th</sup>) grade. He is identified as a student with a Specific Learning Disability (SLD) under the IDEA.

The student is parentally placed at [REDACTED] a non-profit school for students with language-based learning disabilities.<sup>1</sup> Prior to being parentally placed in a private school, he had an IEP developed by the Montgomery County Public Schools (MCPS).

### **FINDINGS OF FACTS:**

1. The parties agree that the student has not been enrolled in the BCPS.
2. On October 2, 2020, the parents sent an electronic mail (email) communication to the school staff at [REDACTED] ([REDACTED] MS) requesting an IEP team meeting. The parents reported that, in October 2019, the family relocated to Baltimore County, Maryland from Montgomery County, Maryland. The parents further reported that the student was currently attending [REDACTED] but that he previously attended school in the MCPS where he had an IEP.
3. On October 26, 2020 and November 1 and 3, 2020, the parents provided the school staff with several assessment reports, a teacher report from [REDACTED] an IEP for the student that was developed by the MCPS (MCPS IEP), and reports of the student's progress on the goals in the MCPS IEP.
4. On November 4, 2020, the IEP team convened virtually to conduct a reevaluation. They reviewed the data provided by the parents and decided that additional information was needed, including assessments in the areas of occupational therapy, speech/language, adapted physical education, and a classroom observation. The parents provided written consent for the recommended assessments on November 4, 2020.
5. The IEP team was scheduled to reconvene on December 17, 2020 to review the results of the recommended assessments.
6. However, on December 9, 2020, the school staff informed the parents, via email, that the meeting could not proceed due to a "recent ransomware attack" impacting the school system's technology and that the meeting would be rescheduled. The parents responded, via email on the same date, requesting that the meeting be rescheduled soon or that the BCPS "consider alternative means" to conduct the IEP meeting.
7. An IEP meeting was to convene on February 19, 2021. However, documentation of the meeting has not yet been made available.

### **DISCUSSION/CONCLUSION:**

No parentally-placed private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school (34 CFR §300.137). However, when the parent of a parentally-placed private school student expresses an interest in enrolling the student in a public school system to receive a

---

<sup>1</sup> www.[REDACTED].org

FAPE through an IEP, the public agency must develop an IEP that offers the student a FAPE so that the parent may enroll the student in the public school system if he or she chooses to do so (34 CFR §300.148 and *Forest Grove School District v. T.A.*, 557 U.S. 230, June 22, 2009).

Further, an IEP team may determine, when reviewing and revising an IEP, that there is a need for additional data to ensure that the IEP will offer a FAPE. When this occurs, the public agency must ensure that the results of assessments are reviewed and considered by the IEP team within ninety (90) days of the decision that additional data is needed (COMAR 13A.05.01.06).

Based on the Finding of Fact #1, the MSDE finds that the BCPS was not required to provide the student with special education and related services because the student has not been enrolled in the school system. However, based on the Finding of Fact #2, the MSDE finds that the BCPS was required to develop an IEP in order to offer the student a FAPE because the parent indicated an interest in enrolling the student in the school system.

Based on the Findings of Facts #3 and #4 the MSDE finds that the BCPS was required to ensure that assessment results were used by the IEP team to develop an IEP that offered the student a FAPE within ninety (90) days of the decision that additional data was needed to develop the IEP on November 4, 2020.

Based on the Findings of Facts #5 - #7, the MSDE finds that the BCPS did not ensure that the reevaluation that began on November 4, 2020 was completed within the required timelines, in accordance with COMAR 13A.05.01.06, and that a violation occurred. As a result, this office finds that there was a delay in offering a FAPE from February 2, 2021 until the date an IEP is developed.

#### **CORRECTIVE ACTION/TIMEFRAME:**

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 time frames below to ensure that noncompliance is corrected in a timely manner.<sup>2</sup> This office will follow up with the public agency to ensure that it

---

<sup>2</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.

completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that the action will not be completed within the timeframe indicated, 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 and at nancy.birenbaum@maryland.gov.

### **Student-Specific**

The MSDE requires the BCPS to provide documentation that the reevaluation has been completed, and if the student is found to continue to meet the criteria for identification as a student with a disability under the IDEA, that an IEP is has been developed.

If the student continues to meet the criteria for identification as a student with a disability under the IDEA and the student is enrolled in the BCPS, the MSDE also requires the BCPS to provide documentation that the IEP team has determined the compensatory services for the delay in completing the reevaluation and offering the student a FAPE through an IEP.

### **School-Based**

The MSDE requires the BCPS to provide documentation of the steps it has taken to ensure that the [REDACTED] staff comply with the COMAR requirements for completing reevaluations within the required timelines. 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 violation does not reoccur.

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 parents 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

---

<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.

Mr. Mark B. Martin, Esq.  
Dr. Kathrine Pierandozzi  
February 25, 2021  
Page 5

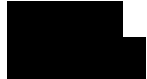
investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Early Intervention and  
Special Education Services

MEF/ksa

c:



Darryl Williams  
Jason Miller  
Charlene Harris



Dori Wilson  
Anita Mandis  
K. Sabrina Austin  
Nancy Birenbaum