



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

February 25, 2021

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Dr. Kathrine Pierandozzi
Executive Director of Special Education
Baltimore County Public Schools
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #21-049

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 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 mother, 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 above-referenced student.

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 November 19, 2020, in accordance with 34 CFR §§300.101, .131, .323 and .324.

BACKGROUND:

The student is sixteen (16) years old, in the tenth (10th) grade, and is identified as a student with an Emotional Disability under the IDEA. The student is parentally placed at the [REDACTED]

██████████ a private school in ██████████. Prior to the ██████████ the student was parentally placed at the ██████████ a private school in ██████████. Before being parentally placed in a private school outside of Maryland, the student had an IEP developed in BCPS.

FINDINGS OF FACTS:

1. There is no documentation that the student has been enrolled in the BCPS since the
 - a. 2017 - 2018 school year.
2. On November 19, 2020, the student's mother informed the school staff at ██████████ that the student was attending school in ██████████ and that she was "looking at his next placement and would like to explore what BCPS can offer." The student's mother also provided the school staff with assessment data.
3. There is documentation that the IEP team meeting was scheduled for December 13, 2020 but was rescheduled for January 13, 2021 after a ransomware attack occurred impacting the school system's technology.
4. The January 13, 2021 IEP meeting summary reflects that the IEP team reviewed data from the student's current and previous educational placements in ██████████ and ██████████ including assessments and background information provided by the student's mother. Based on this review, the team determined that no further assessments were required to determine that the student continues to meet the criteria for identification as a student with a disability under the IDEA. However, the team decided that additional information was needed from the student's current and previous educational placements regarding his social/emotional functioning and academic performance, in order to develop an IEP that addresses his needs.
5. An IEP team 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 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 #2 - #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 January 13, 2021.

Based on the Findings of Facts #2 - #5, the MSDE finds that the BCPS did not ensure that the reevaluation that began on January 13, 2021 was completed within the required timelines by February 17, 2021, in accordance with COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred.

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, 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.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 Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770 or by email at Nancy.Birenbaum@maryland.gov.

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, 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.

² 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.

Student-Specific

The MSDE requires the BCPS to provide documentation that the reevaluation has been completed, and that an IEP has been developed consistent with the data. The BCPS must also provide documentation that the IEP team determined whether the delay in developing the IEP from February 17, 2021 until the date it was developed negatively impacted the offer of a FAPE. If the team determines that there was a negative impact, it must also determine the compensatory services or other remedy for the delay in completing the reevaluation and offering the student a FAPE through an IEP, should he enroll in the BCPS during the 2020 - 2021 school year.

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 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 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/Special Education Services

MEF:ac

c: [REDACTED]
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