



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

May 7, 2021




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

RE: 
Reference: #21-067

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 March 11, 2021 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 County 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 developed an Individualized Education Program (IEP) that addresses the student’s identified occupational therapy (OT) needs since February 12, 2021, in accordance with 34 CFR §300.324.
2. The BCPS has not developed an IEP that addresses the student’s identified dedicated assistant needs since March 11, 2020, in accordance with 34 CFR §300.324.
3. The BCPS did not ensure that the student was consistently provided with occupational therapy related services from March 11, 2020 to February 12, 2021, in accordance with 34 CFR §§ 300.101 and .323.

4. The BCPS did not ensure that the IEP team convened to review the student's IEP before January 14, 2021 in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is eight (8) years old and is identified as a student with a Multiple Disabilities, including Specific Learning Disability and Other Health Impairment based on Attention Deficit Hyperactivity Disorder (ADHD) under the IDEA. He has an IEP that requires the provision of special education services.

The student attended [REDACTED] School, until the March 16, 2020 Statewide closure of all school buildings as the result of the national COVID-19 pandemic.

ALLEGATIONS #1 AND #3

**ADDRESSING OCCUPATIONAL THERAPY
NEEDS SINCE FEBRUARY 12, 2021 AND
PROVISION OF OCCUPATIONAL THERAPY
SERVICES FROM MARCH 11, 2020
TO FEBRUARY 12, 2021**

FINDINGS OF FACTS:

1. The IEP in effect on March 11, 2020 indicated that, based on classroom observations, informal assessments, and a teacher interview, the student had difficulty with sensory processing and visual perception skills, which impacted his participation in the school environment.
2. The IEP included a goal to improve visual and fine motor skills in order to be able cut paper and print/color, with increased accuracy, by January 2021.
3. The IEP required that an OT provider collaborate with classroom staff with developing and implementing sensory strategies as needed for improved attention and participation, and to support progression of skills in order to be able to meet classroom expectations for fine motor and visual motor tasks. The OT provider was to consult with classroom staff on a monthly basis. Additionally, the IEP required thirty (30) minutes weekly of direct OT related services in a separate special education classroom to assist with new skill development and in the general education classroom to ensure generalization of skills. These sessions were to be held individually or in group therapy sessions.
4. A report of the student's progress indicates that the student achieved his OT goal and objectives on November 17, 2020 and there were no new OT concerns noted until an IEP team meeting held on February 12, 2021.
5. The written summary of an IEP team meeting held on February 12, 2021 indicates that the IEP team reviewed a private neuropsychological evaluation report, dated

November 2020, and submitted to the team by the complainant on January 18, 2021. The report identified needs in the areas of fine motor coordination abilities, particularly with regard to fine motor precision. The report included recommendations for occupational therapy and writing accommodations, such as a scribe and human reader, to address those needs, and those supports were added to the IEP.

6. The written summary of the February 12, 2021 IEP team documents that the team considered information from the student's BCPS OT provider that the student had an appropriate grip on his pencil and that his handwriting was legible and proportionate to the lines on the paper. Further, the OT provider stated that the student is able to "cut, trace, copy shapes and color within the boundaries without difficulty." The OT provider stated that the student's current needs are related to executive functioning, and there was no data to support specific OT needs that require an OT goal.
7. The complainant disagreed with the OT provider's recommendation for discontinuation of direct OT services and removal of a specific goal to address visual perceptual motor deficits. She indicated that the skills the student has acquired do not transfer to the classroom. Further, the complainant opined that the private OT services the student was receiving outside of school were helping to further his progress in that area. However, the complainant was unwilling to share the private provider's OT data with the team or complete a questionnaire provided by the BCPS OT provider regarding parental input and concerns about the student's needs.
8. While the IEP team discontinued the OT goal addressing fine motor and visual motor skills, it agreed that OT sessions would continue, but would be focused on the student's self-regulation and behavior goal that addresses sensory needs in order for the student to improve executive functioning. To address the complainant's concerns, the IEP team decided that direct OT and consultation would be used to monitor the student's fine motor, visual motor and sensory processing skills. The direct OT services would be provided to the student in a separate special education classroom to develop new skills, and inside the general education classroom setting to ensure the transfer of skills to the classroom setting.
9. On February 26, 2021, the IEP team met again, based on the parent's disagreement about the removal of the OT goal. The parent requested an OT assessment. The team agreed to an assessment and consent was signed by the parent for the assessment on February 26, 2021. The assessment is to be completed and reviewed no later than May 26, 2021.
10. The OT provider's reports of the student's progress towards achieving his annual self-regulation goal, dated March 12, 2021, reflects that the student is making sufficient progress towards achieving the goal.
11. There is documentation in the form of service provider logs, that the OT services required by the IEP were provided from March 11, 2020 to March 8, 2021.

DISCUSSION/CONCLUSION:

Allegation #1

Based on the Findings of Facts #1 - #10, the MSDE finds that the BCPS developed an IEP that addresses the student's identified occupational therapy (OT) needs, since February 12, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that no violation has occurred with respect to this allegation.

Allegation #3

Based on the Finding of Fact #11, the MSDE finds that the BCPS ensured that the student was consistently provided with occupational therapy related services and consultative services from March 11, 2020 to February 12, 2021, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds no violation with respect to this allegation.

ALLEGATION #2

**ADDRESSING DEDICATED ASSISTANT NEEDS SINCE
MARCH 11, 2020**

FINDINGS OF FACTS:

12. The IEP in effect on March 11, 2020 required additional adult support to be provided, on a daily basis, by the general educator, special educator, or the adult assistant, to assist with sustaining attention and to prevent possible elopement (when in the school building).
13. The report of the student's progress towards achievement of the annual goal in the area of self-regulation, dated June 19, 2020, indicated that the student was not making sufficient progress to meet that goal. However, there is no documentation that the IEP team addressed the lack of expected progress.
14. The reports of the student's progress towards achievement of the annual goal in the area of self-regulation, made during the 2020-2021 school year, indicate that the student has been making sufficient progress on the self-regulation goal during this school year.
15. A private neuropsychological report, dated November 19, 2020, and reviewed at the IEP team meeting on February 12, 2021, included recommendations for an adult to be assigned to work with the student on a one-to-one basis to assist with maintaining attention and to address low frustration tolerance, based on the student's diagnosis of Attention-Deficit/Hyperactivity Disorder, Combined type. The IEP team considered the recommendation and decided that continued adult support with additional services such as the provision of a scribe for the student during periods of extended writing and notetaking, planned breaks and support for using a visual schedule, would address the recommendation for additional support. There is no documentation that this support has not been successful.

DISCUSSION/CONCLUSION:

Based on the Finding of Fact #13, the MSDE finds that the IEP team did not meet to address the lack of expected progress toward achieving the annual goal in the area of self-regulation at the end of the 2019-2020 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #14, the MSDE finds that the student made sufficient progress towards achievement of the goal by the next reporting period at the start of the 2020-2021 school year. Therefore, this office finds that the violation did not have a negative impact on the student's ability to benefit from the education program.

Based on the Findings of Facts #12 and #15, the MSDE further finds that the IEP team considered the request for a dedicated assistant on February 12, 2021, addressed the complainant's concerns by adding different supports, and there is no documentation that those supports have been insufficient, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred since February 12, 2021 with respect to the allegation.

ALLEGATION #4:

ANNUAL IEP REVIEW

16. Due to an oversight by the school staff responsible for monitoring the timeline for reviewing the IEP, there was a delay in conducting the annual review from January 14, 2021 until February 12, 2021.
17. At the February 12, 2021 IEP team meeting, the team decided to consider whether this delay negatively impacted the student's ability to benefit from the education program when it reconvenes to complete the pending reevaluation.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #16 and #17, the MSDE finds that the BCPS did not ensure that the IEP team convened to review the student's IEP at least annually, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

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.¹

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties 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 Nancy.birenbaum@maryland.gov.

Student-Specific

The MSDE requires the BCPS to provide documentation of the following:

1. The IEP team has convened and determined whether the delay in reviewing the IEP had a negative impact on the student's ability to benefit from the education program.
2. If the IEP team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the delay.

School-Based

The MSDE also requires the BCPS to provide documentation of the steps taken to ensure that proper timelines are met at ██████████ School for reviewing students' IEPs at least annually. The documentation must include a description of the action that will be taken to monitor the effectiveness of the steps taken.

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.

¹ 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.

² The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

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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. 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/dee

c: Darryl Williams
Jason Miller
Charlene Harris
■
Dori Wilson
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Nancy Birenbaum