




**Mohammed Choudhury**  
State Superintendent of Schools

November 17, 2021




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

RE:   
Reference: #22-031

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.

**ALLEGATION:**

On September 24, 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 allegation that the BCPS did not follow proper procedures on August 17, 2021, when the Individualized Education Program (IEP) team determined the placement in which the student would receive special education instruction and related services for the 2021-2022 school year, in accordance with 34 CFR §§300.114 and .116.<sup>1</sup>

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<sup>1</sup> The complaint in this case contained facts related to potential discrimination by the BCPS in its administration of the Virtual Learning Program, based on the student’s status as a student with a disability. This Letter of Findings will not address that issue; the United States Department of Education, Office of Civil Rights (OCR) has the authority to investigate such allegations.

## **BACKGROUND:**

The student is thirteen (13) years old and is identified as a student with Autism under the IDEA. The student attends [REDACTED] and has an IEP that requires the provision of special education and related services.

## **FINDINGS OF FACTS:**

1. An IEP was developed for the student in January 2021, which reflects identified needs in the areas of reading, math, communication and social emotional/behavioral. The IEP includes goals to address those needs, as well as supplemental aids, supports and instructional accommodations. The student receives special education instruction by a special educator in a separate special education classroom. Additionally, the student receives occupational therapy and speech/language as a related service. The student also has a Behavioral Intervention Plan (BIP) to assist him with managing his non-compliant and off-task behaviors. The BIP includes supports to assist the student with addressing his behavioral and social/emotional needs.
2. Prior to the 2021-2022 school year, the Complainant applied on behalf of the Student in the BCPS Virtual Learning Program (VLP)<sup>2</sup> for 2021-2022 school year based on her concerns regarding the COVID-19 pandemic. On August 31, 2021, the BCPS communicated to the Complainant via electronic mail (email) that the Student had been admitted to the program.
3. On August 17, 2021, the IEP team convened to determine the student's eligibility to participate in the VLP. The written summary of the IEP team meeting reflects that the team considered information that the student receives all of his instruction outside of the general education setting and because the student has "significant social, communication and academic needs that require specialized instruction, as well as speech, occupational therapy and a social work consult," the VLP could not meet the student's needs and would not provide a Free Appropriate Public Education (FAPE) to the student during the school year 2021-2022.
4. The written summary of the IEP team meeting does not reflect that the team provided an individualized basis for the denial, or conducted a review of the student's IEP. The written summary does not include documentation of the supplementary aids, services, program modifications and supports that were considered as part of the student's needs, or that a continuum of services was reviewed. Additionally, the IEP team did not consider the student's progress data, current performance data or the student's performance during school closures and subsequent distance learning.

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<sup>2</sup> The BCPS Virtual Learning Program, for students in Kindergarten through Grade 12, provides full-time virtual instruction from BCPS staff, including live (synchronous) instruction and anytime (asynchronous) learning. Families were offered an enrollment window for a Virtual Learning Program (VLP) option to support student learning to accommodate students who may not have access to a vaccination and or whose parents feel it is not yet safe to return their student(s) to in-person instruction.

[https://p3cdn4static.sharpschool.com/UserFiles/Servers/Server\\_2744/File/Covid19/ReopeningPlan2021-22\\_Aug.pdf](https://p3cdn4static.sharpschool.com/UserFiles/Servers/Server_2744/File/Covid19/ReopeningPlan2021-22_Aug.pdf)

5. The IEP team participants at the August 17, 2021 IEP team meeting included the student's parents, administrator, special educator and general educator, however, there is no documentation that the related services providers were in attendance at the meeting to discuss whether related services could be provided within the VLP setting.

### **DISCUSSION/CONCLUSION:**

When determining a student's Least Restrictive Environment (LRE), a public agency must ensure that a continuum of alternative placements is available to the extent necessary to implement the IEP and meet the needs of students with disabilities for special education and related services. Additionally, the educational placement decision of a student with a disability is made by the IEP team based on the student's IEP, with consideration given to any potential effect on the student or on the quality of services that the student needs. (COMAR 13A.05.01.10).

Based on Findings of Facts #1 - #5, the MSDE finds that BCPS did not follow proper procedures on August 17, 2021, when the Individualized Education Program (IEP) team determined the placement in which the student would receive special education instruction and related services for the 2021-2022 school year, in accordance with 34 CFR §§300.114 and .116. Therefore, this office finds that a violation occurred with respect to the 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.<sup>3</sup>

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.<sup>4</sup> Dr. Birenbaum can be reached at (410) 767-7770 or by email at [nancy.birenbaum@maryland.gov](mailto:nancy.birenbaum@maryland.gov).

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<sup>3</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.

<sup>4</sup> The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

Dr. Kathrine Pierandozza

November 17, 2021

Page 4

### **Student Specific**

The MSDE requires the BCPS to reconvene an IEP team meeting to ensure that proper procedures are followed to determine the placement in which the student receives special education instruction and related services for the 2021-2022 school year.

If, after the IEP team reconvenes, a different placement decision is determined for the student, the BCPS will determine the compensatory services or other remedy required to address the violation.

### **School-Based**

The MSDE requires the BCPS to provide documentation of the steps taken at [REDACTED] to ensure that proper procedures are in place when determining the placement for students with disabilities at the school.

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 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

[REDACTED]  
Brian Morrison  
Diane Eisenstadt