




**Mohammed Choudhury**  
State Superintendent of Schools

November 29, 2021




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

RE:   
Reference: #22-032

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.

**ALLEGATIONS:**

On September 30, 2021, the MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of her daughter, 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 above-referenced student.

The MSDE investigated the following allegations:

1. The BCPS did not provide prior written notice (PWN) of the team’s decision to reject the parent’s proposal for adult support for the student, which was made at the Individualized Education Program (IEP) team meeting held on September 2, 2021, in accordance with 34 CFR §300.503.
2. The BCPS has not ensured that the student’s IEP has addressed her interfering behavior of elopement, since the start of the 2021 - 2022 school year, in accordance with 34 CFR §300.324.

**BACKGROUND:**

The student is six (6) years old and is identified as a student with an Other Health Impairment (OHI) under the IDEA, related to Down Syndrome.

In July 2020, the student transitioned from an Individualized Family Service Plan (IFSP) to an IEP, as appropriate. However, the complainant did not provide consent for the provision of special education services for the student because she decided that the student would not attend pre-kindergarten due to concerns related to the Covid-19 pandemic.

On August 30, 2021, the student returned to school and on September 3, 2021, the complainant provided consent for the provision of special education and related services for the student, who currently attends [REDACTED]

**FINDINGS OF FACTS:**

1. On September 2, 2021, the IEP team convened for a reevaluation of the student under the IDEA. The prior written notice from the meeting reflects that the team reviewed the student's educational record, and parental and teacher input. Based on the data, the IEP team determined that the student continued to be eligible under the IDEA. The IEP team also recommended that educational, cognitive, and social and emotional assessments be conducted on the student, in addition to a Functional Behavior Assessment (FBA). The team documented the decision that updated present levels of performance were required for the student. The IEP did not identify behavior as an area of need for the student at the start of the 2021 - 2022 school year.
2. The prior written notice from the September 2, 2021 IEP team meeting reflects that the student's teacher reported that the "[the student's] most concerning behavioral need at this time is eloping; not necessarily leaving the classroom but during recess and/or dismissal, which poses a very alarming safety issue." The complainant also indicated that she "strongly believes that having an adult support staff at this time would greatly benefit [the student], keeping her focused, on task, and more so, keeping her safe." The IEP team documented that, because the school year had just begun, the student's IEP had not been implemented and there was "not enough information/data to warrant revisions, and that the IEP remained appropriate" at that time. However, there is no documentation reflecting that the IEP team considered the use of positive behavior interventions and supports, and other strategies to address the eloping behavior reported by the IEP team.
3. On October 14, 2021, the IEP team convened in response to the complainant's "urgent request made for additional support to ensure [the students] safety in school." The student's teachers reported that, "despite knowing the rules, [the student] would wait for the right time/chance to get to something that would result in safety issues e.g., sharp things (scissors) or anything that she sees in the classroom, climb on desks, and most concerning would elope/leave the assigned area/classroom." The complainant reported that her main concern remained to be the student's safety, and that she continues to believe that the student needs "a dedicated adult during the entire school day." Based

on these reports, the student's IEP was revised to include "additional adult support daily throughout the entire instructional day."

4. On November 16, 2021, the IEP team convened to review assessment results. The IEP team reviewed the student's educational, psychological, and FBA assessments, in addition to her first quarter goal progress reports, and teacher and parent input. Based on this review, self-management was identified as an area of need for the student and a goal was developed in this area to assist the student with "improving her ability to pay attention, stay focused and stay on task, particularly staying in the assigned area during the instructional day."

### **CONCLUSIONS:**

#### **Allegation #1 Prior Written Notice Regarding the Parent's Proposal for Adult Support**

Based on the Findings of Facts #1 and #2 , the MSDE finds that the BCPS provided prior written notice of the team's decision to reject the parent's proposal for adult support for the student at the September 2, 2021 IEP team meeting, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to the allegation.

#### **Allegation #2: An IEP that Addresses the Student's Behavior**

Based on the Findings of Facts #1 - #4 , the MSDE finds that the BCPS did not ensure the student's IEP addresses her interfering behavior from September 2, 2021 to October 14, 2021, when the IEP was revised, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation during this time period.

Notwithstanding the violation, based on the Findings of Facts #3 and #4, the MSDE finds that the BCPS convened on October 14, 2021 to revise the student's IEP to address her interfering behavior, consistent with the data. Therefore, no further corrective action is required after this time period.

### **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. 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. Dr. Birenbaum can be reached at (410) 767-7770 or by email at nancy.birenbaum@maryland.gov.

**Student-Specific**

The MSDE requires the BCPS to provide documentation that the IEP team has convened to determine whether the violation identified through this investigation had a negative impact on the student's ability to benefit from the education program from September 2, 2021 to October 14, 2021. If the 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 violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

**TECHNICAL ASSISTANCE:**

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/Special Education Services

MEF:ac

c: Sonja Santelises  
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