




Mohammed Choudhury  
State Superintendent of Schools

May 13, 2022




Dr. Kathy Pierandozzi  
Executive Director, Department of Special Education  
Baltimore County Public Schools  
Jefferson Building, 4th Floor  
105 W. Chesapeake Avenue  
Towson, Maryland 21204

RE:   
Reference: #22-111

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 March 15, 2022, 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 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 following allegations:

1. The BCPS did not follow proper procedures during the 2021 - 2022 school year to fulfill its Child Find obligation to ensure that the student was evaluated and identified as a student with a disability under the IDEA, in accordance with 34 CFR §§300.111, 300 -.311 and COMAR 13A.05.01.04 - .06.
2. The BCPS did not follow proper procedures when responding to a request for an Independent Education Evaluation (IEE) for the student during the 2021 - 2022 school year in accordance with 34 CFR §300.502 and Annotated Code of Maryland, Education Article §8-405.

3. The BCPS did not ensure that an Individualized Education Program (IEP) team meeting convened on February 17, 2022 included the required participants, in accordance with 34 CFR §300.321.
4. The BCPS did not ensure that the parent was provided with copies of the procedural safeguards notice during the 2021 - 2022 school year, in accordance with 34 CFR §300.504.
5. The BCPS did not ensure that the student's record was transferred in conformity with *The Maryland Student Records System Manual* during the 2021 - 2022 school year, in accordance with 34 CFR §§300.101, .323, and COMAR 13A.08.02.
6. The BCPS did not provide proper written notice of the IEP team decisions from the IEP team meetings held on October 19, 2021 and February 17, 2022, in accordance with 34 CFR §300.503.

**BACKGROUND:**

The student is nine (9) years old and has not been identified as a student with a disability under the IDEA. She is parentally-placed at [REDACTED] a Maryland approved [REDACTED] private school.

**FINDINGS OF FACTS:**

1. The student is parentally-placed at a Maryland approved [REDACTED] private school and has not been registered for educational services in the BCPS.
2. On October 7, 2021, the complainant made a written referral for the student for an initial evaluation under the IDEA. The referral states concerns related to the student's inattentiveness, reading, writing, phonics skills, and social/emotional development.
3. There is documentation that the student's neighborhood school IEP team convened on October 19, 2021, which included participation from the school's administrator, psychologist, special educator, general educator, guidance counselor, parent, and the student's grandparent.
4. The written invitation to the IEP team meeting states that the purpose of the meeting was to discuss the student's educational performance or potential need for special education services as an initial referral. The IEP prior written notice reflects that the team considered information about the parent's concerns and the student's educational and social/emotional performance. Based on this review, the team determined that psychological and educational assessments would be conducted for the student, in addition to a classroom observation to determine whether the student was a student with a disability under the IDEA. The student's parent provided consent for the assessments to be conducted.

5. There is documentation that the BCPS provided the complainant with the October 19, 2021, IEP team meeting prior written notice of the IEP team's decisions.
6. The email correspondence dated October 21, 2021, and November 2, 2021, between the school staff and the complainant reflects that the parties agreed that the student would be available for a psychological assessment on November 4, 2021, and an educational assessment on November 8, 2021, both to be conducted at the student's neighborhood school.
7. On November 4, 2021, the BCPS conducted a psychological assessment on the student. However, due to concerns raised by the complainant about the school staff and the amount of time the assessment was taking to complete, the student and complainant did not remain in the school building and the assessment was not completed.
8. The electronic mail (email) dated November 10, 2021, reflects that the school staff provided the complainant with a copy of the procedural safeguards notice.
9. The email correspondence dated November 10, 2021, reflects that the psychological assessment was partially completed on the scheduled date, however, the complainant canceled the scheduled educational assessment due because she did not want to return to the student's neighborhood school for any further testing, including the psychological assessment, based on her dissatisfaction with the "treatment by school staff towards her and [the student] while at the testing site." The complainant requested that the assessments be conducted by other BCPS staff at a location other than the student's neighborhood school.
10. There is email correspondence dated November 22, 2021, between the school staff and the complainant, which reflects that the school staff offered to review the psychological assessment on December 2, 2021. However, the complainant indicated a refusal to convene an IEP team meeting until all of the assessments were conducted for the student.
11. The email correspondence dated November 29, 2021, between the school staff and the complainant, reflects that the school staff offered the complainant an alternative BCPS location in order for the student's assessments to be conducted, and requested that the complainant provide dates that would accommodate the family's schedules.
12. There is documentation reflecting that the educational and classroom observations were conducted on December 15, 2021, at the alternate location offered to the complainant by the BCPS school staff.
13. There is email correspondence dated December 21, 2021, to December 23, 2021, between the school staff and the complainant, reflecting that the school staff indicated that the psychological assessment needed to be completed and that the school staff offered the complainant three (3) different dates at a location other than the student's neighborhood school to complete the assessment for the student. However, the complainant indicated that she was awaiting a response from the BCPS Central Office staff as to whether

- “another psychologist” would be conducting the assessment for the student, in response to her request.
14. An IEP meeting invitation dated January 14, 2022, reflects that the BCPS attempted to convene an IEP team meeting on February 2, 2022 to review the assessment results. However, the complainant indicated that she would be unable to attend an IEP team meeting on that date.
  15. On February 17, 2022, the IEP team convened to review the student’s assessments results. The prior written notice reflects that the team reviewed the assessment results and determined that the student did not meet the criteria of a student with a disability under the IDEA that requires specialized instruction, as the data “did not indicate that the student had an impairment.”
  16. At the same IEP team meeting, the team initiated another evaluation by determining that additional data was required in order to conclude whether the student was eligible under the IDEA. The team recommended that the psychological assessment be completed, in addition to speech or language and occupational therapy assessments. The student’s parents provided consent for the speech or language and occupational therapy assessments to be administered, however, she expressed her disagreement with “anyone in BCPS completing the psychological evaluation,” and requested that the BCPS fund an independent neuropsychological IEE for the student.
  17. There is documentation that the BCPS provided the complainant with the February 17, 2021 IEP team meeting prior written notice of the IEP team’s decisions.
  18. There is documentation from the BCPS, dated March 7, 2022, reflecting that the school system acknowledged the complainant’s request for the BCPS to fund a neuropsychological IEE for the student in response to her disagreement with the school-based psychological assessment. The documentation further reflects that the school system will inform the complainant within thirty (30) days of the decision whether to fund the IEE for the student or their intent to request a due process hearing to defend the school-based evaluation.
  19. There is documentation from the BCPS, dated March 11, 2022, which reflects that the BCPS denied the complainant’s request for an IEE, and offered the complainant the option to have the psychological assessment completed by another BCPS psychologist. It further instructed the complainant to contact the school system should she choose to accept the option.
  20. There is documentation from the BCPS to the complainant, dated April 21, 2022, informing her that the school system would, in fact, fund the neuropsychological assessment for the student, and the documentation includes the procedures for obtaining the assessment, consistent with BCPS policy.

21. There is documentation that the student's speech or language assessment was conducted on March 15, 2022 and her occupational therapy assessment was completed on April 4, 2022.
22. There is an IEP meeting invitation dated March 23, 2022, reflecting that the BCPS attempted to convene an IEP team meeting on April 7, 2022 to review the student's assessment results. However, the complainant indicated on March 31, 2022 that she would not be available on that date.
23. There is documentation that the BCPS has made subsequent attempts to reschedule the IEP team meeting to review the assessment data, but that the complainant has rejected all proposed meeting dates offered by the BCPS stating that her "earliest availability" would be after May 25, 2022.

## **CONCLUSIONS:**

### **Allegation #1: Child Find**

The IEP team must complete an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral (34 CFR §300.301 and COMAR 13A.05.01.06(A)). The timeframe does not apply to a public agency if a parent repeatedly fails or refuses to make the student available for the evaluation, or the student enrolls in a school of another public agency after the timeframe has begun and prior to a determination of the student's eligibility by the previous public agency. The exception applies only if the subsequent public agency is making sufficient progress to complete the evaluation and the public agency and the parent have agreed to a specific time for completion of the evaluation (34 CFR §300.301).

An IEP team meeting can be conducted without a parent when the public agency is unable to convince the parent to participate. However, the public agency must be able to document its attempts to arrange a mutually convenient time and place to hold an IEP team meeting (34 CFR §300.322 and COMAR 13A.05.01.07).

Based on the Findings of Facts #1- #4, the MSDE finds that the BCPS appropriately initiated an evaluation of the student after receiving a referral from the complainant. Furthermore, based on Findings of Facts #6, #7, #9-#15, the MSDE finds that BCPS completed the evaluation of the student with the information that was available to the IEP team following the complainant's decision not to allow the completion of the psychological assessment of the student.

However, based on the Findings of Facts #16-23, the MSDE finds that the BCPS did not ensure that the evaluation was completed within the required timelines. This office further finds, based on those same Findings of Facts that, while the BCPS reports that the complainant requested a delay in the completion of the evaluation, the IDEA does not provide for an exception to the timeline requirements on this basis. Therefore, the MSDE finds that a violation occurred.

Notwithstanding that violation, the MSDE finds that, based on Findings of Facts #22 and #23, the delay in completing the evaluation resulted from the school system's attempt to ensure the

complainant's participation in the IEP team's decisions. Therefore, no student-specific corrective action is required to remediate the violation.

### **Allegation #2: Responding to a Request for an IEE**

If the parent disagrees with the educational evaluation of the student that was conducted by the local school system, the parent may request an independent educational evaluation at public expense in accordance with regulations adopted by the Department. (34 CFR §300.502)

The local school system shall provide a written response approving or denying a request within 30 days of the date the request was made. If the local school system approves a request, the written response shall advise the parent of the process for arranging the evaluation at public expense. If the local school system denies a request, the local school system shall file a due process complaint within 30 days of the date of the denial. (Annotated Code of Maryland, Education Article §8-405)

Based on the Findings of Facts #18 and #19, the MSDE finds that the BCPS followed proper procedures when responding to a request for an IEE for the student during the 2021 - 2022 school year. However, based on the Findings of Facts #20, the MSDE finds that the BCPS did not follow proper procedures to file a due process complaint within 30 days of the date of denial, in accordance with Annotated Code of Maryland, Education Article §8-405. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #20, the MSDE finds that the BCPS subsequently granted the complainant an neuropsychological IEE eleven (11) days after issuing a letter of denial. Therefore, this office does not require corrective action with respect to this aspect of the allegation.

### **Allegation #3: Proper Participants at the October 17, 2021 IEP Team Meeting**

Based on the Findings of Facts #3, the MSDE finds that the required participants attended the IEP team meeting on October 19, 2021, in accordance with 34 CFR §300.321. Therefore, this office does not find that a violation occurred with respect to the allegation.

### **Allegation #4: Provision of Procedural Safeguard Notice**

Based on the Findings of Facts #2 and #8, the MSDE finds that the parent was not provided a copy of the procedural safeguards notice following her request for an evaluation of the student during the 2021 - 2022 school year, in accordance with 34 CFR §300.504. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the same Findings of Facts, the MSDE finds that the violation did not negatively impact the complainants' ability to exercise their rights, and the BCPS subsequently provided them with a copy of the notice of procedural safeguards. Therefore, no corrective action is required to remediate the violation.

### **Allegation #5: Educational Record Transfer**

Based on the Findings of Facts #1, the MSDE finds that, because the student has not been registered as a student in the BCPS, the school system was not required to request for a transfer of the student's educational record during the 2021 - 2022 school year, in accordance with in accordance with 34 CFR §§300.101, .323, and COMAR 13A.08.02. Therefore, this office does not find that a violation occurred with respect to the allegation.

### **Allegation #6: Provision of Proper Written Notice of the IEP Team Decisions**

Based on the Findings of Facts #5 and #17, the MSDE finds that the BCPS provided the complainant with proper written notice of the IEP team decisions following the IEP team meetings held on October 19, 2021 and February 17, 2022, in accordance with 34 CFR §300.503. Therefore, this office does not find 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.

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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

The MSDE requires the BCPS to provide documentation by July 30, 2022 of the steps taken to ensure that staff at the student's neighborhood school are informed of, and comply with, the obligation of the BCPS to complete timely evaluations of students with suspected disabilities.

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

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Dr. Kathy Pierandozzi

May 13, 2022

Page 8

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: Darryl Williams  
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