



September 23, 2022

Corrected Copy September 27, 2022

[REDACTED]

Dr. Courtney Hill
Executive Director of Special Education
Baltimore City Public Schools
200 E. North Avenue, Room 204 B
Baltimore, MD 21202

RE: [REDACTED]
Reference: #23-012

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 July 25, 2022, the MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of her son, 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 has not ensured that proper procedures were followed when conducting a reevaluation of the student since October 13, 2021, in accordance with 34 CFR §§300.303 - .311 and COMAR 13A.05.01.06.
2. The BCPS has not ensured that the Individual Education Plan (IEP) team reviewed and revised, as appropriate, the student’s IEP to address the lack of expected progress toward achieving his IEP goals, during the 2021-2022 school year, in accordance with 34 CFR §§300.101 and 324.
3. The BCPS has not ensured that the IEP team addressed the parent’s concerns regarding adult support, occupational therapy (O/T), safety, and toileting needs since October 2021, in accordance with 34 CFR §300.324.

4. The BCPS did not provide the parent with a copy of the completed IEP document within five business days after the IEP team meeting held on October 13, 2021, in accordance with COMAR 13A.05.01.07.

BACKGROUND:

The student is seven years old and is identified as a student with Autism under the IDEA. He attends ██████████ and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: REEVALUATION PROCEDURES

FINDINGS OF FACT:

1. The BCPS acknowledges that the ninety-day evaluation timeline was not met and an additional violation occurred as to the occupational therapy evaluation agreed to on May 25, 2022.

CONCLUSION:

Based upon the Findings of Fact #1, the MSDE finds that the BCPS did not ensure that proper procedures were followed when conducting a reevaluation of the student since October 13, 2021, in accordance with 34 CFR §§300.303 - .311 and COMAR 13A.05.01.06. The MSDE appreciates the BCPS' acknowledgement and concurs that a violation occurred with respect to the allegation.

ALLEGATION #2: ADDRESSING THE LACK OF EXPECTED PROGRESS

FINDINGS OF FACTS:

2. The reports of the student's progress dated November 4, 2021, reflect that he was not making sufficient progress to meet his "early learning skills - language and literacy" written language goal.
3. The Prior Written Notice (PWN) generated after the January 26, 2022, IEP team meeting reflects that the IEP team reviewed the student's IEP, PWN, attendance records, service provider progress reports, psychologist report (1/21/22), speech and language provider notes, and parent input. The IEP team agreed to the addition of visual aids, toileting schedule, pictures to support reading, close proximity to adults during transitions, strategies to initiate and sustain attention, reinforce positive behavior, and frequent changes in activities to the student's supplementary aids and services. The IEP team further agreed that, "the IEP goals and objectives in the student's active IEP will remain the same."
4. There is no documentation of the student's report of progress for January 2022.
5. The reports of the student's progress dated March 30, 2022, reflect that he was not making sufficient progress to meet his IEP goals.
6. The PWN generated after the March 30, 2022, IEP team meeting reflects that the IEP team reviewed and revised the student's IEP. The IEP team reviewed the student's "active" IEP, PWN, attendance

records, service provider progress reports, psychologist report (1/21/22), educational assessment (3/2/22), speech and language provider notes, school-based assessment data, team discussions, and parent input. The IEP team further determined that an attendance goal was warranted for the student to make academic progress. The student's IEP goals, instructional accommodations, and supplementary aids and services were updated.

7. There is no documentation of the student's report of progress on his pre-writing and attendance goals for June 2022.

CONCLUSIONS:

Based on the Findings of Facts #2, #3, #5, and #6, the MSDE finds that the BCPS did ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achieving his IEP goals, for November 2021 and March 30, 2022, in accordance with 34 CFR §§300.101 and 324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on Findings of Facts #4 and #7, the MSDE finds there were periods in which there were no reports available for the IEP team to review and that the IEP team was unable to address the student's progress, in January 2022 and June 2022, in accordance with 34 CFR §§300.101 and 324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

The BCPS must ensure the provision of written information about the student's progress towards their IEP goals. (34 CFR §§300.101, .320, and .323).

Based on the Findings of Fact #4 and #7, the MSDE finds that the BCPS did not ensure that the parent was not provided with quarterly reports towards achieving the annual IEP goals in January 2022 and the pre-writing and attendance IEP goals in June 2022, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds that a violation occurred.

ALLEGATION #3: ADDRESSING PARENTAL CONCERNS

FINDINGS OF FACTS:

8. The PWN generated after the October 13, 2021 IEP team meeting reflects that the parents "are concerned about the student's difficulty navigating the building and adult support will help him transition from one class to another", and coping in class. The IEP team agreed to submit a technical packet to seek adult support if the student "continued to have difficulty adapting to the new environment." There is no documentation that the IEP team submitted a technical packet.
9. The PWN generated after the January 26, 2022, IEP team meeting reflects that the IEP team agreed the student requires specific accommodations for an emergency evacuation, and to add "close proximity to adults during transitions" to his supplementary aids and services.

10. The PWN generated after the March 30, 2022, IEP team meeting reflects that the parents continued to “express an interest in having the student transferred to another school for reasons related to “concerns about academics and safety.” The parents confirmed they did not submit a safety transfer request during the required period, despite being aware of the opportunity to do so. The IEP team agreed the student requires “direct adult supervision to ensure he remains in a designated location.” The parents further requested 1:1 adult support throughout the day. The school staff reported they had insufficient data to determine the need for 1:1 to adult support due to the student’s poor attendance.
11. The PWN generated after the May 31, 2022, IEP team meeting reflects that the parents expressed concerns about the student arriving home in a soiled pull-up, and his bathroom use while at school. The school staff reported the student is taken to the bathroom per his toileting schedule but is reluctant to use the bathroom and replies “No” when encouraged to do so. The IEP team “considered” recommending an O/T assessment. The Occupational Therapist completed an informal assessment in the classroom and reported “similar concerns as the parents”. The IEP team agreed to conduct a fine motor assessment. The IEP team further agreed to add adult support to the student’s IEP for forty-five days.

CONCLUSION:

Based upon the Findings of Facts #3, #8 - #11, the MSDE finds that the BCPS did ensure that the IEP team addressed the parent’s concerns regarding adult support, O/T, safety, and toileting needs since October 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #4: PROVISION OF IEP DOCUMENTS

FINDINGS OF FACT:

12. The BCPS acknowledges that a violation occurred with respect to providing the parent with a copy of the completed IEP document within five business days after the IEP team meeting held on October 13, 2021.

CONCLUSION:

Based upon the Findings of Fact #12, the MSDE finds that the BCPS did not provide the parent with a copy of the completed IEP document within five business days after the IEP team meeting held on October 13, 2021, in accordance with COMAR 13A.05.01.07. The MSDE appreciates the BCPS’ acknowledgement and concurs 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 non-compliance 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

Student Specific:

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

- a. Completed the reevaluation, reviewed and revised the IEP consistent with the data, and has determined compensatory services for the delay;
- b. Provided the parents with quarterly progress reports from the 2021-2022 school year;
- c. Convened an IEP team meeting to determine the student's progress for quarters two and four and whether any lack of expected progress had a negative impact on the student's ability to benefit from the education program. 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; and
- d. Provided the parent with the completed IEP document(s) from the October 13, 2021, IEP team meeting.

The BCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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.

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School-Based

The MSDE requires the BCPS to provide documentation by December 1, 2022, of the steps it has taken to ensure that ██████████ staff properly implements the requirements for the re-evaluation process, provision of progress reports and providing parents completed IEP documents to the parent under the IDEA and COMAR. These steps must include staff development, as well as tools developed to monitor the action steps, a monitoring schedule and provision of the completed monitoring tool to MSDE by January 1, 2023. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations related to the re-evaluation process, provision of progress reports and providing parents completed IEP documents do not recur.

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/tg

c: Sonja Santelises
Macon Tucker
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