



September 23, 2022

[REDACTED]
[REDACTED]
[REDACTED]

Dr. Courtney Hill
Baltimore City Public School
200 E. North Avenue, Room 204 B
Baltimore, MD 21202

RE: [REDACTED]
Reference: #23- 013

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 27, 2022, the MSDE received a complaint from Ms. [REDACTED], “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City Public School (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 the student’s Individualized Education Program (IEP) addresses his health and nursing needs since the start of the 2021-2022 school year, in accordance with 34 CFR §300.324.
2. The BCPS has not ensured that the student was consistently provided with the nursing services required by his IEP since the start of the 2021-2022 school year, in accordance with 34 CFR §300.101 and .323.
3. BCPS did not ensure that the student was provided with the Extended School Year (ESY) services required by his IEP during the summer of 2022, in accordance with 34 CFR §300.106 and .323.
4. The BCPS did not follow proper procedures when using physical restraint and seclusion with the student during the 2021-2022 school year, in accordance with COMAR 13A.08.04.05.

BACKGROUND:

The student is nine (9) years old and is identified as a student with an Intellectual Disability under the IDEA. He attends ██████████ and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

ALLEGATIONS #1 and #2

DEVELOPMENT AND IMPLEMENTATION OF THE IEP

1. The student's IEP in effect in September 2021 does not reflect the need for a dedicated nurse under supplementary aids and services.
2. On November 29, 2021, an IEP meeting was held in which the complainant raised concerns that the student did not have full-time support from a school nurse. School-based staff explained that the orders provided by the student's physician require that he be provided with access to nursing services, but that this IEP does not require that the student be provided with the services of a dedicated nurse. The parent disagreed with this determination and informed the staff, "The student will not attend school without a dedicated nurse as it is unsafe."
3. The student was approved for Home and Hospital services during the 2021-2022 school year from November 29, 2021- January 25, 2022, and was provided a nurse through the Health Department, as part of Home and Hospital services, due to a medical condition.
4. On December 1, 2021, the IEP team met to review and revise the student's IEP following the parent's approved application for Home and Hospital services. The IEP team determined that the student would receive 6 hours a week of specialized instruction, 30 minutes a week of speech and language services, and 30 minutes a week of counseling services during the time that he was eligible for Home and Hospital services. The student was provided a nurse through the Health Department, as part of Home and Hospital services, due to his medical condition.
5. On January 28, 2022, the IEP team convened to review the student's IEP and consider an "Emergency Care Plan" developed by the Baltimore City Health Department. During the IEP team meeting, the complainant raised her continued concern that the student required the services of a dedicated nurse. While the IEP team reviewed the student's health information, they did not address or refer to the student's "Emergency Care Plan" from the Baltimore City Health Department in the student's IEP.
6. The student's Emergency Health Care Plan requires the administration of Diastat, which requires that a trained individual administer the emergency medication. There is no documentation that any school personnel, outside of the school nurse, have been trained to administer the medication.
7. During the 2021- 2022 school year, a school nurse was available to the student on all but nine days in which the student was absent due to the lack of a school nurse. The student was absent from school for a total of 35 days during the 2021- 2022 school year. He was absent for nine days prior to receiving Home and Hospital Services and 26 days once he was returned to school.
8. The BCPS acknowledges that a violation occurred with respect to the BCPS not ensuring that the student was consistently provided with the nursing services required by his IEP since the start of the 2021-2022 school year, however, this statement by BCPS is not in alignment with the Finding of Fact #1.

ALLEGATION #3: PROVISION OF EXTENDED SCHOOL YEAR SERVICES

9. On April 28, 2022, the IEP team met, in part, to determine the student's need for ESY services. The IEP team agreed the student is eligible for ESY services to continue to work on goals related to critical life skills, as he has shown regression of skills over periods of breaks.
10. There is documentation that the complainant received information related to ESY including the dates, times, location, and transportation details. There is further documentation that a nurse was available at the student's assigned ESY location. The student did not attend the first week of ESY. The parent requested a transfer of the ESY location, which was granted with a start date of July 11, 2022. There is documentation that a nurse was assigned to the second assigned ESY location. The student attended ESY services at the second location for a total of four (4) days.

ALLEGATION #4: PROVISION OF PROPER RESTRAINTS

11. There is no documentation that the student was restrained during the 2021-2022 school year.

CONCLUSIONS:

ALLEGATION #1: IEP DEVELOPMENT

In this complaint, the complainant alleges that the BCPS did not ensure that the student's Individualized Education Program (IEP) addressed his health and nursing needs since the start of the 2021-2022 school year.

Based on Findings of Facts #1 through #8, the MSDE finds that there is no documentation under the Present Levels of Academic Achievement and Functional Performance to indicate the student's health needs as an area of concern. Although his health needs are not directly related to his educational disability and are addressed through the Emergency Care Plan administered by the Department of Health, the student's health is an important part of his profile and must be documented on his IEP. The need for the Emergency Care Plan should be reflected on the IEP in some manner as it is a part of his educational day. (See e.g., "Chronic illness or disability may pose barriers to learning and full participation in school. As a member of school teams, the school nurse can identify and reduce barriers to learning." Role of the School Nurse in Implementing Section 504 and Individualized Education Program Services.) Further, the student's Emergency Care Plan requires the administration of Diastat, an emergency medication that can be administered by trained personnel, school nursing staff, or a licensed health professional. As there is no documentation that school personnel have been trained in the administration of the medication, the student requires access to a school nurse at all times, which should be referenced in the IEP in some way. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #2: IEP IMPLEMENTATION OF NURSING SERVICES

In this complaint, the complainant alleges that the BCPS did not ensure that the student was consistently provided with the nursing services required by his IEP since the start of the 2021-2022 school year.

Based on Findings of Facts #7 and #8, the MSDE finds there were nine (9) days in the school year 2021-2022 that the student did not receive nursing services. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #3: PROVISION OF EXTENDED SCHOOL YEAR SERVICES

In this complaint, the complainant alleges that BCPS did not ensure that the student was provided with the ESY services required by his IEP during the summer of 2022.

Based on Findings of Facts #9 and # 10, the MSDE finds that there is documentation that the BCPS did provide the student with ESY services and transportation services. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #4: PROVISION OF PROPER RESTRAINTS

In this complaint, the complainant alleges that the BCPS did not follow proper procedures when using physical restraint and seclusion with the student during the 2021-2022 school year.

Based on Findings of Fact #11, the MSDE finds that there is no documentation that supports the BCPS conducting a restraint on the student. Therefore, this office does not find 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.

The MSDE has established reasonable time frames below to ensure that noncompliance 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 Ms. 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 by November 30, 2022, that the IEP team has convened and determined the student's present levels of functioning and performance in his identified area

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

of need for Health, that the IEP has been revised to reflect the need of a school nurse or licensed health professional and the use of the Emergency Care Plan consistent with the data provided by the Baltimore City Health Department, and that those services are being provided to the student, as required. The IEP team must determine whether the violation related to the lack of reference to a school nurse on the student's IEP 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.

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

School-Based

The MSDE requires the BCPS to provide documentation by February 28, 2023, of the steps taken to ensure that the violation does not recur at [REDACTED] School. Documentation of the steps taken to prevent the reoccurrence must be provided to the MSDE by March 15, 2023.

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

MF/sj

c: Sonja Santelises
Macon Tucker
Denise Mabry
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