



Mohammed Choudhury
State Superintendent of Schools

March 10, 2023



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

RE: [REDACTED]
Reference: #23- 129

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.

ALLEGATION:

On January 11, 2023, 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.

MSDE investigated the allegation that the BCPS did not follow proper procedures when identifying and evaluating the student to determine if he is a student with a disability requiring special education and related services, since September 19, 2022, in accordance with 34 CFR §§300.301-.311 and COMAR 13A.05.01.06.

BACKGROUND:

The student is eight years old and is not currently identified as a student with a disability under the IDEA. He attends [REDACTED]

FINDINGS OF FACTS:

1. On September 30, 2022, the parent submitted a written referral to school staff for the student to be evaluated for eligibility under the IDEA. The referral reflected concerns in the following areas: academic performance in the area of reading (including specific formal assessments that can detect dyslexia), writing, learning behaviors, psychological functioning, and occupational therapy. The student had a full year of intervention during his first-grade school year that targeted phonics, phonemic awareness, and fluency skills. Reports completed for the student on November 8, 2022,

indicated that he was in the reading intervention group and was performing below grade level expectations on his basic reading skills.

2. On October 24, 2022, the IEP team convened to complete the initial screening and evaluation planning for the student. The written summary of the IEP team meeting reflects that the school staff reported that, despite the student being intelligent, he presents with difficulty in reading texts that include irregular spelling patterns that translate into reading spelling words independently. The IEP team documented their suspicion of a “presence of a disabling condition of a specific learning disability that could be impacting the student’s ability to acquire basic reading skills”.
3. During the October 24, 2022 IEP team meeting, the team reviewed the following data:
 - a. Amplify/ DIBELS diagnostic assessment data for current SY 2022-2023: Beginning of the Year (BOY)(September 13,2022, along with October 24, 2022 progress monitoring);
 - b. Comparative BOY, Middle of the Year (MOY), and End of the Year (EOY DIBELS diagnostic data from previous SY 2021-2022;
 - c. i-Ready Math diagnostic assessment data SY 2022-2023: diagnostic 1: September 20, 2022;
 - d. September to October 2022 classwork samples;
 - e. Classroom teacher's progress report and input;
 - f. Parents' input.
4. Following the review of the student’s data, the IEP team recommended that assessments be conducted for the student in the areas of:
 - a. Academic Performance: Reading Phonemic/ Phonological Awareness; Reading Phonic/ Decoding
 - b. Intellectual/Cognitive Functioning
 - c. Observation and teacher input
5. There is documentation that consent for the assessments recommended at the October 24, 2022, IEP team meeting was provided by the complainant on October 26, 2022.
6. There is documentation that the psychologist conducted a classroom observation on November 17, 2022, during a phonics lesson.
7. On December 19, 2022, the IEP team convened to determine the student’s eligibility as a student with a disability requiring specialized education. The written summary of the IEP team meeting reflects that the team reviewed the results of the psychological, academic, Amplify/ DIBELS BOY, progress monitoring, classwork samples, SY 2022-2023 first quarter report card, Infinite Campus attendance data, teachers' information (classroom and intervention progress reports and observational report/ input). Based on this review, the IEP team determined that the student “does [not] meet BCPS' and IDEA's eligibility criteria as a student with an educational disability that is impacting his access to and participation in the general education curriculum/classroom, and thus is not eligible for special education and/or related service(s)”.
8. The IEP team explained that “results on the assessment of academic skills might have indicated that the student’s performance ranged from the Low range to the Low Average, and the Average range

(that when compared to other children in his grade, his reading skills are in the Low Range, his math skills are in the Low Average), current cognitive testing indicate that the student's cognitive functioning falls in the High Average Range. The student's cognitive profile might indicate a discrepancy between his verbal comprehension skills (which is in the average classification) and visual spatial skills (which is in the extremely high classification), such discrepancy is based on his strengths and results of the student's functioning in five domain-specific areas of performance suggest that the student would be expected to be able to perform at or above grade-level."

9. The data from a Woodcock-Johnson Test of Achievement IV reflects that in the area of Reading Phonics, the student scored in the low to average range on all subtests. In the area of Reading Comprehension, the student scored low range on all subtests. In the area of Reading Fluency, the student scored low in the range on all subtests. In the area of Written Language Expression, the student scored low to average range on all subtests. The student performed below average to average in the area of Phonological Processing Recommendations from the Woodcock-Johnson Test of Achievement IV assessment suggest that the student "needs a little support with word identification and spelling patterns. The student would benefit from exposure to more complex spelling patterns so he is more prepared when he encounters them while reading."
10. The IEP team also used data from the Psychological Report conducted on December 11, 2022, to assess his cognitive functioning. Data from the assessment reflects the student earned a full scale score in the high average range on the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V). The student was also administered the Comprehensive Test of Phonological Processing 2nd Edition (CTOPP-2), which reflected the student scored average in the area of Phonological Awareness, average in the area of Phonological Memory, and below average in the area of Rapid Symbolic Naming. Data from the Psychological Report states "the student's overall cognitive profile indicates a fluency processing delay which may have an adverse impact on the acquisition of certain academic skills. Additionally, the student's cognitive profile indicates a discrepancy between his verbal comprehension skills and visual-spatial skills. This discrepancy is considered both significant and rare as it is seen in fewer than 2% of students his age. This processing deficit may affect his ability to learn and benefit from instruction in the general education classroom. The IEP team will need to determine if this significantly affects his learning and requires specialized instruction and/or related services for him to make academic progress."
11. During the IEP team meeting, the IEP team determined that reading was an area of concern. There is documentation stating the student's most recent DIBELS, and Foundations reading skills endorse a proficient level of performance, which is contradictory to his General Education Progress reports dated Oct. 17, 2022, and December 2, 2022, which reflect his DIBELS his Reading decoding as 312, which correlates to a kindergarten decoding level and spelling on grade level.
12. The IEP team rejected the student's eligibility for special education services based on "formal assessment data, as well as teacher's report substantiated by most current diagnostic assessment data indicating "progress/ improvement in performance in all reading areas, including observational data."
13. The prior written notice developed following the meeting reflects that the parents expressed their disagreement with the IEP team's determination of the student not meeting eligibility criteria based on results of most current educational and psychological testing. It is noted "the student's overall cognitive profile indicates a fluency processing delay which may have an adverse impact on the

acquisition of certain academic skills. Additionally, the student's cognitive profile indicates a discrepancy between his verbal comprehension skills and visual-spatial skills. This discrepancy is considered both significant and rare as it is seen in fewer than 2% of students his age. This processing deficit may affect his ability to learn and benefit from instruction in the general education classroom."

14. There is no documentation the team reviewed the eligibility criteria for a student with a specific learning disability.
15. There is no documentation that each group member certified in writing whether the report reflects the member's conclusion and that the parents were afforded the opportunity to submit a separate statement, regarding the student's eligibility as a student with a specific learning disability.

CONCLUSIONS: IDEA IDENTIFICATION/EVALUATION

A Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that manifests itself in the imperfect ability to listen, think, speak, read, write, spell, or perform math calculations (34 CFR §300.8 and COMAR 13A.05.01.03). The IEP team may determine that a student has a Specific Learning Disability if the student does not achieve adequately for the student's age or meet State-approved grade-level standards in specific areas when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards or intellectual development. This determination can be made based on either of the following criteria:

- The student does not achieve adequately for his or her age or meet State-approved grade-level standards despite the provision of appropriate instruction and the provision of scientific, research-based interventions targeted to the needs of the student; or
- The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments (34 CFR §300.309).

To ensure that underachievement in a student suspected of having an SLD is not due to lack of appropriate instruction in reading or math, the IEP team must consider data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings delivered by qualified personnel and data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parent (34 CFR § 300.309 and COMAR 13A.05.01.06(D)).

Following the consideration of the student with a specific learning disability, each member of the IEP team must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

Based on the Findings of Facts #1 - #15 MSDE finds the BCPS did not follow proper procedures when identifying and evaluating the student to determine if he is a student with a disability requiring special

education and related services, since September 19, 2022, in accordance with 34 CFR §§300.301-.311 and COMAR 13A.05.01.06. Therefore, this office finds a violation has 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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner¹. This office will follow up with the public agency to ensure that it completes the required actions consistent with 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 action². Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

MSDE requires the BCPS to provide documentation by April 15, 2023, that it has convened an IEP meeting to appropriately review the eligibility criteria for a student with a specific learning disability and determine if the student qualifies with a specific learning disability under the IDEA. If the IEP team determines that the student meets the eligibility criteria as a student with a specific learning disability, the IEP team must determine the amount and nature of compensatory services or other remedies 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

MSDE requires the BCPS to provide documentation by April 15, 2023, of the steps that have been taken, including staff training, to ensure that the School staff properly implement the requirements in the areas of noncompliance identified through this investigation, specifically, the requirements to be followed when a referral has been made for a student with a suspicion of eligibility for special education services as a student

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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with a specific learning disability. 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 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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DC/sj

c: Sonja Santelises
Denise Mabry
Christa McGonigal
[REDACTED]
Gerald Loiacono
Diane Eisenstadt
Stephanie James