

March 22, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Allison Myers
Executive Director
Special Education Services
Baltimore County Public Schools
105 W Chesapeake Ave,
Towson, Maryland 21204

RE: [REDACTED]
Reference: #24- 132

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 January 24, 2024, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant”, on behalf of 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.

MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) team convened to review the IEP before the required annual review date to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.
2. The BCPS has not implemented an IEP, specifically the Behavior Intervention Plan (BIP) that addressed the student’s identified needs, since the start of the 2023- 2024 school year, in accordance with 34 CFR §§300.101 and .324.
3. The BCPS has not ensured that the IEP team addressed parental concerns, specifically the bullying incidents that took place starting in December 2023, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is 12 years old and attends [REDACTED]. He is identified as a student with multiple disabilities under the IDEA and has an IEP that requires special education instruction and related services.

FINDINGS OF FACTS:

1. On June 1, 2023, the IEP team met to conduct an annual IEP review meeting to update the student's October 6, 2022, IEP. The June 1, 2023, IEP requires the implementation of a behavior intervention plan (BIP).
2. The IEP in effect at the start of the 2023-2024 school year was developed on June 1, 2023. The BIP reflects that the student has two behaviors that require replacement and goal behaviors:
 - Arguing with peers, and
 - Difficulty with self-regulation, as evidenced by not using an appropriate de-escalation strategy when upset.

The BIP also identifies strategies that address the function of the behavior, skill development, strategies to address the contributing factors of the behavior, strategies to minimize the triggers of the behaviors, positive strategies (rewards and reinforcers) to reinforce appropriate replacement behaviors, consequence strategies for the problem behavior, staff development, response plan (if needed), and BIP data collection methods. Progress towards the achieving strategies in the BIP was reported on October 27, 2023, and January 17, 2024.
3. The Prior Written Notice (PWN) was drafted following the June 1, 2023, IEP team meeting. The PWN reflects the team reviewed the IEP, revised and agreed on the following:
 - Present levels of performance, goals, and objectives;
 - Instructional and testing accommodations;
 - Text-to-speech service;
 - Supplementary aids;
 - The student did not qualify for ESY; and
 - The student requires support for social-emotional learning needs with services provided in the student's home school. The student will receive instruction in a self-contained classroom, taught by a special educator or a general educator with consultation with a special educator.
4. There is documentation that the BIP has been implemented during the 2023-2024 school year. The document reflects date, time, staff, problem behavior, strategies that address the function of the behavior, skill development, strategies to minimize triggers, positive strategies, consequence strategies, response plans, and notes.
5. On December 8, 2023, the complainant completed the BCPS Bullying form. The form reflects the student was targeted by other students on December 1, and 7, 2023. There is no documentation that the form was provided to the IEP team for consideration.
6. On January 26, 2024, the IEP team convened the student's annual review meeting. The PWN developed after the IEP team meeting reflects that the IEP team reviewed the draft IEP. The team proposed and accepted updates to the present levels of performance, instructional and testing accommodations, supplementary aids, services, goals, objectives, and ESY. There is no documentation that the complainant raised concerns regarding bullying.
7. On February 7, 2024, BCPS issued a response to the BCPS Bullying form filed. The BCPS response reflects that the administrative team determined that the incident that occurred on December 8, 2023, "does not meet the criteria for Bullying, Harassment or Intimidation. The next steps to address the incident on December 1 and, 2023, include:

- Refer the affected student to the school counselor,
- Refer the affected student and accused student to the Social Emotional Learning teacher for a restorative conference;
- Preferential seating away from high traffic areas;
- Change classroom seating to ensure the students are seated separately; and
- Confer with the parents for strategies.

There is no documentation that the BCPS administration referred this matter to the IEP team for consideration.

CONCLUSIONS:

Allegation #1:

Annual Review

Each public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revise the IEP, as appropriate. 34 CFR §300.324.

Based on the Findings of Fact #1, #2, #3, and #6, MSDE finds that the BCPS has ensured that the IEP team convened to review the IEP before the required annual review date in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, the office finds that a violation did not occur concerning this allegation.

Allegation #2:

Implementation of BIP

Based on the Findings of Fact #2, and #4, MSDE finds that the BCPS has implemented an IEP, including the BIP, that addressed the student's identified needs since the start of the 2023- 2024 school year, in accordance with 34 CFR §§300.101 and .324. Therefore, the office finds that a violation did not occur concerning this allegation.

Allegation #3:

Addressing Parent Concern

In this case, the complainant alleges that the IEP team did address the parent's concerns regarding bullying of the student. The bullying was addressed by the BCPS Administrator and was not referred to the IEP team for any considerations.

Based on the Findings of Fact, #5, #6, and #7, MSDE finds that the parent's bullying concerns were not raised with the BCPS IEP team; therefore, they were not required to address parental concerns, specifically the alleged bullying incidents that took place starting in December 2023, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur concerning this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include 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 manner.^[1] 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.^[2] Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

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,

Antoine L. Hickman Ed.D.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

ALH/ra

c: Dr. Myriam Rogers, Superintendent, BCPS
Dr. Allison Myers, Executive Director, Department of Special Education, BCPS
Charlene Harris, Supervisor of Compliance in the Department of Special Education, BCPS
Dr. Jason Miller, Coordinator, Special Education Compliance, BCPS
[REDACTED], Principal [REDACTED], BCPS
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Tracy Givens, Section Chief, Dispute Resolution MSDE
Rabiatu Akinlolu, Complaint Investigator, MSDE

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, 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 MSDE will notify the public Agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.