



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

November 20, 2020



Dr. Kathrine Pierandozza  
Executive Director of Special Education  
Baltimore County Public Schools  
The Jefferson Building  
105 West Chesapeake Avenue  
Towson, Maryland 21204

RE: [REDACTED]  
Reference: #21-019

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 September 26, 2020, 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 County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the BCPS has not ensured that the Individualized Education Program (IEP) addresses the student’s social, emotional, and behavioral needs, since October 2019, in accordance with 34 CFR §§300.320 and .324.

**BACKGROUND:**

The student is fifteen (15) years old and is identified as a student with an Emotional Disability under the IDEA. He has an IEP that requires the provision of special education services.

During school year 2019 - 2020, the student was placed by the BCPS at the [REDACTED] [REDACTED] a nonpublic, separate, special education school, where he attended until the March 2020 Statewide closure of school buildings and initiation of virtual instruction as a result of the national COVID-19 pandemic.

During the 2020 - 2021 school year, the student was placed by the BCPS at another nonpublic, separate, special education school, the [REDACTED] because the [REDACTED] is no longer in operation.

**FINDINGS OF FACTS:**

1. The IEP in effect in October 2019 was developed on May 15, 2019. The IEP identifies social, emotional, behavioral needs related to a pervasive mood of unhappiness, inappropriate feelings under normal circumstances and difficulties establishing and maintaining relationships. These behavioral needs have resulted in the destruction of property, refusal to complete assignments, ignoring staff redirection, and elopement from class and the school building. The IEP team determined that the student's interfering behavior impacts all areas of academic performance.
2. The IEP included goals consistent with the needs identified in the present levels of performance in the areas of academics and social/emotional behavior and social interaction. The IEP required the provision of special education classroom instruction and counseling services to assist the student in achieving the goals. Further, the IEP required the provision of accommodations and supports such as frequent breaks, reduced distractions to others, extended time, social skills training, crisis intervention, extra time to transition between activities, incentive charts, advance preparation for schedule changes, use of positive reinforcers and a therapeutic behavioral aide at all times of the school day.
3. The reports of the student's progress towards achievement of the IEP goals, made in November 2019 and January 2020, reflect that the student was continuing to make sufficient progress to achieve the annual IEP goals by May 2020.
4. On February 7, 2020, an IEP team meeting was held to address the student's lack of consistent school attendance and the complainant's concerns that the student was being "harassed" by his peers and school staff. At that time, the student had eleven (11) unexcused absences from school. The complainant reported that the student had not been in school due to anxiety over interactions with peers and school staff that left him feeling "unsafe" in school. The school staff agreed to investigate the student's allegations and that, in the meantime, he would not have interaction with the school staff involved.
5. An annual IEP team meeting was scheduled for May 6, 2020, but did not take place because the complainant was unresponsive to requests for her participation. The IEP meeting was eventually held on June 5, 2020, without the complainant, after the school staff was unsuccessful with convincing her to participate. At the June 5, 2020 IEP team meeting, the team considered information that the student had not been participating in distance learning due to lack of internet service and the student's emotional unavailability as the result of a family emergency. The team also considered information that the complainant was not able to complete an online consent form for the provision of therapeutic services. The IEP goals were revised to reflect reported progress and frequent

breaks were added to the IEP to assist the student when he becomes “emotionally overwhelmed or academically overstimulated.”

However, there is no documentation that the IEP team considered how to assist the student with accessing virtual instruction or how to assist the complainant with providing the required consent for therapeutic services.

6. On July 17, 2020, the IEP team reconvened at [REDACTED] with the complainant’s participation. The team considered the complainant’s concern about the lack of progress the student was making academically and her request for updated assessments. While the school staff reported that the student was “making progress,” and, therefore, rejected the need for additional assessments, the IEP progress reports indicated that the goals were newly introduced and there is no data to support the student’s progress on the goals developed in June 2020. Further, the team stated that the pace of his progress was negatively impacted by his lack of regular participation in virtual instruction. However, there is no documentation that the IEP team addressed the student’s lack of regular participation in virtual instruction.

#### **DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #1 - #4, the MSDE finds that the IEP addressed the student’s social, emotional, and behavioral needs from October 2019 until the initiation of virtual instruction in March 2020, in accordance with 34 CFR §§300.320 and .324. Therefore, this office does not find that a violation occurred for this time period.

However, based on the Findings of Facts #5 and #6, the MSDE finds that the BCPS has not ensured that the IEP team has considered positive behavioral interventions and other supports needed for the student to successfully participate since the initiation of virtual instruction, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation has occurred since the initiation of virtual instruction.

#### **CORRECTIVE ACTIONS/TIMEFRAMES:**

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.<sup>1</sup>

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must 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.

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770 or [Nancy.birenbaum@maryland.gov](mailto:Nancy.birenbaum@maryland.gov).

**Student-based:**

The MSDE requires the BCPS to provide documentation that it has taken the following actions:

1. Ensure that the IEP team provides documentation that the student's lack of attendance during virtual learning periods has been addressed.
2. Provide documentation that the IEP team has convened and determined whether the violation had a negative impact on the student's ability to benefit from the education program from the inception of virtual learning. If the team determines that there has been a negative impact, it must also determine the amount and nature of compensatory services to address the violation and develop a plan for the provision of those services.

**School-Based:**

The MSDE requires the BCPS to provide documentation of the steps taken to ensure that the violation does not recur for BCPS students placed at the [REDACTED]. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur.

The MSDE is not requiring the BCPS to take any corrective action for students at [REDACTED] because that school is no longer in operation, and as a result, students are no longer placed there.

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 timeframes reported in this Letter of Findings.

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<sup>2</sup> The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

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  
and Special Education Services

MEF/dee

c: Darryl Williams  
Daniel Martz  
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