




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

June 14, 2021




Dr. Debra Brooks
Executive Director of Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

RE: 
Reference: #21-086

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.

ALLEGATIONS:

On April 16, 2021, the MSDE received a complaint from Ms.  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 student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that an IDEA reevaluation initiated on December 9, 2020 was completed within the required timelines, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06.
2. The BCPS has not ensured that the student was provided with the supports and services required by the Individualized Education Program (IEP) since April 16, 2020, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with an Other Health Impairment, based on Attention Deficit Hyperactivity Disorder (ADHD) under the IDEA. He has an IEP that requires the provision of special education services.

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The student attended [REDACTED] School, until the March 16, 2020 Statewide closure of all school buildings as the result of the COVID-19 pandemic. In May 2021, the student returned to [REDACTED] School, and is now receiving instruction in the school building, as well as virtual instruction.

ALLEGATION #1: REEVALUATION TIMELINES

FINDINGS OF FACTS:

1. On December 9, 2020, the IEP team recommended that assessments be conducted to complete a reevaluation.
2. On June 10, 2021, the IEP team met and completed the reevaluation. The IEP team considered the educational impact of not ensuring that the reevaluation was completed within required deadlines and awarded the student compensatory services in the areas of math and reading.

CONCLUSION:

Based on the Findings of Facts #1 and #2, the MSDE finds that the BCPS has not ensured that the reevaluation is completed within the required timelines, in accordance with COMAR 13A.05.01.06. Therefore, this office finds a violation with respect to this allegation.

Notwithstanding the violation, based on Finding of Fact #2, the MSDE finds that the IEP team convened to complete the reevaluation, considered any negative impacts of the violation and awarded compensatory services to the student. Therefore, no further student-specific corrective action is required.

ALLEGATION #2: IEP IMPLEMENTATION SINCE APRIL 16, 2020

FINDINGS OF FACTS:

3. The IEP in effect on April 16, 2020 required various supports, as well as services, to assist the student with achieving the annual IEP goals. These supports included repetition of directions, checks for understanding, chunking of text, extended time and breaking down assignments into smaller units. The student's services included one (1) hour weekly of special education instruction, to be provided by the resource teacher, to address reading and math deficits when needed.
4. There are reports of the student's progress towards achieving his annual goals, made in April 2020 and June 2020, that indicate that the student was making sufficient progress on all IEP goals.
5. On August 18, 2020, an amendment to the IEP was made, removing the supports of frequent breaks and reduced distractions, as they did not apply to distance learning.

6. In September 2020, the student's grandfather, who provides the adult supervision in the home during the school day, contacted the school on several occasions for assistance with the technical aspects of distance learning. On each occasion, support was given until the student was successful at logging on, accessing the virtual classroom and participating in discussion. In addition, the student's grandfather brought the student to the school, where he was given one-to-one support with logging on, navigating the classroom portals and participating in classes. Additionally, the grandparent was provided with internet access through a "hotspot," along with accompanying instructions for its use. When the student was not able to attend virtual class even after being given instruction, the student was not marked absent for the day.
7. In October 2020, the student's grandparent contacted the school several times for support and there is documentation that each time the student was successfully provided with assistance. Further, on two other occasions, the school principal and school staff made a home visit to assist the student individually with logging on.
8. The reports of the student's progress towards achieving his annual goals in November 2020 reflect that the student was not making sufficient progress in math, reading or writing due to absenteeism.
9. In January 2021, the school again provided technical support, including a home visit.
10. The reports of the student's progress towards his annual goals dated January 27, 2021 state that the student was not making progress in math, reading and writing, due to absenteeism and behaviors related to inattention.
11. On February 12, 2021, a general educator progress report indicates that school staff reached out to the grandfather by telephone regarding the student's work. In the areas of English and Social Studies, the teacher reported that the student was not completing assignments and not participating in class. In the area of math, the teacher reported that, despite contacts to the student's home and instruction on how to submit assignments, the student was not attending class, arriving late to class, submitting blank assignments, and not participating by turning off his microphone and disengaging his camera.
12. On March 8, 2021, the IEP team conducted the annual IEP review. A classroom instruction consultation was added to the student's supports to require the special educator to assist the general educator with implementing the student's supports. All other services remained the same. The present levels of performance indicated that the student has poor attendance, did not return to virtual instruction after the lunch period, handed in blank assignments and did not participate when he did attend class. While the school staff attempted to discuss the issues of student attendance, communications with school staff, and class participation with the complainant, those issues were not resolved due to a "communication breakdown" with the complainant and the documentation indicates that she became argumentative with the school staff.

13. A written summary of the March 8, 2021 IEP team meeting reflects that the student had been referred to the Truancy Court Program¹ and the IEP team requested wellness checks, however, the complainant refused the student's participation in the Truancy Court Program.
14. The reports of the student's progress towards his annual goals dated March 8, 2021 state that the student was making "minimal" progress in math, reading and writing due to continued absenteeism and inattention.
15. The reports of the student's progress towards achieving his annual goals in April 2021 reflect that the student was making sufficient progress in math, reading and writing.
16. As of May 2021, the student has been offered in-person learning four (4) days per week. However, his inconsistent attendance continues to be a concern.

CONCLUSION:

Based on FOF #3 - #16, the MSDE finds that the BCPS has offered the supports and services required by the IEP since April 16, 2020, in accordance with 34 CFR §§300.101 and .323, and that appropriate steps have been taken to convince the complainant to accept those supports and services. Therefore, this office does not find a violation with respect to this allegation.

CORRECTIVE ACTION/TIMELINE:

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.²

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

¹ Operated by the Center for Families, Children and the Courts (CFCC) at the University of Baltimore School of Law, the Truancy Court Program (TCP) is a voluntary, non-punitive, holistic, data-driven intervention that works to identify and address the root causes of truancy for each child, seeks to improve behavior and student and family attitudes toward school and helps build a foundation for long-term academic success. [REDACTED] (<http://law.ubalt.edu/centers/cfcc/truancycourtprogram/index.cfm>)

² 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.

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Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³Dr. Birenbaum can be reached at (410) 767-7770 or by email at nancy.birenbaum@maryland.gov.

The MSDE requires the BCPS to provide documentation of the steps taken at [REDACTED] School to ensure that the violation does 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 timeframes 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
and Special Education Services

MEF/dee

c: Sonja Santelises
Allen Perrigan
[REDACTED]
Dori Wilson
Anita Mandis
Diane Eisenstadt
Nancy Birenbaum

³ The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.