

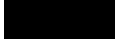


Mohammed Choudhury
State Superintendent of Schools

July 27, 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: #21-106

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 June 2, 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 the student was provided with the supports and services required by the Individualized Education Program (IEP), since September 2020, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS did not ensure that the IEP team reviewed and revised, as appropriate, the student’s IEP to address lack of expected progress toward achieving his IEP goals, during the 2020-2021 school year, in accordance with 34 CFR §§300.101 and 324.

BACKGROUND:

The student is eighteen (18) years old and is identified as a student with Autism under the IDEA. He has an IEP that requires the provision of special education services.

The student attended  until the March 16, 2020 Statewide closure of all school buildings as the result of the COVID-19 pandemic.

FINDINGS OF FACTS:

1. The student participates in a highly structured life skills program, where he is taught functional skills to improve his ability to interact in the community. There is an eleven year gap between the student's instructional and functional levels and he is pursuing a Maryland Certificate of Program Completion.
2. The IEP in effect since September 2020 requires twenty-two (22) hours and thirty (30) minutes of special education instruction per week, in a separate special education classroom, with instruction provided by a special education classroom teacher. It also requires thirty (30) minutes per week, of adapted physical education in the general education classroom.
3. The student's IEP includes various supports to assist him in achieving his annual goals.
4. The parent contact log reflects that on September 10, 2020, September 25, 2020, and September 28, 2020, the school staff attempted to contact the complainant by telephone to determine why the student was not logging on for virtual learning and to offer any needed assistance, but did not receive a response.
5. The parent contact log reflects that on September 30, 2020, the student's case manager contacted the complainant offering any assistance she may need. The complainant responded via text message, stating that she did not want the school staff member to function as the student's case manager.
6. The parent contact log reflects that on October 12, 2020, school staff contacted the complainant by telephone and discussed the student's progress towards achieving the annual IEP goals.
7. The parent contact log reflects that on November 18, 2020, school staff contacted the complainant by telephone to discuss the student's participation in virtual learning, at which time the complainant reported that she did not have an internet connection or a "hot spot."
8. On November 24, 2020, the IEP team convened to address the student's lack of participation in virtual learning. While there is documentation that the complainant was provided with the opportunity to participate in the meeting, she did not do so. The team discussed that the student's teachers were providing him with work packets because he was not logging on to the virtual classroom.
9. The IEP dated November 24, 2020, states, "Despite diligent effort made to let him participate in distance learning through virtual sessions, he is unable to join. There is no data to measure his progress made at this time due to lack of attendance, no participation and no assignment was submitted."
10. The parent contact log reflects that on December 16, 2020 and January 19, 2021, the school staff attempted to contact the complainant by telephone, but did not receive a response.
11. The parent contact log reflects that on January 18, 2021 and February 26, 2021, the school staff sent written correspondence to the complainant by email, providing her with the student's second and third quarter IEP progress reports.

12. The parent contact log reflects that on March 16, 2021, the school staff contacted the complainant by telephone about the student's lack of progress.
13. The parent contact log reflects that on April 13, 2021, the school staff sent written correspondence by email to the complainant, providing her with the student's third quarter IEP progress report.
14. The parent contact log reflects that on April 28, 2021, the school staff attempted to contact the complainant by telephone, but she did not respond.
15. The parent contact log reflects that on May 4, 2021, the school staff sent a work packet to the complainant for the student by email.
16. The parent contact log reflects that on May 13, 2021, the school staff sent a text message to the complainant reminding her to log onto the computer for virtual learning. The log reflects that the student was able to access that lesson virtually. It also reflects that the school staff assisted the complainant with accessing other school resources, and the student was able to access those resources.
17. The parent contact log reflects that on May 28, 2021, the school staff sent the complainant an Extended School Year (ESY) form to be completed for the student. There is no documentation that the form was returned by the complainant.
18. The parent contact log reflects that on June 1, 2021, the school staff contacted the complainant by telephone to discuss the student's lack of progress towards achieving his IEP annual goals, however, the school staff was not able to reach the complainant.
19. The parent contact log reflects that on June 4, 2021, the school staff sent written correspondence through email and attempted to contact the complainant by telephone to assist her with applying for the Baltimore Transition Connection (BTC), which is a community-based program that assists students with intellectual and other disabilities, aged eighteen (18) to twenty-one (21), transition to college or a career. The school staff did not receive a response from the complainant.
20. The parent contact log reflects that on June 11, 2021, the school staff sent home by email the student's fourth quarter report of progress towards achieving the annual IEP goals.
21. There are emails that document that, between June 17, 2021 and June 22, 2021, the school staff communicated with the complainant by email to schedule an IEP team meeting.
22. The written summary of the IEP team meeting that occurred on July 12, 2021, reflects that, the IEP team decided that it should have continued to attempt to convince the complainant to participate in an IEP team meeting to address the student's lack of participation in virtual learning. The team decided the student will be provided with one hundred (100) hours of compensatory recovery services, to address the lack of progress on the annual goals during the second and third quarters of the 2020-2021 school year.

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP IMPLEMENTATION SINCE SEPTEMBER 2020

Based on the Findings of Facts #1 - #19, the MSDE finds that, while the BCPS offered the student the supports and services required by the IEP, since September 2020, the complainant did not make the student available for instruction, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that there was no violation with respect to this allegation.

Allegation #2: IEP REVIEW FOR LACK OF EXPECTED PROGRESS

Based on Findings of Facts #7 - #9, the MSDE finds that, while the IEP team attempted to address the student's lack of participation in virtual learning in November 2020, the complainant did not participate, and thus the team could not do so.

However, based on the Findings of Facts, #10 - #18 and #22, the MSDE finds that the BCPS did not continue to attempt to convince the complainant to participate in order to address the student's lack of access, and thus, lack of progress, following the second and third quarters of the school year, in accordance with 34 CFR §§300.324. Therefore, this office finds a violation occurred from the end of the second quarter of the 2020-2021 school year until July 12, 2021 with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #22, the MSDE finds that the IEP team has determined the compensatory recovery services needed to remediate the violation. Therefore, no further student based corrective action is required.

CORRECTIVE ACTION/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.¹ 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.² Dr. Birenbaum can be reached at (410) 767-7770 or by email at nancy.birenbaum@maryland.gov.

¹ 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.

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

School-Based

The MSDE requires the BCPS to provide documentation of the steps taken at the [REDACTED] [REDACTED] to ensure that IEP teams convene to address lack of student progress towards the annual IEP goals. 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 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
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