



September 23, 2021

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Project Heal
Maryland Center for Developmental Disabilities
Kennedy Krieger Institute
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Dr. Debra Brooks
Executive Director of Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

Re: [REDACTED]
Reference: #22-015

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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.

ALLEGATIONS:

On August 18, 2021, the MSDE received a complaint from Ms. Mallory Legg, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his parent, Ms. [REDACTED]. 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 did not ensure that the reevaluation initiated on April 16, 2021, was completed within the required timelines, in accordance with COMAR 13A.05.01.06.
2. The BCPS did not ensure that the student’s progress towards achievement of the annual goals was measured as described in the Individualized Education Program (IEP), during the 2020-2021 school year, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS has not ensured that the IEP contains a statement of measurable annual IEP goals in the area of math problem solving, designed to meet the student’s needs that result from his disability, to enable him to be involved in and make progress in the general education curriculum, since August 18, 2020, in accordance with 34 CFR §300.320.

BACKGROUND:

The student is eighteen (18) 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 instruction. The student attends [REDACTED]

ALLEGATION #1: REEVALUATION TIMELINE

FINDINGS OF FACTS:

1. On April 16, 2021, a reevaluation IEP team meeting was held. The Prior Written Notice reflects that the IEP team determined that an educational assessment was necessary to assess the student's present levels of performance.
2. By email dated September 3, 2021 from BCPS staff to the MSDE, the BCPS acknowledged that the reevaluation has not been completed within the required timeline.

CONCLUSION:

Based on Findings of Facts #1 and #2, the MSDE appreciates the BCPS' acknowledgment and concurs that the BCPS did not ensure that the reevaluation initiated on April 16, 2021, has been completed within the required timelines, in accordance with COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATIONS #2 AND #3: PROGRESS REPORTS EVALUATION METHOD AND MEASURABLE ANNUAL GOALS - MATH PROBLEM SOLVING

FINDINGS OF FACTS:

3. By email dated September 3, 2021 from BCPS staff to the MSDE, the BCPS acknowledged that the IEP in effect at the beginning of this investigation does not include a measurable math problem solving goal that includes short term objectives.
4. In addition to two (2) math problem solving goals, the IEP dated April 17, 2020 includes two (2) reading comprehension goals, and two (2) written language goals. The IEP reflects that all of the goals describe specific measurement criteria for evaluating the student's progress towards achieving those goals. Reports were made of the student's progress towards achieving the annual goals on November 11, 2020 and January 27, 2021 which state that the student is "making progress through distance learning and skill in this area as it relates to the goal." However, the progress reports do not reflect the description of the measurement criteria required by the IEP.

5. The reports of the student's progress towards achieving the annual math problem solving goals, dated April 12, 2021, state that the student "is not making progress due to a lack of attendance/work completion." The reports of the student's progress towards achieving the annual reading and writing goals, dated April 12, 2021, state that the student is "making minimal progress due to a lack of attendance/work turned in." However, the progress reports do not reflect the description of the measurement criteria required by the IEP.
6. On April 16, 2021, the IEP team convened to conduct an annual IEP review. The IEP reflects that the team revised the math problem solving goal to include measurable objectives, which consist of the component skills required to achieve the goal.
7. In addition to the revised math goal, the IEP dated April 16, 2021, includes a reading comprehension goal and a written language expression goal, which are to be measured through "informal procedures with 80% accuracy." While the reports of the student's progress towards achieving the annual goals in these areas, dated June 11, 2021, reflect a percentage of accuracy, they do not reflect specific collected data related to the goals and objectives.

CONCLUSIONS:

Allegation #2:

In this case, the complainant alleges that the reports of the student's progress toward achieving the annual goals did not contain data regarding the extent to which the student's progress is sufficient to enable him to achieve the goals within a year.

Based on Findings of Facts #4, #5 and #7, the MSDE finds that the IEP progress reports were not consistent with the evaluation methods described in the student's IEP during the 2020-2021 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

Allegation #3:

Based on Findings of Facts #3 and #6, the MSDE appreciates the BCPS' acknowledgment and concurs that the BCPS did not ensure that the IEP contained a measurable annual goal in the area of math problem solving, from August 18, 2020 to April 16, 2021, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred with respect to this allegation for that time period.

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.

Student-Based

The MSDE requires the BCPS to provide documentation of the following:

1. The IEP team has conducted the educational assessment recommended on April 16, 2021 and convened to review and revise the IEP, as appropriate, consistent with the data.
2. The IEP team has determined the amount and nature of compensatory services or other remedy to address the violations identified in this Letter of Findings.

School-Based

The MSDE requires the BCPS to provide documentation of the steps taken at [REDACTED] to ensure the following:

1. IDEA evaluations are completed within required timelines;
2. Progress towards achievement of the goals is being reported in the manner required by the IEP; and,
3. IEPs include a statement of measurable annual goals and objectives that support students' identified area(s) of need.

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.

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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 parents and the school system 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
Denise Mabry
Christa McGonigal
Brian Morrison
Diane Eisenstadt
Nancy Birenbaum