



Mohammed Choudhury
State Superintendent of Schools

May 12, 2022

[REDACTED]
[REDACTED]
[REDACTED]

Dr. Debra Y. Brooks
Executive Director of Special Education
Baltimore City Public Schools
200 E. North Avenue, Room 204 B
Baltimore, MD 21202

RE: [REDACTED]
Reference: #22-110

Dear Parties:

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

ALLEGATION:

On March 14, 2022, the MSDE received a complaint from Mr. [REDACTED], hereafter, “the complainant,” on behalf of his 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 above-referenced student.

The MSDE investigated the allegation that the BCPS has not ensured that the student’s out-of-state Individualized Education Program (IEP) was implemented when the student transferred into the BCPS on February 7, 2022, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is ten (10) years old and is identified as a student with Autism under the IDEA. He attends [REDACTED] Elementary School and has an IEP that requires the provision of special education instruction and related services. Prior to February 7, 2022, the student was enrolled in an elementary school in [REDACTED] where he was also eligible under the IDEA as a student with a disability.

FINDINGS OF FACTS:

1. The student's IEP in effect on February 7, 2022 was developed on January 18, 2022 at his school in ██████████. The IEP requires specialized instruction, supports, related services, and transportation services, including the provision of a support person on the bus daily.
2. On February 7, 2022, the complainant completed the online enrollment application and received a status of "on hold." Additionally, February 7, 2022 the complainant sent an email to BCPS enrollment staff to follow up on the online application. There is no documentation that the BCPS responded to the complainant's email.
3. On February 14 2022, the complainant received a placement letter from the BCPS with a start date of "on or about" February 18, 2022.
4. There is documentation from the BCPS that the student's "start" date was February 22, 2022.
5. There is documentation that the BCPS initiated IEP services for the student on February 22, 2022.
6. On March 2, 2022, the IEP team convened an initial IEP meeting. The prior written notice generated following the meeting reflects that the complainant shared his concerns regarding transportation services. The IEP chair agreed to follow up on the transportation issues.
7. In an email dated March 16, 2022, staff acknowledged the complainant will be reimbursed for providing transportation in February and March 2022.
8. The BCPS acknowledges that a violation occurred with respect to the provision of the 1:1 support person on the bus daily. Specifically, the BCPS acknowledges that the student was not provided a 1:1 support person on the bus until April 1, 2022.
9. On May 2, 2022, the IEP team convened to determine initial eligibility and develop the student's IEP. The prior written notice generated following the meeting reflects that the BCPS acknowledged that there were errors in the implementation of transportation. The student missed nine days of services due to "lack of comparable transportation services" and the IEP team determined there was an adverse impact. The student missed "45 hours of special education classroom instruction, 2 sessions of OT services, and 4 sessions of speech/language services." The team determined that 15 hours of compensatory tutoring services was appropriate to address the impact of the student's missed academic services related to the "IEP not being fully implemented from February 22- March 29, 2022." The IEP team agreed that the student missed two occupational therapy sessions and four speech language therapy sessions. The IEP team agreed that these missed therapy services would be provided to the student.

10. On May 2, 2022, the BCPS generated a Compensatory Services Award letter for the student. The letter reflects the student will receive fifteen hours of compensatory tutoring services outside of the regular school day.

CONCLUSION:

Based upon the Findings of Fact #1- #10, the MSDE finds that the BCPS did not ensure that the student's out-of-state IEP was implemented when the student transferred into the BCPS on February 7, 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, the MSDE finds that the BCPS has convened an IEP team to address the violation and determine the appropriate compensatory services owed to the student.

CORRECTIVE ACTIONS/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.

The MSDE has established reasonable time frames below to ensure that non-compliance 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 the 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisestadt@maryland.gov.

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

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The MSDE requires the BCPS to provide documentation that the student is being provided with the adult support during transportation as required by the IEP.

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. 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/Special Education Services

MEF/tg

c: Sonja Santelises
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