



August 16, 2022

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Allison Myers
Executive Director
Department of Special Education
Baltimore County Public Schools
105 W Chesapeake Avenue
Jefferson Building, 4th Floor
Towson, Maryland 21204

RE: [REDACTED]
Reference: #22-193

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.

ALLEGATIONS:

On June 17, 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 County 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 following allegations:

1. The BCPS has not ensured that the student has been consistently provided with the special education instruction, related services, and supports required by the individualized Education Program (IEP) since the start of the 2021-2022¹ school year, in accordance with 34 CFR §§300.101 and .323. Specifically, you allege the following:
 - a. The student has not been provided with “other instructional supports”;
 - b. The student has not been provided with adult support;
 - c. The student has not been provided with “other physical/environmental supports”;
 - d. The student has not been provided with school health consult;

¹ While the allegations predate this date, only those violations that are alleged to have occurred within one (1) year can be resolved through the State complaint investigations procedure (34 CFR §300.153).

- e. The student has not been provided with specialized instruction; and
 - f. The student has not been provided with occupational therapy, speech and language services and music therapy.
2. The BCPS did not ensure that the IEP team convened to review the student's IEP before February 11, 2022, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is twenty (20) years old and is identified as a student with Autism under the IDEA. He attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

Allegation #1: PROVISION OF OTHER INSTRUCTIONAL SUPPORTS, ADULT SUPPORT, OTHER PHYSICAL/ENVIRONMENTAL SUPPORTS, SCHOOL HEALTH CONSULT, SPECIALIZED INSTRUCTION, OCCUPATIONAL THERAPY, SPEECH AND LANGUAGE SERVICES AND MUSIC THERAPY.

FINDINGS OF FACTS:

1. The student's IEP in effect at the start of the 2021- 2022 school year was developed on February 11, 2021. The IEP requires the student to receive classroom instruction outside of the general education setting for 113 hours and 20 minutes per month, 30 minutes per month of occupational therapy, one hour per week of speech and language services, and 30 minutes per week of music therapy. The IEP further requires the following supports:
 - a. Instructional Supports that includes the use of a communication device;
 - b. Environmental Supports;
 - c. School Health Consult; and
 - d. Adult support.
2. The student's IEP requires that a communication device be provided to the student during tasks "including reading/using vocabulary and following directions." The IEP requires that the student should be provided the opportunity to "respond by the following means: verbal, low-tech, or high-tech", and provide him the opportunity to practice writing his personal information.
3. The student's February 11, 2021, IEP further requires that the student be provided with supports including the identification of a school staff member currently working with the student to implement and support the use of "identified equipment".
4. The student requires access to pictures, simple picture displays, low-tech communication devices, and a voice output device.
5. The student's IEP requires health and safety supports including ensuring that the student does not come into contact with gluten, that the student be properly hydrated and that staff be aware of his health concerns outlined in the student's health plan.

6. To ensure that the student remains safe in the school building, the IEP requires that the student receive extra time for dismissal, that he be escorted by a staff member when entering and exiting the building, and that he be provided with adult support throughout the school day.
7. On March 11, 2022, the IEP team met and determined that the student continues to require the specialized instruction, related services and supports as outlined in his February 11, 2021, IEP, however, the IEP team determined that the student's speech and language services should be increased to 90 minutes per week.
8. There is documentation that the student was consistently provided other instructional support, adult support, environmental supports, and specialized instruction required by his IEP since the start of the 2021-2022 school year.
9. There is documentation that the student was consistently provided speech and language services as required by his IEP since the start of the 2021-2022 school year.
10. There is documentation that the student was consistently provided occupational therapy from October 2021 to December 2021, and February 2022 to May 2022 as required by his IEP. There is no documentation that the student was consistently provided occupational therapy services in September 2021, January 2022, and June 2022.
11. There is no documentation that the student was consistently provided with the music therapy services required by his IEP from September 2021 to the present.
12. There is no documentation that the student was provided with school health consult services, specifically the training of school staff on the student's health concerns and health care plan as required by his IEP.

CONCLUSIONS:

Based on Findings of Facts #1 - #9, the MSDE finds that the BCPS has ensured that the student has been consistently provided with instructional, environmental, and adult supports, specialized instruction, and speech and language services, as required by the IEP since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on Findings of Facts #10 - #12, the MSDE finds that the BCPS has not ensured that the student has been consistently provided with occupational therapy, school health consult, and music therapy as required by the IEP since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Allegation #2: ANNUAL REVIEW OF IEP

FINDINGS OF FACTS:

13. On February 11, 2021, the IEP team developed an IEP for the student.
14. On March 11, 2022, the IEP team met to review and revise, as appropriate, the student's IEP.

CONCLUSION:

Based on Finding of Facts #13 and #14, the MSDE finds that the BCPS did not ensure that the IEP team convened to review the student's IEP prior to February 11, 2022, ensuring that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

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.² 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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

Student Specific

The MSDE requires the BCPS to provide documentation by October 1, 2022, of the following actions:

- a. That it has provided the student with occupational therapy, school health consult, and music therapy services, as required by the student's IEP;
- b. That it has convened an IEP team meeting to determine the amount and nature of compensatory services or other remedy to redress the lack of provision of occupational therapy and music therapy, and developed a plan for the provision of those services within one year of the date of this Letter of Finding; and
- c. That it has convened an IEP team meeting to determine whether the annual IEP review and the provision of the school health consult violations had a negative impact on the

² 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.

³ 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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student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The BCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the BCPS to provide documentation by October 1, 2022, of the steps taken to ensure that the staff at ██████████ School properly execute the requirements of the IDEA related to IEP implementation and annual IEP review. Please note that any documentation that is submitted relating to a future plan of action must be supplemented with documentation that demonstrates that the plan has been implemented and monitored, prior to the closing of the case.

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: Conya Bailey
Jason Miller
Charlene Harris

██████████
Alison Barmat
Gerald Loiacono

Diane Eisenstadt
Tracy Givens