



September 14, 2022

[REDACTED]
[REDACTED]
[REDACTED]

Dr. Courtney Hill
Coordinator
Baltimore City Public Schools
200 E. North Avenue, Room 204 B
Baltimore, Maryland 21202

RE: [REDACTED]
Reference: #23-010

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 July 21, 2022, the MSDE received a complaint from Ms. [REDACTED], 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 above-referenced student.

The MSDE investigated the allegation that the BCPS has not provided the student with nursing services as required by the Individualized Education Program (IEP) since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with an Other Health Impairment (OHI) based on his [REDACTED] under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student’s IEP in effect at the start of the 2021-2022 school year was developed on January 18, 2021. The IEP requires a dedicated nurse to implement the student’s nursing care plan daily.
2. The student’s IEP developed on January 13, 2022, requires a dedicated nurse to implement the student’s nursing care plan daily.

3. The BCPS acknowledges that a violation occurred with respect to the provision of daily nursing services. Specifically, the BCPS acknowledges that the student was not provided daily nursing services until April 4, 2022.
4. There is documentation that the student was provided daily nursing services from April 4, 2022 until June 15, 2022.
5. The Prior Written Notice (PWN) generated after the January 13, 2022, IEP team meeting reflects that the IEP team discussed the lack of provision of daily nursing services. The IEP team determined the student was "eligible to receive 150 hours of compensatory services due to the ongoing Free Appropriate Public Education (FAPE) violation."
6. The PWN generated after the April 4, 2022, IEP team meeting reflects that the student was unable to attend school until April 4, 2022, "because of a lack of nurses" and the IEP team determined that due to his special circumstances the student would receive extended school year (ESY) services during the summer.
7. The PWN generated after the May 26, 2022, IEP team meeting reflects that upon review of the formal assessment and progress reports, the student has not shown any signs of regression. The teacher reports indicate the student is "participating in class and his grades are stable since he returned to school." Therefore, he was not eligible for COVID recovery services. However, the BCPS will "connect the student to an outside tutoring service to provide academic support on goals and objectives related to his IEP along with homework assistance." The team further determined that the student would attend Credit Recovery classes from July 5, 2022 - August 11, 2022.

CONCLUSIONS:

Based upon the Findings of Facts #1- #4, the MSDE finds that the BCPS did not provide the student with nursing services as required by the Individualized Education Program (IEP) since the start of the 2021-2022 school year until April 4, 2022, 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.

Notwithstanding the violation, based upon Findings of Facts #5 - #7 the MSDE finds that the BCPS has convened an IEP team meeting to address the violation and determined the appropriate compensatory services owed to the student. Therefore, no further student specific corrective action is required.

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.Eisenstadt@maryland.gov.

System-Based:

The MSDE requires the BCPS to provide documentation of the steps taken to identify other BCPS students who have not been provided with the nursing services required by their IEPs since the start of the 2021-2022 school year. For each student identified, BCPS must ensure that the appropriate support is provided and convene an IEP team meeting to determine whether the violation had a negative impact on the 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 one (1) year of the date of this Letter of Findings. The BCPS must inform the MSDE of the names and locations of the students affected by the violation and the outcomes of the compensatory services decisions made by the respective IEP teams. If compensatory services are determined appropriate, the BCPS must provide the MSDE with documentation of the implementation of the services.

If the BCPS is unable to secure the required nursing services for any student due to staff shortages, the BCPS must provide monthly documentation of the attempts and the various strategies made to secure the appropriate and required nursing services.

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 FAPE for the student, including issues subject to

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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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
Macon Tucker
Christa McGonigal
[REDACTED]
Diane Eisenstadt
Alison Barmat
Gerald Loiacono
Tracy Givens