



October 25, 2022

[REDACTED]

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

RE: [REDACTED]
Reference: #23-027

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 September 14, 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 following allegations:

1. The BCPS did not ensure that the student was provided with the Extended School Year (ESY) services required by the Individualized Education Program (IEP) since July 2022, in accordance with 34 CFR §300.101.
2. The BCPS has not addressed the student’s needs for recovery or compensatory services since the start of the 2021-2022 school year, in accordance with 34 CFR §300.101.
3. The BCPS has not ensured that the student has been provided with speech and language services, occupational therapy, transportation services, and adult support required by the IEP since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323.
4. The BCPS did not ensure that the IEP team convened to review the student’s IEP before November 17, 2021, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is eighteen (18) years old and is identified as a student with Multiple Disabilities (Other Health Impairment and Autism) under the IDEA. He attends the [REDACTED] in BCPS and has an IEP that requires the provision of special education and related services.

FINDINGS OF FACTS:

1. The BCPS acknowledges that the student was not provided with ESY services as required by the IEP since July 2022. Specifically, the BCPS acknowledges that though ESY services were available for the student; he was not provided with the required therapeutic aide for bus transportation, therefore, he was unable to attend ESY.
2. The Prior Written Notice (PWN) generated after the January 27, 2022, IEP team meeting reflects that the IEP team determined the student required updated assessments. The IEP team agreed to discuss the possible impact of the loss of learning due to COVID 19 from March 2020 - April 9, 2021, upon completion of the updated assessments.
3. The Prior Written Notice (PWN) generated after the June 7, 2022, IEP team meeting reflects that the IEP team determined that after reviewing the testing data from school year 2018 - 2019, the IEP team would make a determination concerning the loss of learning due to COVID 19. There is no documentation that the data was reviewed during the meeting. The IEP team further agreed to reconvene on June 13, 2022.
4. There is no documentation that the IEP team convened on June 13, 2022.
5. The BCPS acknowledges that the student was not provided with adult support required by the IEP during the 2021-2022 school year. Specifically, the BCPS acknowledges that there is insufficient documentation that the student was provided his therapeutic behavior aide (TBA).
6. The IEP in effect at the start of the 2021- 2022 school year was drafted on June 7, 2021. The IEP requires daily adult support provided by a TBA. The TBA will support the student "throughout the school day and to and from school while being transported." The IEP further requires two (2) thirty (30) minute sessions per week of occupational therapy, thirty (30) minutes per week of speech and language services, and daily special transportation services.
7. The student's IEP dated June 7, 2021, does not contain an accurate statement of the transportation services consistent with the requirements of the TBA as indicated in the supplementary aides and services. Therefore, the IEP is unclear as to the TBA being provided during transportation services.
8. The student's IEP drafted on January 27, 2022 and June 7, 2022, requires daily adult support provided by a TBA. The TBA will support the student "throughout the school day in all settings." The IEP further requires two (2) thirty (30) minute sessions per week of occupational therapy and speech and language services, and daily special transportation services.
9. There is documentation that the student's transportation services (bus pick up and drop off) were available for him as required by the IEP. However, the student could not access those services due to the failure to ensure the TBA on the bus.

10. There is documentation that the student's speech and language and occupational therapy services were available for him as required by the IEP. However, the student missed those services due to the failure to ensure the TBA on the bus.
11. The BCPS acknowledges that it did not ensure that the IEP team convened to review the student's IEP before November 17, 2021, in order to ensure that the IEP was reviewed at least annually.
12. The Prior Written Notice (PWN) generated after the August 10, 2022 IEP team meeting reflects that the IEP team discussed and determined that the student is to receive:
 - Fourteen (14) hours of compensatory speech language services and 1180 hours of "classroom instruction outside of the normal school day" to redress the "learning loss" during COVID 19;
 - Four (4) hours of compensatory speech and language services and 233 hours of compensatory classroom instruction "outside of the normal school day" to redress the "learning loss" during the 2021-2022 school year due to "not having a therapeutic aide during travel";
 - Eighty (80) hours of compensatory classroom instruction to redress the "learning loss" during ESY 2022; and
 - 4.5 hours of compensatory speech language services "outside of the normal school day" to redress the "learning loss" due to delayed annual IEP review meeting.

CONCLUSIONS:

ALLEGATION #1:

PROVISION OF EXTENDED SCHOOL YEAR SERVICES

Based upon the Findings of Fact #1, the MSDE finds that the BCPS did not ensure that the student was provided with the ESY services required by the Individualized Education Program (IEP) since July 2022, in accordance with 34 CFR §300.101. The MSDE appreciates the BCPS' acknowledgement and concurs that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation based upon Findings of Fact #12, 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.

ALLEGATION #2:

RECOVERY SERVICES

Based on Findings of Fact #2 - #4, the MSDE finds that the BCPS has not addressed the student's needs for recovery or compensatory services since the start of the 2021-2022 school year, in accordance with 34 CFR §300.101. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation based upon Findings of Fact #12, 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.

**ALLEGATION #3: PROVISION OF SPEECH AND LANGUAGE SERVICES,
OCCUPATIONAL THERAPY, TRANSPORTATION SERVICES, AND
ADULT SUPPORT**

Based on Findings of Fact #5, the MSDE finds that the BCPS has not ensured that the student has been provided with adult support required by the IEP since the start of the 2021-2022 school year. The MSDE appreciates the BCPS' acknowledgement and concurs that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation based upon Findings of Fact #12, 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.

Based on Findings of Facts #6, #8 - #10, the MSDE finds that the BCPS has ensured that the student has been provided with speech and language services, occupational therapy, and transportation services required by the IEP since the start of the 2021-2022 school year. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

The public agency must ensure that the IEP contains clear and accurate statements of the related services and supplementary aides and services. (34 CFR §300.320)

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes*, Federal Register, Vol 64, No. 48, p.12479, March 1999.¹

Based on the Findings of Facts #6 and #7, the MSDE finds that the IEP team did not ensure that the IEP contains an accurate statement of the student's transportation services, from the start of the 2021 - 2022 school year until January 27, 2022. Therefore, this office finds that a violation occurred.

ALLEGATION #4: ANNUAL REVIEW OF IEP

Based upon the Findings of Fact #11, the MSDE finds that the BCPS did not ensure that the IEP team convened to review the student's IEP before November 17, 2021, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. The MSDE appreciates the BCPS' acknowledgement and concurs that a violation occurred with respect to this allegation.

Notwithstanding the violation based upon Findings of Fact #12, 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,

¹ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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 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 December 1, 2022, that the IEP team has convened to review and revise the IEP to provide clarification regarding the need for a TBA as part of the student's transportation services.

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 of the steps that have been taken to ensure that ██████████ staff properly clarifies and implements the requirements for the provision of supplementary aids and services, and transportation services under the IDEA. These steps must include staff development, as well as tools developed to monitor the action steps, a monitoring schedule and provision of the completed monitoring tool to MSDE by April 1, 2023.

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.

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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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

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