




Mohammed Choudhury
State Superintendent of Schools

April 12, 2023




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

RE: 
Reference: #23-147

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 February 15, 2023, MSDE received a complaint from Ms.  “the complainant,” on behalf of her daughter, 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.

MSDE investigated the following allegations:

1. The BCPS did not follow proper procedures when determining comparable services upon the student’s transfer to the BCPS since October 2022, in accordance with 34 CFR §300.323(f).
2. The BCPS did not provide the student with services in the placement required by her Individualized Education Program (IEP) since October 2022, in accordance with 34 CFR §300.116.
3. The BCPS has not ensured that the student was provided with the transportation services required by her IEP since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and 323.
4. The BCPS has not ensured that the student has been provided with the special education instruction and related services required by the IEP since October 2022, in accordance with 34 CFR §§300.101 and .323. Specifically, the following was alleged:

- a. The student was not provided with accommodations;
- b. The student was not provided with assistance during transition; and
- c. The student was not provided with adult support.

BACKGROUND:

The student is 17 years old and is identified as a student with multiple disabilities (Autism, Intellectual Disability, Other Health Impairment) under the IDEA. At the start of the school year 2022-2023, the student attended school in [REDACTED]. The student first attended [REDACTED] School when she moved to Maryland in November 2022. The student was transferred and currently attends [REDACTED] School ([REDACTED] School) and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

Allegations #1 and #2

PROVISION OF COMPARABLE SERVICES AND PLACEMENT DETERMINATION

1. There is documentation that the student enrolled in the BCPS on November 9, 2022, with an IEP dated October 17, 2022, from [REDACTED] which requires special education services to be provided outside the general education classroom for more than 60% of the time in a “substantially separate classroom.”
2. The student’s [REDACTED] IEP required the provision of direct services outside of the general education setting for “Functional Academics five (5) sessions of 240 minutes each per five-day cycle, speech and language services for 120 minutes monthly, occupational therapy (OT) sessions of 80 minutes monthly, and adapted physical education, one session of 30 minutes per five-day cycle, a “dedicated aide,” and transportation services. The student’s [REDACTED] IEP provided approximately 20 hours of special education services weekly outside of the general education setting.
3. On November 11, 2022, the BCPS’ IEP team met to determine the student’s eligibility based on the out-of-state IEP and district placement letter, discuss comparable services, review and revise the IEP as appropriate, discuss transportation, and discuss extended school year services (ESY). The IEP team reviewed the [REDACTED] IEP, the student’s cumulative records, and parent input to determine if the student qualified as a student with a disability requiring special education in Maryland, and no additional assessments were recommended. The IEP team determined comparable classroom services of four (4) 1 hour 5 minute sessions daily (approximately 20 hours and 20 minutes weekly) of specialized instruction from the special educator outside the general education setting in a classroom that utilizes alternate learning outcomes during instruction. The IEP team also determined the student requires curb-to-curb transportation, occupational therapy, speech therapy, and an adult support 1:1 aide.
4. During the meeting, the IEP team was unable to determine comparable services for some of the student’s school-based supports. The complainant expressed concerns about the proposed schools’ ability to provide the same level of services and maintain student safety due to health concerns. The complainant shared that the student takes medication causing extreme fatigue due to a medical

condition (seizures). The [REDACTED] IEP provided opportunities to sleep during the school day when needed and the need for medical support but did not specify the exact service. The complainant also expressed concern regarding the number of transitions the student would have to make at the current BCPS school. The student was in a smaller, restricted setting at her prior school. The IEP team agreed to start at the current BCPS school and meet after Thanksgiving break to continue the meeting and determine the remainder of comparable services. The IEP team agreed to continue to implement the [REDACTED] IEP to the "best of their ability", as well as locate documentation from the prior school to determine remaining comparable services. The student attended only one day of school at that location.

5. On December 16, 2022, the IEP team (including a member of the complainant response unit and an educational specialist from BCPS) met to continue the comparable services discussion from the prior IEP meeting, to discuss complainant concerns regarding student school placement, and to review the draft IEP. The IEP team determined placement at a BCPS citywide program was appropriate. During the meeting, the complainant expressed concern that the program at a citywide program is not a comparable program for her daughter compared to the program she attended in [REDACTED]. The complainant stated that the students in the citywide program "function at a much higher academic and life skills level than the student is currently able to." BCPS staff indicated more data was required to move the student from her home school to a more restrictive environment.
6. Students at the BCPS school where the student was enrolled are required to transition between buildings during the day to receive instruction in core content areas. Per the IEP team discussion, the IEP team on December 16, 2022, was in agreement with the complainant and determined that a "change of school location" was appropriate given the difficulties the student experiences during transitions. A transfer request was placed by the Parent Response Unit Representative.
7. There is documentation of a Special Education School Wide Assignment letter created on December 20, 2022, reassigning the student to the new school location with a start date of January 3, 2023.
8. On January 12, 2023, the IEP team met to continue the discussion regarding services, transitions, and specialized instruction. This IEP team included a representative from the student's [REDACTED] school. During the meeting, the IEP team discussed the morning routine including transition, and the difficulty the student displayed with transitions during the first week of attending the current BCPS school. Both the complainant and the team were concerned the current placement had "too many transitions for the student who historically does not do well with transitions." The student had been in attendance for three days since her start date of January 3, 2023. At the meeting, a member of the student's previous school joined to give a summary and strategies to assist the current BCPS school team in supporting the student's transition.
9. On February 1, 2023, the IEP team met per the request of the complainant to address her concerns and to review and revise the IEP, as appropriate. During the meeting, the team agreed to information regarding the student's functional skills, reviewed the student's accommodations and supports, including a change in adult support from a temporary adult support (TAS) to a therapeutic behavioral aide (TBA) with specific training in de-escalation strategies. The IEP team also revised the student's IEP goals and objectives to align with Maryland standards.
10. While in the meeting on February 1, 2023, the IEP team reviewed the student's services and placement. Based on the student's absences, the team determined there was insufficient data to recommend a more restrictive setting. A school-based team member stated the student "would

need time to learn the expectations and transitions” after transitioning to a new school in the middle of the year and encouraged the student to attend school.

11. The complainant disagreed with the IEP team's decisions, expressing that BCPS “does not seem to be on the same page”, noting BCPS received enough documentation regarding the student's diagnosis to make appropriate recommendations. She stated she is not seeing a special education program that is comparable to the program in [REDACTED]

Discussion/ Conclusions:

Procedure when Determining Comparable Services

If a student with a disability who had an IEP that was in effect in a previous public agency in another state transfers to a public agency in a new state, and enrolls in a new school within the same school year, the new public agency (in consultation with the parent) must provide FAPE to the student, including services comparable to those described in the child’s IEP from the previous public agency, until the new public agency either: conducts an evaluation, or develops, adopts, and implements a new IEP (34 CFR §300.323).

Based on the Finding of Facts #1 to #5, MSDE finds that the BCPS did follow proper procedures when determining comparable services upon the student’s transfer to the BCPS since October 2022, in accordance with 34 CFR §300.323(f). Therefore, this office finds that a violation did not occur with respect to the allegation.

Placement Determination

Each student’s educational placement must be made by the IEP team in conformity with the requirement that to the maximum extent appropriate, students with disabilities, including those in public or private institutions or other care facilities, are educated with nondisabled students. This is the requirement to ensure that the IEP is implemented in the Least Restrictive Environment (LRE). Each public agency must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities, including instruction in the regular class and special classes (34 CFR §§300.114 - .116 and COMAR 13A.05.01.10).

Based on the Finding of Facts #1 to #11, MSDE finds that the BCPS did provide the student with services in the placement required by her Individualized Education Program (IEP) since October 2022, in accordance with 34 CFR §300.116. Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #3 PROVISION OF TRANSPORTATION SERVICES

12. There is documentation that the out-of-state IEP requires “door-to-door” transportation.
13. There is documentation of the complainant being informed that transportation will be provided and may take up to “five days” to start after the date of enrollment.
14. There is documentation from the BCPS Department of Transportation that reflects the student was assigned to bus route number 414.704 on bus number 414 with a start date of November 14, 2022, to attend the previous school.

15. There is documentation that the student was offered transportation services from November 14, 2022, through December 23, 2022; however, was marked "absent" during morning and afternoon pick-up and drop-off.
16. There is documentation from the BCPS Department of Transportation that reflects the student was assigned to bus route number 414.704 on bus number 21 with a start date of January 9, 2023, to attend the current BCPS school.
17. There is documentation the student was offered transportation services from January 9, 2023 through February 24, 2023; however, was marked "absent" during morning and afternoon pick-up and drop-off. The student was marked "present" for morning pickup on January 9, 2023.
18. Due to the student displaying difficulties with transitioning, on January 12, 2023, the IEP team created a plan and "asked the complainant to assist the school the first week or so by bringing the student to school and staying with her through at least the first transition."

Conclusion:

Based on the Finding of Facts #12 to #18, MSDE finds that the BCPS has not ensured that the student was provided with the transportation services required by her Individualized Education Program (IEP) since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and 323. The complainant is not identified as a service provider on the student's IEP, nor is she required to implement services and supports that BCPS must provide. The complainant had been collaborative with the team but should not have been asked or expected to support the implementation of a service. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #4 PROVISION OF SUPPORTS AND RELATED SERVICES

19. There is documentation that the student enrolled in the previous school on November 9, 2022, and was in attendance for one (1) day.
20. While enrolled at the current BCPS school, there is documentation that the student was provided with SL services as well as OT services during her three days of attendance, but due to chronic absenteeism, the student has not received special education or related services since January 31, 2023.
21. There is documentation that the complainant was sent an attendance letter when the student was enrolled at the current BCPS school. The student was absent during Term 2 for 3.5 days and Term 3 for 15.5 days.
22. There is documentation of a snapshot of the student accommodations and supports needed for the classroom to include support with transitions.
23. There is documentation the student was assisted during transitions by the instructional assistants, TAs, and/or teachers, but was reluctant to complete transitions within the school environment and building and required additional assistance.

24. There is documentation the student was not provided with a 1:1 aid from the first date of enrollment, as required by the student's IEP, but was provided with adult support from alternate staff members until an aide was assigned from November 9, 2022, to November 11, 2022, and January 3, 2023, to January 13, 2023. MSDE acknowledges attempts made to hire the required aide with the start date of January 23, 2023.

Conclusion:

Based on the Finding of Facts #19 to #24, MSDE finds that the BCPS has not ensured that the student has been provided with the special education instruction and related services required by the IEP, specifically the provision of accommodations, assistance during the transition and adult support since October 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did occur with respect to the allegation.

Notwithstanding the violation of the absence of a dedicated 1:1 aide when the student was in attendance, there is documentation that BCPS was able to provide dedicated staff to support the student during the time she was in school. Accordingly, there is no student specific correction 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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance 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 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.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific:

MSDE requires the BCPS to provide documentation by May 15, 2023, that the IEP team has convened and developed a transportation plan for the student, including a behavior support and transition plan, to support getting her on and off the bus.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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, 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 MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

The BCPS must ensure that the complainant is provided with written notice of the team's decisions.

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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMC/sj

c: Sonja Santelises
Denise Mabry
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[REDACTED]
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