



July 14, 2023



Ms. Allison Myers
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #23-229

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 May 16, 2023, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant”, on behalf of her son. 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.

MSDE investigated the following allegations:

1. The BCPS has not followed the proper procedures when developing the student’s service plan since February 2023, in accordance with 34 CFR §§300.37, .320, and .138.
2. The BCPS did not ensure that a representative from the parentally placed private school attended the service plan meeting on March 29, 2023, in accordance with 34 CFR § 300.137(c).
3. The BCPS did not allow the parent to invite the related service provider from the parentally placed private school to attend the service plan meeting on March 29, 2023, in accordance with 34 CFR § 300.321.

BACKGROUND:

The student is 13 years old and is identified as a student with Other Health Impairment under the IDEA. He attends [REDACTED] a private school where the student is parentally placed.

FINDINGS OF FACTS:

1. During the 2021- 2022 school year, the student attended a public school in Baltimore County and had an IEP that required the provision of special education and related services. While in public school, the student received support in the area of visual motor, reading comprehension, math problem solving, written language expression, social/emotional/behavior. The student's IEP goal for visual motor skills reflects, "By December 2022, the student will demonstrate improved visual motor skills for completion of classroom based handwritten and keyboarding tasks." The reports on the student's progress in visual motor skills contains data to support the conclusion that the student was making sufficient progress toward achievement of the goal in this area.
2. At the start of the 2022- 2023 school year, the student was enrolled by his parents in a private school.
3. On February 13, 2023, the parent was invited via email to attend a meeting on February 24, 2023, by a BCPS staff to "hear some of the parent's concerns and to have an occupational therapist available at the meeting to determine the next steps" regarding the students handwriting. The BCPS staff sought contact information for the student's general education teacher at the private school from the parent.
4. On February 24, 2023, the BCPS team met to discuss the student's educational performance and determined the student's need for a services plan. During the meeting, the parent shared concerns regarding the student's handwriting and his attempts at keyboarding that was unsuccessful. The parent believes the student has dysgraphia because his "writing is hard to read and looks like one long word." The parent requested Occupational Services (OT) for the student in the form of a service plan. The BCPS Occupational Therapist (OT) discussed the foundational skills for keyboarding and stated, "once those skills are proficient, keyboarding practice should happen daily and can be overseen by the teacher, parents, and staff."
5. The BCPS team could not proceed with the remainder of the February 24, 2023, meeting due to lack of data and work samples from the private school, as well as no representative from the school being present at the meeting to provide input. The meeting was rescheduled to March 14, 2023, "so everyone could get a better understanding of what supports the student needs."
6. On February 27, 2023, the parent received a "Parent Notification of IEP Team Meeting" for March 14, 2023, to "develop the initial service plan (for students currently attending a private school in Baltimore County). The participants invited to the meeting would be the BCPS administrator, the BCPS special education teacher, the BCPS general education teacher, the BCPS OT, and the private school classroom teacher.
7. There is email documentation dated March 3, 2023, from a BCPS OT to the private school general education teacher requesting feedback on the student's academic and classroom performance due to the parent's concern regarding the student's handwriting. The classroom teacher was invited to the meeting to be held on March 14, 2023.
8. There is email documentation dated March 13, 2023, from the BCPS OT to the private school general education teacher requesting a response from the email previously sent on March 3, 2023.
9. On March 14, 2023, the private school teacher provided the BCPS OT the "OT Teacher Input Form" requested on March 3, 2023.

10. There is email documentation dated March 14, 2023, from the parent to the BCPS staff that she was in communication with the BCPS OT “who was not able to get in contact with the student’s private school teacher to receive input on how the student is performing in order to write the service plan and may need to reschedule the meeting.”
11. On March 14, 2023, the team reconvened to review the student’s current data. The written summary generated after the meeting reflects the meeting was postponed to March 29, 2023, due to lack of data and or writing samples from the private school and lack of attendance of a representative from the private school.
12. On March 15, 2023, the BCPS staff requested that the private school classroom teacher provide input to the BCPS team in writing if they are unable to attend the scheduled team meeting.
13. There is email documentation dated March 17, 2023, from the BCPS OT to the team stating she has received various writing samples from the private school classroom teacher.
14. On March 17, 2023, the parent received a “Parent Notification of IEP Team Meeting” for March 29, 2023, to “develop the initial service plan (for students currently attending a private school in Baltimore County). The participants invited to the meeting would be the BCPS administrator, the BCPS special education teacher, the BCPS general education teacher, the BCPS OT, and the private school classroom teacher.
15. There is email documentation dated March 20, 2023, from the BCPS OT to the team stating she has emailed the writing samples and teacher statement to the BCPS staff and informed the team that the “teacher of a parentally placed private school does not attend the meeting, as a representative of the school does.”
16. There is email documentation dated March 27, 2023, from the BCPS staff to the BCPS OT Team Lead requesting assistance in the meeting scheduled for March 29, 2023. The email document reflects the private school classroom teacher, the parent, the previous OT from the public school, and the BCPS OT are advocating for direct keyboarding services during OT through a services plan. It is explained that the team does not have baseline data, an expired IEP, and input from the previous OT mentioned the student has all of the fundamental motor skills for keyboarding.
17. On March 29, 2023, the team met to review data to determine if a service plan is needed for occupational therapy services. While a representative from the private school did not participate in the team meeting, the team was able to discuss assessments completed for the student while in BCPS and reviewed the information and writing samples provided by the private school teacher. During the meeting, the parent shared the current accommodations the student receives at the private school due to the student’s difficulties with writing and the lack of scribe services available to the student. The BCPS OT explained accommodations the student would receive if he was in the public school because the student’s motor skills are developed. The team discussed a service plan to teach “keyboarding”; however, the team did not address the student’s handwriting skills that were previously addressed on his IEP. The team decided “not to implement a Service Plan due to the student’s motor skills being developed with the patterns that work for him.”
18. There is no documentation BCPS ensured that a representative of the private school was invited to all of the meetings intended to determine eligibility and creation of a service plan.

19. There is no documentation that the parent received the Prior Written Notice following the meeting held on March 29, 2023.

DISCUSSION/CONCLUSION:

Children with disabilities enrolled in public schools or who are publicly placed in private schools or facilities by public agencies are entitled to FAPE and must receive the full range of services under Part B of IDEA. (34 C.F.R. §§ 300.101, .146, and .201). These services are determined by the child’s IEP team and are necessary to meet the child’s individual needs and to provide FAPE to the child. Students enrolled by their parents in private schools are entitled to certain services determined through consultation between LEAs and representatives of private schools within the jurisdiction. The determination of the services for individual students is made by the IEP team through the creation of a services plan. A services plan should reflect only the services offered by the LEA to a parentally placed private school child with a disability designated to receive services. In addition, a services plan, to the extent appropriate, is required to meet the IEP content requirements described in 34 CFR § 300.320. (34 CFR § 300.138(b)(2)(i)).

The LEA must ensure that a representative of the religious or other private elementary school attends each meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. See 34 CFR § 300.137(c). The services plan must, to the extent appropriate, be developed, reviewed, and revised consistent with 34 CFR §§ 300.321 through 300.324. (34 CFR § 300.138(b)(2)(ii)).

The LEA where the private school is located must initiate and conduct meetings to develop, review, and revise a services plan for a parentally placed private school child with a disability designated to receive services. The LEA must ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls 34 CFR § 300.137(c).

Parents may invite individuals who have knowledge or special expertise regarding the student, including public agency personnel to IEP team meetings convened for the student. However, decisions as to which particular teachers or special education providers will participate on the IEP team are left to the public agency (34 CFR §300.321 and *Analysis of Comments and Changes*, 71 FR 46670 and 46674 (2006)).

ALLEGATION #1: DEVELOPMENT OF SERVICE PLAN

Based on the Finding of Facts #1- #19, MSDE finds the BCPS did not follow the proper procedures when developing the student’s service plan since February 2023, in accordance with 34 CFR §§300.37, .320, and 138. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #2: PROPER PARTICIPANTS AT THE MARCH 29, 2023, MEETING

Based on the Finding of Facts #3- #7, #11- #12, #14, #15, and #18, MSDE finds the BCPS did not ensure that a representative from the parentally placed private school was invited to or use other methods to ensure participation, to provide input to the service plan meeting on March 29, 2023, in accordance with 34 CFR § 300.137(c). Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #3:

PARENTAL INVITATION OF TEAM MEMBER

Based on the Finding of Fact #18, MSDE finds the BCPS allowed the parent to invite the related service provider from the parentally placed private school to attend the service plan meeting on March 29, 2023, but the BCPS was not obligated to ensure that the individual attended the meeting, in accordance with 34 CFR § 300.321. Therefore, this office finds that a violation did not occur with respect to the 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, 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 August 31, 2023, that the IEP team has taken the following action:

- a. Convened an IEP meeting to ensure that the IEP team developing the student's services plan addresses the student's handwriting skills that were previously addressed on his IEP and determine if a services plan is required. The IEP team must also determine whether the violation related to addressing the student's needs and the lack of a representative from the private school 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 a year of the date of this Letter of Findings.
- b. The IEP team must ensure that a representative of the religious or other private elementary school is invited to the meeting. If the representative is unavailable to participate, the BCPS must attempt other means of obtaining their input.

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, 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.

²MSDE 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 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.

System Based

MSDE requires the BCPS to provide documentation by September 30, 2023, of the steps it has taken to ensure that BCPS staff properly implements the requirements for developing a service plan. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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

DC/sj

c: Darryl L. Williams
Allison Myers
Conya Bailey
Charlene Harris
Gerald Loiacono
Paige Bradford
Nicol Elliott
Diane Eisenstadt
Stephanie James