




Karen B. Salmon, Ph.D.
State Superintendent of Schools

August 25, 2020




Dr. Kathy Pierandozzi
Executive Director
Department of Special Education
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 Chesapeake Avenue
Towson, MD 21204

RE: 
Reference: # 20-140

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 26, 2020, the MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of 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 student.

The MSDE investigated the following allegations:

1. The BCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified behavioral needs since June 2019, in accordance with 34 CFR §§300.320 and 324. This includes the needs that arise out of the student’s Autism, the need for an adult assistant dedicated to work with the student exclusively on a one-to-one basis, and the need for social skills training in the general education setting.

2. The written notice of the June 16, 2020 IEP team meeting did not include information that a middle school coordinator would attend the meeting and that a purpose of the meeting was to discuss the student's transition to middle school, in accordance with 34 CFR 300.322 and COMAR 13A.05.01.07D.
3. The BCPS did not provide an IEP that the team planned to discuss at the June 16, 2020 IEP team meeting at least five (5) business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
4. The BCPS did not ensure that at least one (1) general education teacher of the student was in attendance the IEP team meeting held on June 16, 2020, in accordance with 34 CFR §300.321.
5. The BCPS did not follow proper procedures when the IEP team determined the placement in which the student would receive special education instruction, for the 2020-2021 school year, in accordance with 34 CFR §§300.300 - .114 and .116, and .324.
6. The BCPS did not ensure that there was opportunity for parent participation during the entire June 16, 2020 IEP team meeting, in accordance with 34 CFR §§300.321 and .322.
7. The BCPS did not ensure that the student was provided with the special education services and supports required by the IEP, in accordance with 34 CFR §§ 300.101 and .323, specifically:
 - a. The student was not provided with the amount of psychological services determined by the IEP team between June, 2019 and December, 2019.
 - b. The student was not provided with a social skills group comprised of his peers from September 2019 through March 2020.
 - c. The student was not provided with the accommodations, supplementary, aids and services, program modifications and supports required by the IEP during history and science general education classes from September 2019 through March 2020.

BACKGROUND:

The student is thirteen (13) years old and is identified, under the IDEA, as a student with Multiple Disabilities, including Autism and a Specific Learning Disability, and has an IEP that requires the provision of special education and related services.

The student attended [REDACTED] until March 16, 2020, when there was a Statewide closure of all school buildings due to the national COVID-19 pandemic.

ALLEGATIONS #1 - #6: IEP DEVELOPMENT

FINDINGS OF FACTS:

1. The IEP in effect in June 2019 identifies social, emotional, and behavioral skills as areas of need that are affected by the student's disability. The IEP reflects that the student's Autism Spectrum Disorder affects his executive functioning skills causing challenges with organization, planning, attention to tasks, social interaction skills, social norms, and identification and understanding of his emotions and the emotions of others. The IEP includes goals for the student to improve his skills and special education services to assist him with achieving the goals.
2. The IEP reflects that the complainant requested a one-to-one assistant to help the student manage peer relations, stay on track during classroom instruction, and reduce the number of times he eloped from class. The IEP indicates that the IEP team agreed to make a referral to the BCPS Office of Special Education so that data could be obtained about the student's need for a one-to-one assistant. However, there is no documentation that the data was obtained.
3. The IEP requires weekly social skills training, and allowing the student to leave classes five (5) minutes early to avoid sensory overload in the hallways. Further, the IEP requires the student to have periodic checks with the school counselor to address social concerns and the school psychologist is to consult with teachers to support the generalization of social skills in history and science classes.
4. The IEP requires the student to receive a 30-minute weekly counseling session with the school psychologist to develop coping strategies dealing with anxiety, avoidance behaviors and peer relationships.
5. On September 24, 2019, the IEP team met to conduct an annual review of the IEP. Two new behavioral goals were added for the student to increase managing and regulating his emotions in social situations by using coping strategies with peers.
6. At the September 24, 2019 IEP team meeting, the complainant provided the IEP team with a letter from a private licensed clinical psychologist from [REDACTED]. The letter contains recommendations, based on the information provided by the complainant, for increased classroom support to address executive functioning needs and social, emotional, and behavioral challenges. It states that "the student may make improvements in his academic and behavioral functioning following placement in a more structured school environment equipped to work with students with emotional and behavioral challenges."
7. The IEP team summary reflects that the IEP team considered whether the student would benefit from a different program that provided additional social communication skills support embedded throughout the school day but rejected the recommended placement

change because it was more restrictive and located outside of the student's home school. Instead, the IEP team determined that the student required additional social skills support services for history and science within general education classes.

8. On February 3, 2020, the IEP progress reports indicated that the student was making sufficient progress to meet all of the behavioral goals. By May 24, 2020, the student was reported to be continuing to show progress.
9. On May 21, 2020, the complainant was contacted via electronic mail (email) inviting her to the IEP team scheduled for June 16, 2020. The BCPS acknowledges that the complainant was not given written notification that identified the purposes for the meeting, which included reviewing the IEP and developing a plan to transition the student to another middle school, and that a transition coordinator would participate in the meeting. The BCPS also acknowledges that a report of the psychological assessment and a draft IEP that were considered at the meeting were not provided to the complainant at least five (5) business days prior to the meeting. The BCPS further acknowledges that a general education teacher of the student did not participate in the IEP team meeting.
10. The psychological report considered by the IEP team on June 16, 2020 reflected that the student has "high average" to "superior" intellectual functioning and social, emotional, and behavioral needs. The report recommendations included social skills training with a selected group of peers, cognitive behavioral therapy techniques and emotional regulation strategies.
11. Based on the data, the IEP team revised the IEP to require adult directed supports rather than to require the student to advocate for the provision of supports. These supports included scheduled resource time for organizational assistance, social skills instruction with the speech/language pathologist and school counselor and a more detailed home/school communication system coordinated by the special education teacher.
12. On June 16, 2020, the IEP team considered the recommendation from the private psychologist, the complainant's concerns about the student's current placement, and information from the school staff about the student's challenges within the current placement. The complainant expressed concern that the student's behavioral needs, including depression, anxiety and the need for an academically challenging curriculum for a "twice exceptional student" were not being met in his current placement. The IEP team was in agreement with the complainant about the student's needs. Based the recommendation for specialized "social-communication learning support," the team determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented with the provision of supplementary aids and services is a combination of general and separate special education classes. The team decided that the school the student would attend if not disabled did not have the supports required to implement the IEP in those setting, but that they were available at [REDACTED]

13. The June 16, 2020 IEP team was held via a Google Meets video meeting. According to the complainant and school staff, the complainant's computer was disconnected the meeting prior to the conclusion of the meeting. However, the documentation reflects that the complainant was able to remain connected for the discussion of the development of the IEP and placement determination.
14. By June 12, 2020, the student achieved all of the behavioral goals. However, the student's report card grades reflected that he received failing grades in his general education history and science classes, and Bs and Cs in all other classes.

CONCLUSIONS:

Allegation #1: Addressing Behavioral Needs

In this case, the complainant alleges that the BCPS did not develop an IEP that addresses the student's behavioral needs or respond to her request for a one-to-one assistant and social interaction training in the general education classrooms.

Based on the Findings of Facts #1 - #11, the MSDE finds that the IEP addresses the student's behavioral needs, and the needs that arise from Autism consistent with the data. However, the BCPS did not ensure the data was obtained to identify the student's need for a one-to-one assistant since June 2019, in accordance with 34 CFR §§300.101, .323 and 324. Therefore, this office finds a violation occurred with respect to the allegation.

Allegation #2: Written Notification of the June 16, 2020 IEP Team

In this case, the complainant alleges that the BCPS did not ensure that she was provided with notification of the purposes of the team meeting and who was invited to attend the June 16, 2020 meeting.

Based on the Finding of Fact #9, the BCPS acknowledges, and the MSDE concurs, that the BCPS did not provide the complainant with the written notification including the purposes of the meeting, in accordance with 34 CFR 300.322 and COMAR 13A.05.01.07D. Therefore, this office finds a violation occurred with respect to the allegation.

Allegation #3: Provision of Documents Prior to the June 16, 2020 IEP Team

Based on the Finding of Fact #9, the BCPS acknowledges, and the MSDE concurs, that the BCPS did not provide the documents that were to be discussed at the June 16, 2020 IEP team meeting five (5) days prior to the meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds a violation occurred with respect to the allegation.

Allegation #4: Required Participants at the June 16, 2020 IEP Team

In this case, the complainant alleges that the BCPS did not ensure that a general education teacher was in attendance at the June 16, 2020 IEP team meeting when placement was discussed.

Based on the Finding of Fact #9, the BCPS acknowledges, and the MSDE concurs, that the BCPS did not ensure the special education teacher participated in the June 16, 2020 IEP team meeting, in accordance with 34 CFR §300.321. Therefore, this office finds a violation occurred with respect to the allegation.

Allegation #5: Placement Determination at the June 16, 2020 IEP Team

In this case, the complainant alleges that the BCPS did not follow proper procedures when making the placement determination at the June 16, 2020 IEP team meeting for the 2020-2021 school year.

Based on the Findings of Facts #1 - #14, the MSDE finds that, while there was data to support the IEP team's placement determination, the BCPS did ensure that the decision was made by an IEP team that included all of the required participants, in accordance with COMAR 13A.05.01.10. Therefore, this office finds a violation occurred with respect to the allegation.

Allegation #6: Parent Participation at the June 16, 2020 IEP Team

In this case, the complainant alleges that the BCPS did not stop meeting when she was disconnected from the Google Meets video meeting, instead the IEP was finalized without her participation.

Based on the Finding of Fact #13, the MSDE finds that the BCPS did not ensure the complainant was present for the entire IEP team meeting. Therefore, this office finds a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #12, the MSDE finds that the complainant was able to participate in the portions of the meeting where the decisions were made about the program and placement. Therefore, no school-based corrective action is required to remediate the violation.

ALLEGATION #7: IEP IMPLEMENTATION

FINDINGS OF FACTS:

18. There is documentation that the student received the amount of counseling sessions with the school psychologist required by the IEP.

19. There is documentation that the weekly accommodations were provided as required by the IEP. However, there is no documentation that consultation with the history and science teachers to support the generalization of social skills in the general education classes was provided as required by the IEP.
20. The IEP requires the accommodations of small grouping, frequent breaks, reduction of distractions, extended time, and the organization of assignments into smaller units. Further, the IEP requires advance preparation for schedule changes, monitoring of an agenda book and/or progress report. There is no documentation that the accommodations were provided in history and science classes.

CONCLUSION:

In this case, the complainant alleges that the BCPS did not ensure the student received counseling services as required by the IEP, a social skills peer group, accommodations, and supplementary aids and supports in science and history general education classes.

Based on the Findings of Facts #18 - #20, the MSDE finds that, while the student was provided with accommodations and counseling services required by the IEP, there is no documentation that he was provided with the remaining supports, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation occurred 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, 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 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 the MSDE Special Education State Complaint Resolution Procedures.

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, 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.

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 Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the BCPS to provide documentation that the IEP team has convened with proper participants after having obtained data through a referral to the BCPS Office of Special Education and done the following:

- a. Determined the student's need for one-to-one support;
- b. Reviewed all of the decisions made at the June 16, 2020 IEP team meeting; and
- c. Determined whether the violations identified through this investigation had a negative impact on the student's ability to benefit from the education program, and if so compensatory or other services needed to remediate the violations.

School-Based

The MSDE requires the BCPS to provide documentation of the steps it has taken to ensure violations do not recur at [REDACTED] and how the BCPS will monitor to ensure the effectiveness of those steps.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

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,

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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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: sf

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