



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

September 30, 2020

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Office of the Public Defender
Parental Defense Division
200 Washington Street
Towson, MD 21204

Dr. Kathrine Pierandozza
Executive Director of Special Education
Baltimore County Public Schools
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #21-005

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.

ALLEGATION:

On August 4, 2020, the MSDE received a complaint from the Office of the Public Defender, Parental Defense Division, hereafter “the complainant,” on behalf of Mr. [REDACTED] father 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 allegation that the BCPS has not ensured that an IDEA evaluation that began in October 2019 has been completed, in accordance with 34 CFR §§300.101 and .111 and COMAR 13A.05.01.04 - .06.

BACKGROUND:

The student is thirteen (13) years old and is not identified as a student with a disability under the IDEA.

The student was attending the [REDACTED] at the start of the investigation period. She is reported, by the Baltimore County Department of Social Services (BCDSS), to be currently hospitalized and there is no information or documentation that she is receiving educational services.

FINDINGS OF FACTS:

1. On October 4, 2019, school staff referred the student for an initial evaluation under the IDEA.
2. The student is committed to the custody of the BCDSS by order of the Circuit Court for Baltimore County, Maryland. The Court Order states that the BCDSS has been awarded limited guardianship for educational purposes, which is to be exercised if the father is not available to exercise his parental rights.
3. There is documentation that, on October 16, 2019, the BCPS staff requested a copy of the Court Order from the BCDSS, and there is a copy of the Court Order in the student's educational record.
4. The IDEA evaluation was not conducted. The BCPS reports that it was not conducted because the school staff were unable to obtain parental consent from the student's father. However, there is no documentation that attempts were made to do so, and there is no documentation that the BCPS made a request for the appointment of a parent surrogate.

DISCUSSION/CONCLUSIONS:

Whenever a student is referred for an evaluation, the public agency must promptly request parental consent and ensure that an initial evaluation is completed within sixty (60) days of parental consent and ninety (90) days of the written referral (34 CFR §300.301 and COMAR 13A.05.01.04 and .06).

The public agency is not required to obtain parental consent for an initial evaluation if the student is a ward of the State and is not residing with the student's parent (34 CFR §300.300).

A ward of the State means a student for whom a State or county agency or official has been appropriated legal guardian, or who has been committed by a court of competent jurisdiction to the legal custody of a State or county agency or official with the express authorization that the State or county agency or official make educational decisions for the child (Md. Educ. Code Ann. §8-412.)

The public agency must request that the local school system superintendent appoint a parent surrogate to represent a student at any point in the education decision-making process if it is suspected that the student may be disabled and if the student is a ward of the State, or if the parents are unknown or unavailable (Md. Educ. Code Ann. §8-412).

More than one (1) person may qualify as a parent under the IDEA, including a biological parent and a parent surrogate. However, when a biological parent attempts to act as the parent under the IDEA, that individual must be presumed to be the parent (34 CFR §300.30). Therefore, notwithstanding the need to appoint a parent surrogate for a ward of the State, the public agency must continue to provide a student's biological parent with the opportunity to participate in the education decision-making process unless parental rights are terminated.

Based on the Findings of Facts #1 - #4, the MSDE finds that the BCPS has not followed proper procedures to seek parental consent to conduct the initial IDEA evaluation, 34 CFR §300.300.

Based on Findings of Facts #2 and #4, the MSDE finds that the student is a ward of the State, and that the BCPS has not followed the proper procedures to obtain a parent surrogate, in accordance with Md. Educ. Code Ann. §8-412.

Based on the Findings of Facts #1 - #4, the MSDE finds that the BCPS has not ensured that the IDEA evaluation was conducted within timelines for a ward of the State despite the lack of parental consent, in accordance with 34 CFR §§300.300 and COMAR 13A.05.01.04 - .06. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS/TIMEFRAMES:

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.¹

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties 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.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must 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 Directors of Special Education of any corrective action that has not been completed within the required timelines.

Student-Specific

The MSDE requires the BCPS to provide documentation that it has taken the following actions:

1. The BCPS has ensured that an initial IDEA evaluation is conducted without delay; and
2. If it was determined that the evaluation requires the conducting of in-person assessments and the school system staff cannot currently conduct assessments due to the COVID-19 pandemic or, if the student is otherwise unavailable for assessments, the BCPS has actively monitored the situation to ensure that the evaluation is completed as soon as access to the student can be obtained.
3. The BCPS has ensured that, if the student is identified as a student with a disability under the IDEA, that an Individualized Education Program (IEP) has been developed on an expedited basis and that the IEP team has determined the compensatory services or other remedy to redress the delay in providing appropriate services; and
4. The BCPS has ensured that the student's father has been provided with the opportunity to participate in IEP team meetings and that a parent surrogate has been appointed, without delay, in order to represent the student if the student's father is unavailable to do so.

School-Based

The MSDE requires the BCPS to provide documentation of the steps taken to ensure that the violation does not recur at [REDACTED]

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 timeframes 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,

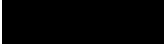
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consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Early Intervention
and Special Education Services

MEF/dee

c:	Darryl Williams	Dori Wilson
	Daniel Martz	Anita Mandis
	Charlene Harris	Diane Eisenstadt
	 (c/o Beverly Schulerbrandt)	Nancy Birenbaum