



June 28, 2022

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #22-141

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 April 29, 2022, the MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of 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 has not ensured that the Individualized Education Program (IEP) contains appropriate measurable goals and a statement of the student’s present levels of academic achievement and functional performance since April 29, 2021, in accordance with 34 CFR §300.320.
2. The BCPS has not ensured that the progress reported towards the achievement of the annual IEP academic goals, since April 29, 2021, have been consistent with the data, in accordance with 34 CFR §§300.320 and .323.
3. The BCPS did not provide the parent with proper prior written notice (PWN) of the IEP team’s decision to reject her proposal that the student receive assistive technology services, on December 9, 2021, in accordance with 34 CFR §300.503.

BACKGROUND:

The student is ten (10) years old and is identified as a student with Autism under the IDEA. She attends ██████████ School and has an Individual Education Plan (IEP) that requires the provision of special education instruction and related services.

ALLEGATION #1: IEP CONTAINS APPROPRIATE GOALS

FINDINGS OF FACT:

1. The BCPS acknowledges that a violation occurred with respect to the allegation. Specifically, the BCPS acknowledged that “none of the goals were revised” at the October 4, 2021, IEP team meeting. The academic goals were revised at the December 9, 2021, IEP team meeting, however, “no changes were made to the speech and language or fine motor IEP goals.” The IEP team met on May 18, 2022, the student’s IEP was revised to “reflect new goals aligned to the student’s present level of performance” and compensatory services were awarded. The IEP team agreed to reconvene after the student attends one quarter in her new school placement to consider if additional compensatory services are warranted.

CONCLUSION:

Based upon the Findings of Fact #1, the MSDE concurs with the BCPS conclusion that a violation occurred and appreciates the school system’s response to the investigation.

ALLEGATION #2: PROGRESS REPORTED CONSISTENT WITH THE DATA

FINDINGS OF FACTS:

2. The student's IEP, in effect in June 2021, was developed on October 27, 2020. The IEP requires that the student be provided with specialized instruction, supports, and related services.
3. Reports on the student’s progress towards achieving annual IEP goals dated June 8, 2021, for the reading phonics goal contains data to support the conclusion that the student was not making sufficient progress to achieve the goal within a year. However, there is no documentation that the IEP team convened to discuss the lack of progress.
4. Reports on the student’s progress towards achieving annual IEP goals dated June 8, 2021, for the reading comprehension goal contains data to support the conclusion that the student was not making sufficient progress to achieve the goal within a year. However, there is no documentation that the IEP team convened to discuss the lack of progress.
5. Reports on the student’s progress towards achieving annual IEP goals dated June 8, 2021, for the functional academic program goal does not contain data to support the conclusion that the student was making sufficient progress to achieve the goal within a year. The progress report reflects that the student was not “participating actively in occupational therapy sessions” but remained “on screen for five to ten minutes at a time.” The teacher’s observations reflect that the student “is still not making sufficient progress at this time due to

her lack of attention and hyperactivity.” However, there is no documentation that the IEP team convened to discuss the lack of progress.

6. Reports on the student’s progress towards achieving annual IEP goals dated June 8, 2021, for the math calculation goal contains data to support the conclusion that the student was not making sufficient progress to achieve the goal within a year. However, there is no documentation that the IEP team convened to discuss the lack of progress.
7. Reports on the student’s progress towards achieving annual IEP goals dated June 8, 2021, for the math problem solving goal contains data to support the conclusion that the student was not making sufficient progress to achieve the goal within a year. However, there is no documentation that the IEP team convened to discuss the lack of progress.
8. The student's IEP, in effect in November 2021, was developed on October 4, 2021. The IEP requires that the student be provided with specialized instruction, supports, and related services.
9. Reports on the student’s progress towards achieving annual IEP goals dated November 8, 2021, for the reading phonics goal contains data to support the conclusion “not yet introduced.” The goal was drafted on October 4, 2021.
10. Reports on the student’s progress towards achieving annual IEP goals dated November 8, 2021, for the reading comprehension goal contains data to support the conclusion “not yet introduced.” The goal was drafted on October 4, 2021.
11. Reports on the student’s progress towards achieving annual IEP goals dated November 8, 2021, for the functional academic program goal contains data to support the conclusion that the student was making sufficient progress to achieve the goal within a year.
12. Reports on the student’s progress towards achieving annual IEP goals dated November 8, 2021, for the math problem solving goal contains data to support the conclusion of “newly introduced skill; progress not measurable at this time.” The goal was drafted on October 4, 2021.
13. Reports on the student’s progress towards achieving annual IEP goals dated December 6, 2021, for the reading phonics goal contains data to support the conclusion that the student was not making sufficient progress to achieve the goal within a year.
14. Reports on the student’s progress towards achieving annual IEP goals dated December 6, 2021, for the reading comprehension goal contains data to support the conclusion that the student was not making sufficient progress to achieve the goal within a year.
15. Reports on the student’s progress towards achieving annual IEP goals dated December 6, 2021, for the functional academic program goal contains data to support the conclusion that the student was making sufficient progress to achieve the goal within a year.

16. Reports on the student's progress towards achieving annual IEP goals dated December 6, 2021, for the math problem solving goal contains data to support the conclusion that the student was not making sufficient progress to achieve the goal within a year.
17. Reports on the student's progress towards achieving annual IEP goals dated January 28, 2022, for the reading phonics goal contains data to support the conclusion of "newly introduced skill; progress not measurable at this time." The goal was revised in December 2021.
18. Reports on the student's progress towards achieving annual IEP goals dated January 28, 2022, for the reading comprehension goal contains data to support the conclusion of "newly introduced skill; progress not measurable at this time." The goal was revised in December 2021.
19. There is no documentation on the report of the student's progress towards achieving annual IEP goals dated January 28, 2022, for the functional academic program goal.
20. Reports on the student's progress towards achieving annual IEP goals dated January 28, 2022, for the math problem solving goal contains data to support the conclusion of "newly introduced skill; progress not measurable at this time." The goal was revised in December 2021.
21. Reports on the student's progress towards achieving annual IEP goals dated April 19, 2022, for the reading phonics goal contains data to support the conclusion that the student was making sufficient progress to achieve the goal within a year.
22. Reports on the student's progress towards achieving annual IEP goals dated April 19, 2022, for the reading comprehension goal contains data to support the conclusion that the student was making sufficient progress to achieve the goal within a year.
23. Reports on the student's progress towards achieving annual IEP goals dated April 19, 2022, for the math problem solving goal contains data to support the conclusion that the student was making sufficient progress to achieve the goal within a year.
24. Reports on the student's progress towards achieving annual IEP goals dated April 19, 2022, for the functional academic program goal contains data to support the conclusion that the student was making sufficient progress to achieve the goal within a year.

CONCLUSIONS:

Based on the Findings of Facts #2 - #4, #6 - #18 and #20 - #24, the MSDE finds that the BCPS has ensured that the progress reported towards the achievement of the annual IEP academic goals, since April 29, 2021, have been consistent with the data, in accordance with 34 CFR §§300.320 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Fact #5, the MSDE finds that the BCPS has not ensured that the progress reported towards the achievement of the annual IEP academic goals, since April 29, 2021, have been consistent with the data, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on Findings of Fact #19, the MSDE finds that there is no documentation that the parent was provided with a report on the student's progress towards IEP goals in functional academic program on January 28, 2022. Therefore, this office finds that a violation occurred 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 team reviews and revises, as appropriate, at least annually to determine whether the annual goals are being achieved. In addition, the public agency must ensure that the IEP team reviews and revises, the IEP, as appropriate, to address any lack of expected progress towards achievement of the goals and must make sure that each student has an appropriate IEP in effect at the start of the school year (34 CFR §§300.323 and .324).

Based on the Findings of Facts #3 - #7, the MSDE finds that the IEP team did not convene to address the lack of expected progress reported in June 2021 until December 9, 2021. Therefore, this office finds that a violation occurred.

ALLEGATION #3: PROVISION OF PROPER PRIOR WRITTEN NOTICE

FINDINGS OF FACTS:

25. The IEP dated December 9, 2021 reflects that "despite several diligent efforts the parent was not in attendance at the IEP meeting."
26. While the student's IEP dated December 9, 2021, states that the student does not "readily engage in verbal communication and based on a team discussion does not require the use of assistive technology," there is no basis provided in the prior written notice to support this decision.
27. The BCPS acknowledges that a violation occurred with respect to the provision of the PWN to the parent after the December 9, 2021 IEP team meeting. Specifically, the BCPS acknowledges there is "no evidence or documentation that the IEP or PWN was provided to the parent after the meeting." Subsequently, the BCPS provided the PWN from the December 9, 2021 IEP team meeting to the parent on May 24, 2022 by US Mail.

CONCLUSIONS:

Based upon the Findings of Facts #25 and #26, the MSDE finds that there is no documentation to support the complainant's allegation that a request for assistive technology was made at the December 9, 2021 IEP team meeting. However, the MSDE further finds that the BCPS did not provide the parent with proper prior written notice (PWN) of the IEP team's decision regarding assistive technology services, on December 9, 2021, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based upon the Findings of Fact #27, the MSDE concurs with the BCPS conclusion that a violation occurred as to the provision of the PWN to the parent after the IEP team meeting and appreciates the school system's response to the investigation.

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 non-compliance 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.

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.² 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 September 1, 2022, of the following actions:

- a. That the IEP team has convened to determine whether the violation related to appropriate IEP goals, progress consistent with the data, failure to convene to discuss lack of progress, and failure to report progress 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; and
- b. That the IEP team has convened to clarify the determinations made regarding the student's assistive technology needs and that the PWN documents the team's decision.

The BCPS must ensure that the parents are 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.

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, 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 public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

██████████
Dr. Debra Y. Brooks
June 28, 2022
Page 7

School-Based

The MSDE requires the BCPS to provide documentation by October 1, 2022, of the steps it has taken to ensure that the ██████████ School staff properly implements the requirements for reporting and generating progress reports as well as the provision of a proper prior written notice. 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. 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

c: Sonja Santelises
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