



Mohammed Choudhury
State Superintendent of Schools

September 12, 2022

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Allison Myers
Executive Director
Baltimore County Public Schools
Department of Special Education
Jefferson Building, 4th Floor
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #23-009

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 July 22, 2022, the MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of her daughter, 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 above-referenced student.

The MSDE investigated the following allegations:

1. Whether the BCPS provided the complainant with Procedural Safeguards in August 2021, prior to the revocation of consent for special education services in order for the student to remain on virtual instruction, in accordance with 34 CFR §300.504 .
2. Whether the BCPS followed proper procedures in initiating the evaluation process to determine whether the student is a student with a disability in need of special education and related services in accordance with 34 CFR §§300.111, and .301- .311 and COMAR 13A.05.02.13(A) when the complainant requested assistance from the school and met with the special education and Section 504 school-based leadership in the Spring of 2022.

BACKGROUND:

The student is currently seventeen years old. Prior to August 20, 2021, she was eligible as a student with a disability under the IDEA. During the 2021-2022 school year, she was enrolled in the BCPS [REDACTED]

FINDINGS OF FACT:

1. The student's Individualized Education Program (IEP), in effect prior to August 2021, was developed on January 25, 2021. The student was recommended to receive eleven hours and forty-five minutes per week of specialized instruction outside of the general education setting for English, math, science, and social studies. In addition, the student received one hour of career and "tech ed." with support in the general education setting yearly, and 30 minutes per week of social work services outside of the general education setting.
2. During the 2020 - 2021 school year, the student received instruction virtually due to closure of school buildings during the COVID-19 pandemic.
3. In May 2021, the complainant applied to the BCPS "[REDACTED]" so that the student could continue to receive virtual instruction for the 2021-2022 school year.
4. On August 3, 2021, the IEP team convened to determine whether a Free Appropriate Public Education (FAPE) could be provided to the student in the Virtual Program.
5. The team determined that the specialized instruction required by the student's IEP was not available in the [REDACTED] and further determined that all of her goals could not be supported through virtual learning. The team further determined that the student would not be able to receive FAPE were she to attend the [REDACTED] due to the barriers in the platform of the unavailability of instruction outside of the general education setting.
6. There is documentation that the complainant was provided with a copy of the Procedural Safeguards Notice the Parent Rights document at the IEP team meeting.
7. Following the IEP team meeting, the complainant emailed school staff to again share that she disagreed with the determination that the student could not receive a FAPE in the [REDACTED] and that she had received confirmation of the student's enrollment in the program.
8. On August 20, 2021, the complainant revoked consent for special education services.
9. There is no documentation that the complainant received Prior Written Notice after revoking consent for special education services.
10. During the 2021-2022 school year, the student was determined eligible for accommodations and supports pursuant to a Section 504 plan. During an April 4, 2022, "Student Support Team" meeting convened to address the student's failing grades, the complainant stated that the student "needs" an IEP. In response, school staff informed the parent that if the student were eligible under the IDEA, she could not continue in the [REDACTED]

11. There is no documentation that the student was referred to an IEP team to determine eligibility for special education services following the complainant's request.

CONCLUSION:

ALLEGATION #1: PROCEDURAL SAFEGUARDS

A copy of the procedural safeguards notice must be given to parents at least once every school year, except that a copy must also be given to parents on initial referral or parent request for evaluation; on receipt of the first State complaint or due process complaint in a school year; in accordance with discipline procedures, and at parent request.

If, at any time after receiving special education and related services, the parent revokes consent in writing for the continued provision of services, the services must stop. The school system will not be responsible for the provision of a free appropriate public education (FAPE), development of an IEP, disciplinary protections, or any of the other procedural safeguards afforded students under the Individuals with Disabilities Education Act (IDEA). Following the revocation of services, the local education agency is required to provide the parents with prior written notice in accordance with 300.503 before ceasing the provision of special education and related services.

Based on the Finding of Facts #1 to #6, the complainant was provided with her Parental Rights document prior to the revocation of special education services for her daughter; therefore, the MSDE does not find a violation with respect to this allegation. However, based on the Finding of Facts #7 to #9, there is no documentation that the BCPS provided the complainant with the required notice following her revocation of consent for special education services; therefore, the MSDE finds a violation with respect to this allegation.

ALLEGATION #2: INITIAL EVALUATION

Each Local Education Agency (LEA) must locate, identify, and evaluate all students with disabilities located in the school district served by the LEA, in accordance with the IDEA child find requirements. This includes students who are homeless, those who are wards of the State, and those attending private schools (34 CFR §§300.111).

The LEA must make a Free Appropriate Public Education (FAPE) available to all students who are identified with disabilities located in the school district serviced by the LEA. This is done through the development and implementation of an IEP (34 CFR §§300.101).

Upon receipt of a request for evaluation under the IDEA, the public agency may implement interventions within the regular school program, but the evaluation must also occur as soon as possible following the referral and within timelines required by State law (*Letter to Anonymous*, 21 IDELR 998, United States Department of Education Office of Special Education Programs, 1994). When a student is referred for evaluation to determine eligibility under the IDEA, in accordance with State regulations, an IEP team must meet to review existing data, information from the parent, instructional interventions and strategies, current classroom-based assessments, and observations by teachers and related service providers (COMAR 13A.05.01.06).

Based on the Finding of Facts #10 and #11, the BCPS failed to respond appropriately to the complainant's statement that her daughter required an IEP, in accordance with 34 CFR §§300.111, the MSDE finds a violation with respect to this 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 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 November 15, 2022, that the school system has taken the following actions:

- a. Provided the complainant with prior written notice required following the revocation of consent for special education and related services.
- b. Convened an IEP team meeting to consider the student's eligibility for special education services, and if eligible, draft an initial IEP for the student. At that time, the complainant can determine whether or not she will agree to the implementation of the initial IEP.
- c. If the student is found eligible for special education services and the complainant consents to the implementation of the initial IEP, the IEP team will determine the amount and nature of compensatory services or other remedy to redress the violation (specifically, not referring the student to the IEP team when the complainant stated she needed an IEP) and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

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.

School Based:

The MSDE requires the BCPS to provide documentation by December 1, 2022, of the steps taken to ensure that the staff at [REDACTED] School properly execute the requirements of the IDEA related to procedures following revocation of consent for special education and related services and referral to an IEP team for evaluation. Please note that any documentation that is submitted relating to a future plan of action must be supplemented with documentation that demonstrates that the plan has been implemented and monitored, as appropriate.

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/ab

c: Darryl Williams
Jason Miller
Charlene Harris
Alison Barmat
Gerald Loiacono
Diane Eisenstadt