



October 24, 2022

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Ms. Conya J. Bailey
Director of Special Education
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #23-026

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.

ALLEGATION:

On August 26, 2022, the MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County Public School (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 did not develop and implement an Individualized Education Program (IEP) that addressed the student’s identified needs from August 2021, through May 2022, in accordance with 34 CFR §300.101 and .324.
2. The BCPS did not ensure that the student consistently received special education instruction and supports, including the requirement of a dedicated aide, as required by the IEP from August 2021 through May 2022, in accordance with 34 CFR § 300.101and .323.
3. The BCPS did not provide written notice of the IEP team's decisions from the IEP team meetings convened on October 4, 2021, and October 25, 2021, in accordance with 34 CFR § 300.503.
4. The BCPS did not ensure that the student's teachers had access to the student's IEP which has resulted in the support and services not being provided, in accordance with 34 CFR §300.101 and .323.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with an Other Health Impairment under the IDEA. He attends ██████████ School and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1:

ADDRESS THE STUDENT'S NEEDS

FINDINGS OF FACTS:

1. The student's IEP in effect at the start of the 2021-2022 school year was dated June 22, 2021. The IEP identifies the student's needs in the areas of reading, mathematics, written language, and communication. The IEP requires that the student be provided with specialized instruction and has annual goals to assist with improving his skills in these areas. The student was placed in the Virtual Learning Program (VLP) at the complainant's request in the spring of 2020 and for the remainder of the school year 2020- 2021, with the support outlined on his IEP, due to health issues. There is documentation to state the student's IEP can be implemented in the VLP in the 6th grade.
2. The student's annual Reading (Fluency and Decoding) goal states that "by June 2022, when given a short chunk of fifth-grade level text, (the student) will recognize or decode the words in order to read the section with 92% accuracy in 2 out of 3 targeted trials."
3. The student's annual Reading Comprehension goal states that "By June 2022, when reading a short fifth-grade level passage, (the student) will answer a set of written multiple choice comprehension questions with questions and answers read to him with 85% accuracy in 2 out of 3 targeted trials."
4. The student's annual Math goal states that "By June 2022, when given a set of addition of fractions with unlike denominators, (the student) will use a checklist and multiplication chart to add the fractions with 75% accuracy in 2 out of 3 targeted trials."
5. The student's annual Written Language (Editing and Keyboarding) goal states that "By June 2022, when given a typed or written sentence containing errors, (the student) will be able to retype the sentence and use a checklist or editing chart (i.e. CAPS) and correct 75% or more of the errors in 2 out of 3 trials."
6. The student's annual Communication goal states that "Given a specified topic, social situation, passage, or video, verbal/visual prompts, and access to completed graphic organizers, as needed, (the student) will recall/retell at least 3 relevant facts and details in a logical sequence using complete phrases/sentences in 2 out of 3 opportunities as measured through SLP data sheets by June 2022.
7. The VLP is a general education program with general education classes. Special education support is available for students who do not require intensive services. On October 4, 2021, the IEP team convened to determine if a Free and Appropriate Education (FAPE) could be provided to the student through the VLP, as he was in a new school and grade. The IEP meeting summary reflects that the team discussed the student's current IEP and progress for the year. The school team expressed concern that the VLP may not be able to provide FAPE for the student based on the student's current IEP.

8. The student's IEP dated June 22, 2021, requires the following accommodations, supplementary aids, and services: Verbatim Reading, Human Scribe, and Additional Adult support.
9. The PWN dated October 4, 2021, reflects the school staff stating the VLP program does not provide additional adult support and "questioned " how the use of a human reader and scribe will be implemented in the VLP.
10. The PWN dated October 4, 2021, reflects during the IEP meeting, the IEP team reviewed and amended the student's IEP to identify the supplementary aids and services support he requires through VLP, as opposed to the general education classroom setting, due to the different instructional environment.
11. There is documentation that the student is doing well in the VLP and receiving grades of "A" and "B" in his classes.
12. The PWN dated October 4, 2021, reflects during the IEP meeting, the complaint reports the student is working hard in the VLP. He attends all of his classes and does all of his assignments. The complaint supports the student with longer assignments and focusing.
13. The PWN generated after the October 4, 2021, IEP meeting reflects the BCPS is unable to implement the entire IEP based on the October 4, 2021, IEP in the VLP setting.
14. On October 25, 2021, the IEP team convened to review the student's progress and determine if FAPE can be provided in the VLP. The school staff conducted informal testing with the results reviewed during the meeting. The parent reports the student is working very hard to be successful in the VLP. The complainant expressed concern about the student's access to virtual instruction and accommodations. The complaint stated the student was not receiving the following accommodations per his IEP:
 - a. the student's accommodations are not being provided to him.
 - b. the student requires a scribe per his IEP. The student cannot use speech-to-text due to articulation needs.
 - c. the student requires a Reader per his IEP. Text-to-speech is not successful as the student is not able to focus and it affects his comprehension.
 - d. the student struggled in Physical Education due to low muscle tone.
15. The PWN dated October 25, 2021, reflects the school staff recommending the student receive an Assistive Technology Assessment to determine if the student requires additional equipment in the VLP as well as an Adaptive Physical Education Assessment. The parent disagreed with the recommendations as they would "cause undue stress on the student." The meeting and discussion were suspended as the parent was seeking representation at the meeting because she felt her child's rights were being violated.
16. On December 22, 2021, the IEP team convened to review and revise the student's IEP due to the lack of progress the student made toward his fluency and decoding goal during the first quarter. The IEP discussed each IEP goal and the progress the student made toward the IEP goals. The IEP team updated the student's IEP to reflect a more realistic goal.

17. The progress reported on the student's reading comprehension, math, written Language, and communication goals dated November 5, 2021, January 21, 2022, and April 1, 2022 (communication goal), reflect that the student was making sufficient progress to achieve his goals.

CONCLUSIONS:

Based on Findings of Facts #7- #16, the MSDE finds that there is documentation that the BCPS did not develop and implement an Individualized Education Program (IEP) that addressed the student's identified needs from August 2021 through May 2022, in accordance with 34 CFR §300.101 and .324. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Facts #10, #14, #15, and #16, BCPS convened IEP meetings to determine whether the VLP was appropriate for the student. They amended the IEP to develop changes needed to support the student in that environment. The student made progress on his goals and objectives and demonstrated his ability to access the grade-level curriculum at a high level. Therefore, no additional corrective action is required to remediate the violation.

ALLEGATION #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION INCLUDING THE REQUIREMENT OF A DEDICATED AIDE

FINDINGS OF FACTS:

18. On October 4, 2021, the IEP team met to determine if a Free and Appropriate Education (FAPE) could be provided to the student through the VLP. The IEP team reviewed the student's IEP and amended it to reflect the supplementary aids and services that will not be needed during VLP:
- a. Manipulatives Amended for VLP: Manipulatives will be provided in the home
 - b. Adapted paper Amended for VLP: Will be provided in the home
 - c. Advanced prep for schedule changes Amended for VLP: Schedule is provided for the parent to print out for the home
 - d. Human Reader Amended for VLP: Speech-to-text
 - e. Human Reader Amended for VLP: Text to speech
 - f. Adult Support to maintain attention in order to participate and complete assignments during whole and small group instruction, as well as during independent activities. Amended for VLP: No change
 - g. Adult Support to maintain attention and during the special area classes to help follow safety rules Amended for VLP: Will not need in special area classes
 - h. Adult Support to walk to and from his classrooms, use of classroom materials, and monitor bathroom etiquette. Amended for VLP: Not a need
19. There is no documentation to show if the use of an aide was consistently provided to the student during small group instruction and or independent work.
20. There is documentation to show speech and language as a related service was not provided to the student from August 30, 2021 to September 21, 2021.
21. There is documentation to show that occupational therapy as a related service was not provided to the student from August 30, 2021 to September 22, 2021.

CONCLUSIONS:

Based on Findings of Facts #19 - #21, the MSDE finds the BCPS did not ensure that the student consistently received special education instruction and support, including the requirement of a dedicated aide, as required by the IEP from August 2021 through May 2022, in accordance with 34 CFR § 300.101 and .323.

Based on Findings of Facts #20 to #21, the MSDE finds that there is documentation that the BCPS has made speech/language services unavailable to the student from August 30, 2021 - September 21, 2021, and occupational therapy services unavailable from August 30- September 22, 2021, in accordance with 34 CFR§ 300.101. Therefore, this office does find that a violation occurred with respect to these allegations.

ALLEGATION #3:

PROVISION OF PRIOR WRITTEN NOTICE

22. The PWN dated October 4, 2021, of the IEP team's decisions, was provided to the parent on October 13, 2021.
23. The PWN dated October 25, 2021, of the IEP team's decisions, was provided to the parent on November 02, 2021.

CONCLUSIONS:

Based on Findings of Facts #22 - #23, the MSDE finds that BCPS did provide written notice of the IEP team's decisions from the IEP team meetings convened on October 4, 2021, and October 25, 2021, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation did not occur with respect to this allegation.

ALLEGATION #4:

ACCESS TO IEP

24. There is documentation to show not all of the student's teachers signed the "Acknowledgement of Individualized Education Program" page that indicates:
 - a. staff has access to the IEP
 - b. staff has been informed of their role within the IEP
 - c. staff has been informed of the accommodations, modifications, and support of the IEP
 - d. staff's responsibility for implementing the goals
 - e. evaluating and documenting student performance

CONCLUSIONS:

Based on Findings of Facts #24, the MSDE finds the BCPS did not ensure that the student's teachers had access to the student's IEP which has resulted in the support and services not being provided. Therefore, this office finds that a violation occurred 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 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.

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

The MSDE requires the BCPS to provide documentation by December 2, 2022, that the IEP team has convened and determined whether the violation is related to lack of the student consistently not receiving support, including the requirement of a dedicated aide, missed related services, and all staff not having access to the student's IEP, 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.

The BCPS must ensure that the parent is provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the BCPS to provide documentation of the steps taken to ensure that the violations identified do not recur at ██████████ School, specifically, ensuring all BCPS school staff have regular, prompt access to IEP snapshots and are trained on how to read and implement the services required on the IEP. 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 reoccur again.

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.

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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Ms. Conya J. Bailey

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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

MF/sj

c: Darryl L. Williams
Allison Myers
Charlene Harris
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Stephanie James