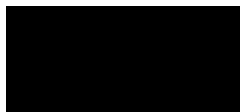





Mohammed Choudhury
State Superintendent of Schools

April 25, 2023




Ms. Allison Myers
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: 
Reference: #23-160

Dear Parties:

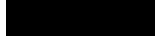
The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On February 24, 2023, MSDE received a complaint from Ms. , hereafter, “the complainant,” on behalf of her daughter. 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.

MSDE investigated that Baltimore County Public Schools (BCPS) has not provided the student with special education and related services in the placement required by the Individualized Education Program (IEP) since December 15, 2022, in accordance with 34 CFR §§300.114, and .116.

BACKGROUND:

The student is 16 years old and is identified as a student with Other Health Impairment (Attention Deficit Disorder/ Attention-deficit/hyperactivity disorder) under the IDEA and is assigned to  School awaiting placement in a private separate special education day school (a “nonpublic school”). The student has an IEP that requires the provision of special education instruction and related services. Prior to the start of the 2022-2023 school year, the student was placed in a nonpublic school by the BCPS.

FINDINGS OF FACTS:

1. On August 17, 2022, while the student was assigned to a nonpublic school, the parent sent correspondence to the BCPS indicating that she was revoking consent for special education services and requested that the student be enrolled in a general education school.
2. On September 19, 2022, and October 11, 2022, following a referral for special education services for the student, the IEP team met to determine the student's eligibility and the student's appropriate placement. Following a review of the student's needs, on October 11, 2022, the IEP team at [REDACTED] School determined that the student was eligible for special education services, developed an IEP for the student, and determined that she required placement in a nonpublic school.
3. There is documentation that the BCPS applied to two schools in October of 2022, on behalf of the student, but that the student was not accepted.
4. On December 15, 2022, the IEP team met to review and revise as appropriate the student's IEP. The IEP in effect on December 15, 2022, was created October 11, 2022, and reflects that the student requires support in the areas of math problem solving, reading comprehension, reading vocabulary, written language content, self-management, social-emotional/behavioral, and Employment. The IEP requires that the student receives 30 hours per week of specialized instruction outside of the general education classroom and 30 minutes per week of behavior support as a related service in a nonpublic school.
5. The present level of performance reflects that the student's attendance in the past three school years have been "very limited" and the IEP "does not have sufficient current data on the student".
6. There is documentation that the student has attended [REDACTED] School five days from September 1, 2022, to January 18, 2023, during the 2022- 2023 school year. The school team submitted a Pupil Personnel Worker (PPW) referral on November 23, 2022, due to attendance concerns.
7. On December 15, 2022, the IEP team discussed the IEP that was created on October 11, 2022, and discussed placement. During the IEP meeting, the complainant recommended an E- Learning program and the Lab School as a new non-public placement. The school district rejected the complainant's proposal as the recommended schools were not appropriate for the student per her IEP. The BCPS staff explained that the student would be referred to four additional nonpublic schools.
8. During the December 15, 2022, IEP team meeting, the complainant expressed concern related to the student's ability to receive instruction at home via "virtual tutoring" due to internet connectivity issues. The team responded that although "she hasn't attended virtually in the past" the student could receive a Free Appropriate Public Education (FAPE) virtually while assigned to [REDACTED] School.
9. There is documentation that the student received information on how to access her virtual tutoring from [REDACTED] School on March 9, 2023. There is no documentation that the student has engaged in virtual instruction during the 2022-2023 school year.

10. There is documentation that the BCPS submitted one application following the December 15, 2022, IEP team meeting on behalf of the student to nonpublic schools. On March 27, 2023, the student received a letter of acceptance; however, the school indicated that there was not currently space for the student to attend.

CONCLUSION:

Based on the Findings of Facts #1 - #10, MSDE finds that the BCPS has not provided the student with special education and related services in the placement required by the IEP since December 15, 2022, in accordance with 34 CFR §§300.114, and .116. Therefore, this office finds that a violation occurred.

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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

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 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:

MSDE requires the BCPS to provide documentation of the following by the end of the 2022-2023 school year:

1. That the student is provided with special education and related services in the placement required by the IEP; and
2. That the IEP team has determined the amount and nature of compensatory services to redress the lack of the provision of special education and related services in the placement required by the student's IEP and develop a plan for the provision of those services within one 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 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, 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 MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

[REDACTED]
Ms. Allison Myers

April 25, 2023

Page 4

Similarly Situated Students:

MSDE requires the BCPS to provide documentation by the end of the 2022-2023 school year that it has identified all students with disabilities under IDEA, pending placement in a nonpublic school, who have not been provided with special education and related services in the placement required by the IEP. For those students identified, the BCPS must ensure that an IEP team convenes and determine the next steps to ensure the student is placed in the placement required by the IEP and determine the amount and nature of compensatory services or other remedy to be provided to the student for the lack of implementation of the IEP, and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings. If a student transfers to another school system prior to the completion of the provision of the remedy, the BCPS must coordinate with the public agency responsible for the education of the student in order to ensure that the remedy is provided.

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

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMC/sj

c: Darryl L. Williams
Conya Bailey
Charlene Harris
[REDACTED]
Gerald Loiacono
Diane Eisenstadt
Stephanie James