



May 5, 2023

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Ms. Alexis de la Rosa
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Dr. Courtney Hill
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Ms. Gloria R. Valentine
Director of Early Intervention
Baltimore City Infants & Toddlers Program
Baltimore City Health Department
3002 Druid Park Drive
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RE: [REDACTED]
Reference: #23-169

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 March 7, 2023, the MSDE received a complaint from Ms. Kathryn Chib and Ms. Alexis de la Rosa, hereafter, “the complainants,” on behalf of the above-referenced student. In that correspondence, the complainants alleged that the Baltimore City Public Schools (BCPS) and the Baltimore City Infants and Toddlers (BCITP) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

Based on the correspondence, MSDE investigated the following allegations:

1. The BCITP did not ensure the parent was provided with written notice of the Individual Family Service Plan (IFSP) team meeting on September 2, 2022, in accordance with 34 CFR §303.342.

2. The BCITP did not follow proper procedures to ensure the transition conference and the development of a transition plan occurred ninety days before the student's third birthday, in accordance with 34 CFR §§303.209, .211, .343 and COMAR 13A.13.01.09.
3. The BCITP did not ensure the parent provided informed written consent for the provision of special education services since September 2022, in accordance with COMAR 13A.13.01.09.
4. The BCPS did not provide the parent with a written invitation to the September 29, 2022, Individualized Education Program (IEP) team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.
5. The BCPS did not ensure that the parent was provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the IEP team meeting at least five business days before the scheduled meetings on September 29, 2022, and November 22, 2022, in accordance with COMAR 13A.05.01.07.
6. The BCPS did not ensure that the parent provided informed consent before the initial provision of special education and related services, since September 2022, in accordance with 34 CFR §300.300 and COMAR 13A.05.01.13.
7. The BCPS did not follow proper procedures on September 29, 2022, when the IEP team determined the placement in which the student would receive special education instruction in accordance with 34 CFR §§300.114 and .116 and COMAR 13A.05.01.10.
8. The BCPS did not provide the parent with a copy of the IEP document within five business days after the IEP team meetings on September 29, 2022, and November 22, 2022, in accordance with COMAR 13A.05.01.07.
9. The BCPS did not provide the parent with proper written notice of the IEP team's decisions from the IEP team meetings on September 29, 2022, and November 22, 2022, in accordance with 34 CFR §300.503.
10. The BCPS did not ensure that the parents were provided with a copy of the procedural safeguards, since September 2022, in accordance with 34 CFR §300.504.

BACKGROUND:

The student is three years old and is currently not attending a school program. He was determined eligible for special education services as a student with Autism under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

Allegations #1 to #3

IFSP TEAM MEETING NOTICE, TRANSITION PLAN PROCEDURES, and CONSENT FOR IEP SERVICES

1. In its written response, the BCITP acknowledges that violations occurred with respect to the

allegations. MSDE concurs with the BCITP's conclusions and appreciates the agency's response to the investigation.

CONCLUSIONS:

Early intervention services are provided to children with disabilities, from birth through the age of two (2) years old, through the Infants and Toddlers Program under Part C of the IDEA. Special education services are provided to children with disabilities who are aged three (3) through the end of the school year in which they turn twenty-one (21) years old under Part B of the IDEA and related State requirements (34 CFR § 300.101, 34 CFR § 303.21, COMAR 13A.05.01.01 -.02, and COMAR 13A.13.01.).

In Maryland, if a child who has been receiving services through an IFSP is found eligible for special education services under Part B of the IDEA prior to his or her third birthday, the child's parent can opt for the manner in which services will be provided. They may opt for the child to continue to receive services through an extended IFSP that has an educational component until the beginning of the school year following his or her fourth birthday, or for the child to receive preschool special education services through an IEP (COMAR 13A.13.01.01, .02, and .09)

In order to ensure a smooth transition from Part C early intervention services to Part B special education services or other community-based services, the Infants and Toddlers Program is required to conduct a transition planning meeting, with the approval of the parents, for all children receiving services under an IFSP. This meeting must be conducted no later than ninety (90) days prior to the child's third (3rd) birthday, unless the referral for early intervention services was made after the child reached the age of thirty-three (33) months. If the referral was made after the child turned thirty-three (33) months old, the transition planning meeting must be held as soon as possible (COMAR 13A.13.01.09).

If, at the Part C to Part B transition planning meeting, it is determined that the child may be eligible for preschool special education services, the local lead agency must, with the approval of the parents, convene an IFSP team meeting with a representative of the local school system to identify the steps necessary to arrange for the smooth transition of the child from Part C to Part B of the IDEA (COMAR 13A.13.01.09).

Based upon the Findings of Fact #1, MSDE finds that the BCITP did not ensure the parent was provided with written notice of the Individual Family Service Plan (IFSP) team meeting on September 2, 2022, in accordance with 34 CFR §303.342, did not follow proper procedures to ensure the transition conference and the development of a transition plan occurred ninety days before the student's third birthday, in accordance with 34 CFR §§303.209, .211, .343 and COMAR 13A.13.01.09 and did not ensure the parent provided informed written consent for the provision of special education services since September 2022, in accordance with COMAR 13A.13.01.09. Therefore, this office finds that a violation occurred with respect to these allegations.

FINDINGS OF FACT:

Allegation #4:

IEP MEETING NOTICE

2. There is documentation that a Notice of IEP Team Meeting scheduled for September 29, 2022, was generated by BCPS staff on September 23, 2022, and emailed to the parent on September 23, 2022.

CONCLUSION:

Based upon the Findings of Fact #2, MSDE finds that BCPS did not provide the parent with a timely written invitation to the September 29, 2022 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D. Therefore, this office finds that a violation occurred with respect to the allegation.

FINDINGS OF FACTS:

Allegation #5:

IEP TEAM MEETING DOCUMENTS

3. The BCPS acknowledges that the parent was not provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the IEP team meeting at least five business days before the scheduled meeting on September 29, 2022.
4. There is documentation that on October 12, 2022, the BCPS staff emailed the parent a copy of the “meeting notification, Parental Rights booklet, Habilitative Guide, Parents for Success flyer, assessments, and progress reports” in anticipation of an IEP team meeting to be convened on November 22, 2022.
5. There is documentation that on October 20, 2022, the BCPS staff emailed the parent a copy of draft IEP goals to be reviewed at the November 22, 2022, IEP team meeting.

CONCLUSIONS:

Based upon the Findings of Fact #3, MSDE finds that BCPS did not ensure that the parent was provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the IEP team meeting at least five business days before the scheduled meeting on September 29, 2022, in accordance with COMAR 13A.05.01.07. MSDE appreciates the BCPS’ acknowledgement and concurs that a violation occurred with respect to this aspect of the allegation.

Based upon the Findings of Facts #4 and #5, MSDE finds that BCPS did ensure that the parent was provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the IEP team meeting at least five business days before the scheduled meeting on November 22, 2022, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

FINDINGS OF FACT:

Allegation #6:

INFORMED PARENTAL CONSENT

6. The BCPS acknowledges that the BCPS did not ensure that the parent provided informed consent before the initial provision of special education and related services, since September 2022, in accordance with 34 CFR §300.300 and COMAR 13A.05.01.13. Specifically, “the initial IEP developed on 9/29/22 was closed on 9/30/22 with the eligibility page indicating that the parent consented for initiation of services on 9/29/22 based on verbal consent, not a written consent.” The IEP indicated that services were to begin on October 9, 2022, when the child turned 3 years old.”

CONCLUSION:

Based upon the Findings of Fact #6, MSDE finds that BCPS did not ensure that the parent provided informed consent before the initial provision of special education and related services, since September 2022, in accordance with 34 CFR §300.300 and COMAR 13A.05.01.13. MSDE appreciates the BCPS' acknowledgement and concurs that a violation occurred with respect to the allegation.

FINDINGS OF FACT:

Allegation #7:

PLACEMENT DETERMINATION

7. On September 29, 2022, the IEP team met to determine if the student was eligible for IEP services under Part B of the IDEA. Prior to this date, the student was eligible under Part C of the IDEA and received services pursuant to an Individualized Family Services Plan. The IEP team, including the parents, reviewed all assessments from the BCITP, the toddler's IFSP, speech and language progress report, and an educational assessment. The student was determined eligible for IEP services under Part B to address his needs in the areas of self-help, articulation, and social-emotional needs. The IEP team reviewed the family choice option. Following the determination that the student was eligible under Part B of the IDEA, the parents requested Part B service delivered through an IEP instead of services pursuant to an extended IFSP. Based on the student's identified needs, the IEP team determined that the student would receive thirty minutes per week of speech and language services and two thirty-minute sessions per month of specialized instruction to be delivered at the "service provider location". The IEP team rejected the toddler receiving Part B services at home, because he is not medically fragile. The PWN further reflects that the parent agreed with the IEP team's decisions.

CONCLUSION:

Based upon the Findings of Fact #7, MSDE finds that BCPS followed proper procedures on September 29, 2022, when the IEP team determined the placement in which the student would receive special education instruction in accordance with 34 CFR §§300.114 and .116 and COMAR 13A.05.01.10. Therefore, this office finds that a violation did not occur with respect to the allegation.

FINDINGS OF FACTS:

Allegation #8:

PROVISION OF IEP DOCUMENTS

8. There is documentation that on September 30, 2022, the BCPS staff emailed the parent a copy of the completed IEP from the September 29, 2022 IEP team meeting.
9. The BCPS acknowledges that the BCPS did not provide the parent with a copy of the completed IEP within five business days after the IEP team meetings on November 22, 2022, in accordance with COMAR 13A.05.01.07.
10. There is documentation that on December 14, 2022, the BCPS staff emailed the parent a copy of the completed IEP from the November 22, 2022, IEP team meeting.

CONCLUSIONS:

Based upon the Findings of Fact #8, MSDE finds that the BCPS did provide the parent with a completed copy of the IEP within five business days after the IEP team meetings on September 29, 2022, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Based upon the Findings of Fact #9, MSDE finds that the BCPS did not provide the parent with a completed copy of the IEP within five business days after the IEP team meetings on November 22, 2022, in accordance with COMAR 13A.05.01.07. The MSDE appreciates the BCPS' acknowledgement and concurs that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation based upon Findings of Fact #10, MSDE finds that the BCPS has provided the parent with a copy of the IEP documents for the November 22, 2022, IEP team meeting. Therefore, no further student specific corrective action is required.

FINDINGS OF FACTS:

Allegation #9:

PROVISION OF PRIOR WRITTEN NOTICE

11. There is documentation that on September 30, 2022, the BCPS staff emailed the parent a copy of the prior written notice generated after the September 29, 2022, IEP team meeting.
12. There is documentation that on December 14, 2022, the BCPS staff emailed the parent a copy of the prior written notice generated after the November 22, 2022, IEP team meeting.

CONCLUSION:

Based upon the Findings of Facts #11 and #12, MSDE finds that the BCPS provided the parent with proper written notice of the IEP team's decisions from the IEP team meetings on September 29, 2022, and November 22, 2022, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to the allegation.

FINDINGS OF FACT:

Allegation #10:

PROVISION OF PROCEDURAL SAFEGUARDS

13. There is documentation that on September 23, 2022, October 12, 2022, and November 9, 2022, BCPS staff emailed the parent a copy of the procedural safeguards.

CONCLUSION:

Based upon the Findings of Fact #13, MSDE finds that the BCPS ensured that the parents were provided with a copy of the procedural safeguards, since September 2022, in accordance with 34 CFR §300.504. Therefore, this office finds that a violation did not occur with respect to the 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, 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 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 Diane.Eisenstadt@maryland.gov.

Student Specific:

MSDE requires the BCITP and the BCPS to convene an IEP team meeting prior to July 1, 2023, to determine the compensatory services or other remedy to address the violations in this Letter of Finding regarding the provision of the IFSP team meeting notice, transition plan procedures, provision of documents prior to and following IEP team meetings, and obtaining informed parental consent, and to develop a plan for the provision of those services within a year of the date of this Letter of Findings.

MSDE further requires that the BCITP and BCPS convene an IEP team meeting to allow the parent to make an informed decision regarding the student's participation under an extended IFSP or IEP. The BCITP and the BCPS must ensure that the parent's informed written consent is obtained prior to implementing any extended IFSP or IEP developed for the student.

The BCITP and 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.

System-Based:

MSDE requires that the BCITP and the BCPS provide documentation by July 30, 2023, that they have developed a procedure that ensures that parents of students eligible under Part C of the IDEA are informed of the process of transition to Part B of the IDEA in an appropriate and timely manner. This process must include mechanisms by which Part B staff have ongoing knowledge of eligible students approaching their

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.

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third birthdays, and are informed of, and invited to, participate in transition planning meetings convened for students approaching their third birthdays. The BCPS must ensure that Part B staff are available and participate in these meetings. The BCPS and BCITP must further jointly develop a process by which individual student evaluation data is shared between the agencies and with parents in a comprehensive and timely manner prior to Part B transition meetings.

The documentation must include a description of how the BCITP and the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations identified in this Letter of Findings 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. 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/tg

c: Sonja Santelises
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