



August 7, 2023



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

RE: [REDACTED]
Reference: #23- 272

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 24, 2023, 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.

MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) addresses the student’s identified speech/language needs and the parent’s concerns regarding the student’s speech/language needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324.
2. The BCPS has not ensured that the student was provided with the speech/language services as required by her IEP since the start of the 2022- 2023 school year, in accordance with 34 CFR §§ 300.101 and .323.
3. The BCPS did not ensure that an IEP team meeting convened on September 14, 2022, and April 17, 2023, included the required participants, in accordance with 34 CFR §300.321.

BACKGROUND:

The student is four years old and is identified as a student with a speech/language impairment under the IDEA. She attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

ALLEGATIONS #1 AND #2: IEP THAT ADDRESSES THE STUDENT'S IDENTIFIED SPEECH/LANGUAGE NEEDS AND THE PARENT'S CONCERNS REGARDING THE STUDENT'S SPEECH/LANGUAGE NEEDS AND THE PROVISION OF SPEECH/LANGUAGE SERVICES

FINDINGS OF FACTS:

1. The student was determined eligible for an IEP on September 2, 2022.
2. The student's IEP, developed on September 14, 2022, reflects that the student's communication is an area that impacts the student's academic achievement and/or functional performance. The IEP further reflects that the student was administered the Goldman-Friscoe Test of Articulation-3. Based on the student's standard score of 84 on the Word subtest and observations of the student, her articulation and phonology are developing below the average range. In addition, the IEP reflects the student has a goal in the area of communication: phonology and articulation.
3. The student's IEP, developed on September 14, 2022, requires that the student be provided with one thirty-minute weekly session of speech/language pathology services provided by the speech/language pathologist. The IEP also reflects that services can be provided in person or via the visual platform.
4. The student's IEP, developed on September 14, 2022, reflects the complainant's concerns and priorities regarding their preschool child's educational and functional performance as "her main concern for the student is that her speech delay may impact her reading skills and her love for reading. She would like her speech delays to be corrected now. She stated that the student is patient and persistent and feels she will do well with speech therapy."
5. From September 14, through October 13, 2022, the student received no services. The student's IEP was not implemented.
6. There is email documentation dated October 13, 2022, from the BCPS staff to the complainant, reflecting that at that time, the BCPS did not have a speech therapist at the student's school.
7. From October 13, 2022, through April 15, 2023, the student received no services. The student's IEP was not implemented.
8. There is email documentation dated April 15, 2023, from the BCPS staff to the BCPS staff reflecting a phone call that was made to the parent with the intention to set up virtual speech/language services: "I contacted the student's Mom... she wasn't expecting a call and didn't know the services would be virtual.
9. An IEP meeting was held on April 17, 2023. The prior written notice generated after the April 17, 2023, IEP team meeting reflects that "upon request for the IEP team meeting from the parent, the [REDACTED] School team found that the student was inactive under the Special Education Planning System due to a technical error." The error was corrected, and the student was made active on March 26, 2023. The prior written notice further reflects that the speech/language pathologist "previously contacted the family to coordinate services. The family shared that they are declining BCPS services at this time. It was shared that the student has been provided weekly speech services through a private provider. The family wishes to continue these services as opposed to the BCPS services being offered as written in the IEP."

10. There is no documentation that the IEP team convened to discuss the complainant's concerns with the provision of virtual services or determine whether adjustments could be made to the student's IEP to address her concerns. There is no documentation to support the statement that the BCPS staff member "previously contacted the family" or that the complainant declined BCPS services.
11. There is email documentation from the BCPS staff to the complainant reflecting that "based on the declining of services, the student will be withdrawn from our system as of April 17, 2023." The complainant responded the same day via email communication, stating, "Please do not withdraw. There's a complete misrepresentation of what occurred in the meeting."

CONCLUSIONS:

Allegation #1: IEP THAT ADDRESSES THE STUDENT'S IDENTIFIED SPEECH/LANGUAGE NEEDS AND THE PARENT'S CONCERNS REGARDING THE STUDENT'S SPEECH/LANGUAGE NEEDS

Based upon Findings of Facts #1- #3, #6, #7, #9, and #11, the BCPS has not ensured that the Individualized Education Program (IEP) addresses the student's identified speech/language needs and the parent's concerns regarding the student's speech/language needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds a violation occurred with respect to allegation #1.

Allegation #2: THE PROVISION OF SPEECH/LANGUAGE SERVICES

Based upon Findings of Facts #1- #11, the BCPS has not ensured that the student was provided with the speech/language services as required by her IEP since the start of the 2022- 2023 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds a violation occurred with respect to allegation #2.

ALLEGATION #3: IEP TEAM MEETING REQUIRED PARTICIPANTS

FINDINGS OF FACTS:

12. The IEP team summary generated after the September 14, 2022, IEP team meeting reflects that the administrator/special educator, parent, and speech/language pathologist/special educator were present in the IEP team meeting.
13. The prior written notice generated after the April 17, 2023, IEP team meeting reflects that the IEP facilitator, general education teacher, speech/language pathologist/special educator, the student's advocate, and the parent were present in the IEP team meeting.

CONCLUSIONS:

IEP Team Meeting Required Participants on September 14, 2022

Pursuant to 34 CFR §300.321(a)(3), an IEP team requires not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child. Speech-language pathology services are considered special education when the service includes specially designed instruction (COMAR 13A.05.01.03B(72)). When the student is receiving speech-language pathology services as specially designed instruction, such as in this case, then the speech-language pathologist may serve as the student's

special education provider for the IEP team meeting. However, there was no general educator present at this meeting. Based upon the Finding of Fact #12, the BCPS did not ensure that an IEP team meeting convened on September 14, 2022, included the required participants in accordance with 34 CFR §§300.321. Therefore, this office does find a violation occurred with respect to this aspect of allegation #1.

IEP Team Meeting Required Participants on April 17, 2023

Pursuant to 34 CFR §300.321(a)(2), an IEP team requires not less than one regular education teacher of the child if the child is participating or could be in the regular education environment. If a student does not have a regular education teacher or is younger than school age, the regular education teacher shall be an individual qualified to teach a student of the student's age (COMAR 13A. 05.01.07A(2)).

Based upon the Finding of Fact #13, there was a general education teacher, special education teacher, IEP facilitator, and family present at the meeting. BCPS did ensure that an IEP team meeting convened on April 17, 2023, included the required participants in accordance with 34 CFR §§300.321. Therefore, this office does not find a violation occurred with respect to this aspect of allegation #1.

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 that by August 31, 2023, the student's IEP team at [REDACTED] School convene to address the parent's concerns regarding the delivery of speech/language services to the student and to determine appropriate compensatory services or other remedy to address the lapse in speech services during the 2022-2023 school year. The recommended services must be completed prior to June 15, 2024.

The parents must be provided with prior written notice of the decisions of the IEP team. The parents have the right to request mediation and/or a due process hearing should they disagree with the actions of the IEP team.

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.

School Based

MSDE requires that BCPS provide staff at [REDACTED] [REDACTED] School with professional development targeting documenting and addressing parent concerns. Further, BCPS is required to determine whether there are other similarly situated students at [REDACTED] [REDACTED] School, and if so, convene IEP team meetings to determine appropriate compensatory services for those students, with plans to be implemented within the 2023-2024 school year.

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: sd

c: Miriam Yarborough
Conya Bailey
Charlene Harris
Jason Miller
[REDACTED]
Alison Barmat
Gerald Loiacono
Diane Eisenstadt
Sarah Denney
Paige Bradford
Nicol Elliott