



September 26, 2023

Ms. Robin Winternitz
821 Delray Drive
Forest Hill, Maryland 21050

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: #24-013

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 31, 2023, MSDE received a complaint from Ms. Robin Winternitz, hereafter, “the complainant”, on behalf of 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 IEP team addressed the parent’s concerns regarding speech and language needs, since October 2022, in accordance with 34 CFR §300.324.
2. The BCPS did not ensure that proper procedures were followed when considering the need for the student’s Extended School Year (ESY) services for the 2022-2023 school year, in accordance with 34 CFR §300.106, COMAR 13A.05.01.03, and 13A.05.01.08.

BACKGROUND:

The student is nine years old and is identified as a student with Multiple Disabilities that include specific learning disability and other health impairment under the IDEA. He attends [REDACTED] a private special education school, where he is unilaterally placed by his parents. The BCPS has proposed an IEP for the student that includes the provision of specialized instruction and related services.

FINDINGS OF FACTS:

1. On October 4, 2022, the IEP team met to develop an IEP for the student while he was attending the private school as a parentally placed private school student. The IEP team summary reflects that the IEP team discussed the need for speech and language services. A disagreement was noted from the prior IEP team meeting where the complainants proposed that the student receive direct speech and language services. The IEP team determined there was no data to support the need for speech and language services at that time. During the meeting, the parents shared that the student was unable to communicate with his peers and received private speech and language services as part of the program he attended at the private school. While the private school speech and language pathologist completed assessments on the student, those results had not been shared with the IEP team. The IEP team discussed the request to observe the student at the private school, however, the parents denied the request stating that observations were not permitted by the school. The BCPS team informed the parent that they would seek consent to speak with the speech and language pathologist at the private school. The IEP team reviewed the student's BCPS August 2022 speech and language assessment. The assessment reflects that the student demonstrates average receptive and expressive language skills, and the student independently uses strategies to increase the accuracy of his verbal responses. The IEP team determined the student's communication is not impacted by a speech and language impairment. The IEP team agreed to reconvene on October 18, 2022, to finalize the IEP.

2. On October 18, 2022, the IEP team met to continue the development of the student's IEP. The IEP team summary reflects that the parents proposed that the speech and language pathologist be a service provider for the peer relationship goal. The BCPS team refused this proposal because the student does not currently qualify for speech services based upon his recent assessments. The team agreed to a different collaboration of providers for the peer relationship goal. The parents continued to disagree with the decision regarding the need for speech and language services. They shared that the student has difficulty communicating at home and requires daily speech therapy to assist with language and word retrieval. The results of a recent BCPS speech assessment reflect that the student is in the "average" range for his age. The BCPS requested data to support the need for direct speech services and asked for permission to speak with providers at the private school. To date, BCPS had not received permission to speak to providers or the assessment data from the school. The IEP team further discussed the student's need for ESY services. The BCPS team proposed that the student did not qualify for ESY based upon the lack of data to support the need for ESY. Upon further discussion the IEP team agreed to defer the decision and to meet later in the school year to make a determination. The complainant shared that they disagreed with the IEP and would not agree with the BCPS' placement.

3. On July 12, 2023, the IEP team met to review and/or revise the student's IEP and to make an ESY determination after receiving additional data from the parents on July 4, 2023. The Prior Written Notice drafted after the meeting reflects that the IEP team reviewed the data from the student's private school that was provided by the parents that included report cards from the first through the third trimesters, fluency data, assessment results, and benchmarks. The IEP team discussed the document labeled "Evaluation"; however, it did not contain the date of the assessment, the credentials of the examiner, or the examiner's name. The parents agreed to

share the formal evaluation report after the meeting. The data reviewed reflects the student demonstrated slow progress from the fall to the spring, regression, and struggles with attention, anxiety, self-esteem, self-worth, and making friends. The IEP team determined the student was eligible for ESY services and would receive sixty minutes of instruction in Phonics, Spelling, and thirty minutes in Written Expression per day during ESY. The team discussed compensatory services since ESY has already started. The IEP team proposed that the service hours be extended daily to compensate for the missed services. The IEP team further proposed that the student be evaluated in the area of pragmatic language to plan appropriately for the student's educational needs. The parents agreed with the ESY eligibility determination, however, they proposed that the ESY service be provided at the [REDACTED] where the student was attending a summer program. The complainants elected to consult with their lawyer before providing consent for the pragmatic language evaluation. The complainants emailed the BCPS after the July 12, 2023, IEP team meeting indicating "We are declining ESY for the summer of 2023 with BCPS due to the fact the program has already started. We are requesting reimbursement for the [REDACTED] since we were not offered ESY with the county until today Wednesday, July 12th."

CONCLUSIONS:

Allegation #1: PARENT CONCERNS

Based upon Findings of Facts #1 to #3, MSDE finds that the BCPS has ensured that the IEP team addressed the parent's concerns regarding speech and language needs since October 2022 in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to this allegation.

Allegation #2 ESY DETERMINATION

Based on Findings of Fact #3, MSDE finds that the BCPS did ensure that proper procedures were followed when considering the need for the student's Extended School Year (ESY) services for the 2022-2023 school year, in accordance with 34 CFR §300.106, COMAR 13A.05.01.03, and 13A.05.01.08. Therefore, this office finds that a violation did not occur with respect to this allegation.

TIMELINES:

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: Myriam Yarbrough
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