




Carey M. Wright, Ed.D.
Interim State Superintendent of Schools

November 7, 2023

Corrected Copy November 8, 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: 
Reference: #24- 033

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 September 8, 2023, MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of her son, 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 developed an Individualized Education Program (IEP) that addressed the student’s identified behavioral and social-emotional needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324.
2. The BCPS has not implemented an Individualized Education Program (IEP) that addressed the student’s identified behavioral and social-emotional needs since the start of the 2023- 2024 school year, in accordance with 34 CFR §§300.101 and .324.

BACKGROUND:

The student is six years old and is identified as a student with Autism under the IDEA. He attends [REDACTED] School. During the 2022-2023 school year, the student attended [REDACTED] School. He has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP in place at the start of the 2022-2023 school year was developed on May 31, 2022. It reflects that social/emotional/behavioral is an area affected by his disability and that social/emotional/behavioral skills are below grade level expectancies and "atypical". The IEP further reflects that the "student needs to learn to follow class routines (including toileting routines) and transition between class activities. The student needs to be able to better adapt to changes in routines. The student needs to expand his attention to less preferred tasks. He should be able to sit and participate in group instruction. He should be able to follow a variety of classroom directions. He should be able to respond to social greetings and social bids more consistently. The student needs to learn to play with peers, taking conversational turns and turns with toys; he should be able to play pretend with his peers."
2. The May 31, 2022, IEP required that the student received accommodations to address his social/emotional/behavioral needs including daily social skills training, daily strategies to initiate and sustain attention, daily advance preparation for schedule changes, weekly use of positive/concrete reinforcers, and a daily picture schedule. All accommodations were to be provided by the general educator, special educator, or the instructional assistant. The IEP further required that the student receive daily adult support provided by the instructional assistant, and that a Behavior Intervention Plan (BIP) be in place.
3. The May 31, 2022, IEP has two behavioral skills goals and one social skills goal to measure the student's progress in these areas:
 - a. Behavior Skills Goal One: Given positive behavioral supports, the student will improve personal social skills in the area of following simple classroom rules and routines as measured by following class routines, transitioning between class activities, adapting to changes in routines, and following classroom directions on four out of five targeted trials.
 - b. Behavior Skills Goal Two: Given positive behavioral supports, the student will improve personal social skills in the area of attention and participation as measured by attending to class activities/tasks, remaining seated and attentive for group instruction, participating in group instruction, and giving personal information on four out of five targeted trials.
 - c. Social Skills: Given positive behavioral supports, the student will improve personal social skills in the areas of turn-taking and interactive play with peers as measured by giving up a toy when his turn is over, taking turns, waiting for his turn, and playing cooperatively.
4. To assist the student in achieving his goals the May 31, 2022, IEP required that he receive twenty-six hours weekly of instruction outside the general education classroom provided by the general education teacher, special education teacher, or the instructional assistant. It further requires that the student receive five daily one hour and five minutes of instruction in the general education classroom by the general education teacher or instructional assistant.

5. The student's placement at the start of the 2022-2023 school year was determined at an IEP team meeting on June 13, 2022. The "IEP Team Summary" document generated after the IEP team meeting reflects that the IEP team reviewed the student's IEP and determined that the Least Restrictive Environment for his progression into kindergarten was the [REDACTED] program at [REDACTED] School. The IEP team considered both the general education setting with support at the student's home school as well as the [REDACTED] program at [REDACTED] School. The student's IEP was also amended on this date to reflect the additional need for one weekly thirty-minute session of social work services.
6. On December 6, 2022, the IEP team met to review and revise, as appropriate, the student's IEP and to conduct an annual review of the IEP. The Prior Written Notice generated after this IEP team meeting reflects that the IEP team updated the student's present levels of achievement, reviewed the student's supplementary aids and services, updated goals, and added Occupational Therapy to the student's IEP.
7. The student's IEP, developed on December 6, 2022, reflects the student's social/emotional/behavioral skills to be below grade level expectancies. The PLAAFP further reflects that the student is in the "Social Emotional Learning Support" classroom, which has two other students, one classroom teacher, and two assistants. "As a result, the student receives individual attention throughout the day for both academic learning and social emotional learning."
8. The student's IEP, developed on December 6, 2022, reflects that the student continues to receive daily social skills training, daily strategies to initiate and sustain attention, daily advance preparation for schedule changes, weekly use of positive/concrete reinforcers, daily picture schedule provided by the general educator, special educator, or the instructional assistant, support from an instructional assistant, and implementation of a BIP. The IEP team determined that the student also requires the provision of small group instruction, frequent breaks, and reduced distraction to self and others.
9. The student's December 6, 2022, has two behavioral skills goals and one social skills goal to measure the student's progress in these areas:
 - a. Behavior Skills: Compliance: Given positive behavioral supports, the student will improve personal social skills in the area of following simple classroom rules and routines as measured by following class routines, and following classroom directions on four out of five targeted trials.
 - b. Behavior Skills: Attention and Participation: Given positive behavioral supports, the student will improve personal social skills in the areas of attention and participation as measured by attending to class activities/tasks, remaining seated and attentive for group instruction, and participating in group instruction on four out of five targeted trials.
 - c. Social Skills: Given social skills training and positive behavioral supports, the student will improve personal social skills in the areas of turn taking and interactive play with peers as measured by giving up a toy when his turn is over, taking turns, waiting for his turn, and playing cooperatively on four out of five targeted trials.
10. To assist the student in achieving his goals the December 6, 2022, IEP requires that he receive twenty eight hours weekly of instruction outside the general education classroom provided by the general education teacher, special education teacher, or the instructional assistant. It further requires that

the student receives five daily one hour and five minutes of instruction in the general education classroom by the general education teacher or instructional assistant.

11. The IEP team met on July 26, 2023, to review and revise, as appropriate, the student's IEP. The IEP team discussed the student's change in school location due to an administrative location change. The IEP team amended the IEP to reflect a change in case manager and transportation based on the location of the new school and his daycare.
12. Following an incident in the school where the student was allegedly harassed and/or attacked by another student, the student's assistant principal, and student's parent met on September 7, 2023, to develop a "Classroom Safety Plan". The documentation reflects that the goal of the plan was to "to ensure that the student is physically safe from (the other student) within the social emotional learning classroom at [REDACTED] School."
13. There is documentation that the student was enrolled in the Regional Social Emotional Learning Program since the start of the 2023- 2024 school year and received the instruction required by his IEP.
14. While there is documentation that the student has received some of the accommodations as required by the student's IEP since the start of the 2023- 2024 school year, there is not documentation that the student has routinely received daily strategies to initiate and sustain attention, daily advanced preparation for schedule changes, and weekly use of positive/concrete reinforcers.

CONCLUSIONS:

Allegation #1: Developed An IEP That Addresses The Student's Identified Behavioral And Social- Emotional Needs

Based upon Findings of Facts #1- #15, the BCPS has developed an IEP that addresses the student's identified behavioral and social-emotional needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find a violation occurred with respect to allegation #1.

Allegation #2: Implemented An IEP That Addresses The Student's Identified Behavioral And Social- Emotional Needs

Based upon Findings of Facts #1, #2, #10, #12, #13, and #14, MSDE finds that the student was provided with some, but not all of the accommodations and supports required by his IEP, since the start of the **2023- 2024** school year, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds a violation occurred with respect to allegation #2.

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 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

MSDE requires the BCPS to provide documentation by January 5, 2024, that the student is receiving each of the accommodations and supports required by his IEP. MSDE further requires that the BCPS provide documentation by February 1, 2024, that it has convened an IEP team meeting and determined whether the violation related to the provision of accommodations and supports 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.

School Based

MSDE requires the BCPS to provide documentation by March 1, 2024, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at [REDACTED] School and [REDACTED] School. Specifically, a monitoring of other students in the Social Emotional Learning Classes at [REDACTED] School must occur to determine whether the supplementary aids and services and accommodations on the students' IEPs are being implemented. If not, steps must be taken to ensure that there is full implementation and for each student, BCPS must convene an IEP team meeting and determine whether the violation related to the provision of accommodations and supports 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. If compliance with the requirements is reported, MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety days of the initial date of a determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements

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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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: Myriam Yarbrough
Allison Myers
Conya Bailey
Charlene Harris
Jason Miller
Norma Villanueva
■
Alison Barmat
Gerald Loiacono
Diane Eisenstadt
Sarah Denney
Paige Bradford
Nicol Elliott