


January 4, 2024

CORRECTED COPY JANUARY 9, 2024




Ms. Denise Mabry
Director of Compliance and Due Process
Baltimore City Public Schools
200 E. North Avenue
Baltimore, Maryland 21202

RE: 
Reference: #24-066

Dear Parties:


Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 November 14, 2023, MSDE received a complaint from Ms. , hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City 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. BCPS has not ensured that the student has been consistently provided with the speech/language related services required by the Individualized Education Program (IEP) since January 2023, in accordance with 34 CFR §§300.101 and .323.
2. BCPS has not ensured that the student is being provided with the special education classroom instruction required by the IEP since August 2023, in accordance with 34 CFR §§ 300.101 and .323.
3. BCPS has not ensured that the decisions regarding recovery services made on November 7, 2023, were consistent with needs of the student, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is 9 years old and attends  School. He is currently identified as a student with Autism under the IDEA and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The November 18, 2022, speech/language assessment reflects the following:
 - Language Assessment - average compared to same- aged peers
 - Receptive Language- average range
 - Expressive Language - average range
 - Classroom Observation- student was distracted but volunteered to answer a question and responded correctly.

2. The IEP in effect in January 2023, reflects impact in the following areas: Cognitive, Math Calculation, Math Problem Solving, Reading Comprehension, Reading phonics, Speech and Language Articulation, Written Language Expression, and Social Emotional/Behavioral. The IEP requires ninety minutes of specialized instruction outside of the general education classroom per week. The IEP requires speech and language (SLP) as a related service, once a week for thirty minutes per session.

3. The SLP log reflects the following:
 - January 2, 2023 - no service schools closed
 - January 16, 2023 - no service schools closed
 - January 23, 2023 - no service schools closed
 - January 27, 2023 - makeup session for missed service on December 19, 2022
 - January 30, 2023 - clinician absent
 - February 6, 2023 - clinician unavailable
 - February 10, 2023 - make-up service for missed service on January 30, 2023
 - February 13, 2023 - direct service
 - February 20, 2023 - no school
 - February 27, 2023 - direct service for missed service on February 6, 2023
 - September 1, 2023 - direct service
 - September 4, 2023 - no service schools closed
 - September 8, 2023 - no service, student unavailable
 - September 15, 2023 - direct service
 - September 18, 2023 - direct service
 - October 2, 2023 - no service, student refused
 - October 9, 2023- direct service
 - October 16, 2023 - direct service make-up for September 25, 2023
 - October 20, 2023- schools closed
 - November 3, 2023 -direct service make-up October 27, 2023
 - November 3, 2023 - no direct service ½ day
 - November 15, 2023 - direct service
 - November 17, 2023 - school closed
 - November 30, 2023 - direct service

4. The IEP developed on November 7, 2023, reflects impact in the following areas: Reading Comprehension, Reading Fluency, and Speech Language Articulation. The present levels of Speech and Language Articulation reflects the student does not have any areas of need within the domain that impacts his ability to access the curriculum. The IEP requires ninety minutes of specialized instruction outside of the general education classroom per week. The IEP requires speech and language (SLP) as a related service, once a week for thirty minutes per session.
5. The PWN developed as a result of the meeting on November 7, 2023, reflects the purpose of the meeting, was to hold the student's annual review meeting and to make a FAPE determination for speech and classroom instruction. The team reviewed and discussed the student's progress with Speech, Mathematics, Written Expression and ELA. During this meeting, the IEP team acknowledged that the student did not receive Speech Language services from March 2023 through June 2023.
6. The PWN developed on November 7, 2023, the IEP team determined:
 - The student no longer requires direct service and would benefit from consultation. The parent was not in agreement with the proposed service. The team agreed to continue SLP service and revisit the student's Speech Language needs at the end of the second quarter of the 2023-2024 school year.
 - The IEP team reviewed the Speech Language service log for the 2023-2024 school year and determined that the student did not experience any adverse impact from missed speech services; therefore, the student did not require compensatory services for services missed.
 - The IEP team acknowledged the violation regarding the provision of specialized instruction during the 2023-2024 school year. The student was not provided with ninety minutes of specialized instruction per week. The IEP team proposed and agreed to reconvene at the end of the second quarter of the 2023-2024 school year to determine the impact of the violation and the appropriate remedy.
7. On November 7, 2023, the Speech Language Pathologist, reviewed the student's goals:
 - "By 9/2023, given direct instruction and feedback, [student] will produce the r phoneme in words, phrases, and sentences with 80% accuracy given verbal cues as measured by clinical data."
 - "By 11/2023, given a recording or in real time using a 3 point scale, [student] will self-rate his own production and others productions of the r phoneme in words and sentences 8 out of 10 times during a structured language activity given verbal cues as measured by clinical data."
 - "By 11/2023, [student] will produce the sh and th sound in words and sentences given minimal cues with 80% accuracy as measured by clinical data."

The Speech Language Pathologist report reflected that the student receives a thirty-minute session of speech service per week. The student is able to "produce vocalic and prevocalic /r/ in words and sentences with approximately 90% accuracy and increases to 100% accuracy given a model. There is a slight /r/ distortion but not enough to impact his intelligibility." The student is able to "produce the /sh/ and /th/ sound in words with 100% accuracy and at the sentence level with approximately 90% accuracy, which increases to 100% accuracy when given a model." The student requires cues to increase his volume to increase he is 90 - 95% intelligible.

However, the team did not have sufficient data to determine compensatory services with regard to the missed academic services at the November 7, 2023, IEP team meeting, and deferred the discussion until the end of the second quarter. Therefore, this office finds that a violation did occur with respect to this part of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include 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 Based:

MSDE requires BCPS to provide documentation by March 1, 2024, that it has completed the following actions:

Reconvene an IEP team meeting to determine remedy for missed academic services during the 2023-2024 school year;

- a. Convene an IEP team meeting to determine if the student has speech and language needs that can be addressed by informal means in the classroom; and
- b. Provide MSDE with documentation that BCPS has convened and determined the compensatory services, or other remedy to redress the lack of provision of related services, and specialized instruction since August 2023. The IEP team must also develop a plan for the provision of those services within one year of the date of this Letter of Findings. BCPS must ensure that the complainant is provided with written notice of the team's decisions.

BCPS must also ensure that the IEP team considers the difference between the student's present and expected levels of performance when determining the services needed to remediate the violations. BCPS must ensure

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.

Ms. Denise Mabry

January 4, 2024

CORRECTED JANUARY 9, 2024

Page 6

that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School Based:

MSDE requires the BCPS to provide documentation by **June 1, 2024**, that it has identified all students with disabilities under IDEA at the student's school who did not receive speech and language and/or specialized instruction, due to service provider unavailability during the 2023-2024 school year. For those students identified, the BCPS must ensure that an IEP team convenes and determines the amount and nature of compensatory services or other remedy to be provided to the student for the loss of services and develops a plan for the provision of those services within one 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 may 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,

Antoine L. Hickman, Ed.D.
Assistant State Superintendent
Division of Early Intervention/Special Education Services

ALH/ra

c: Dr. Sonja Santelises, Superintendent, BCPS
Ms. Christa McGonigal, Educational Specialist, BCPS
Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Ms. Diane Eisenstadt, Compliance Specialist, MSDE
Ms. Rabiātu Akinlolu, Complaint Investigator, MSDE