

May 10, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Allison Myers
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #24-170

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and 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 March 13, 2024, 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 School (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the allegation that the BCPS did not follow the proper procedures when identifying and conducting an initial evaluation to determine if the student is a student with a disability requiring special education and related services, since March 2023, in accordance with 34 CFR §§300.111 and 301-.311 and COMAR 13A.05.01.06.

BACKGROUND:

The student is 18 years old and is identified as a student with Autism under the IDEA. She attends [REDACTED] School and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

FINDING OF FACTS:

1. At the start of the 2022-2023 school year, the student received interventions through accommodations of a 504 Plan¹.

¹ “Section 504” refers to Section 504 of the Rehabilitation Act of 1973, requiring schools to provide a free appropriate public education (FAPE) to each eligible student, including the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student as adequately as the needs of a student without a disability are met. (34 CFR § 104.33).

2. On January 5, 2023, the complainant requested an IEP meeting, expressing concerns that the student's needs were not adequately addressed under the existing 504 Plan.
3. On January 27, 2023, the IEP team convened per the request of the complainant. During the meeting, the team reviewed the student's current progress and considered the student's impairments and need for additional processing time. The complainant requested the student to be evaluated for an IEP. However, the IEP team discussed that the student was enrolled in advanced courses and earning "good grades." The classroom teachers expressed that the student understood the course material well, and there was no indication of a need for specialized instruction. Despite this, the complainant disagreed with the IEP team's assessment and stated she felt the 504 plan was "inadequate." Additionally, during the meeting, the complainant expressed concerns that the student may be on "the spectrum" and complained that the school environment was too noisy. The complainant also informed the team that the student did not want to come to school and was lacking in social skills. Furthermore, the school's psychologist discussed a private "neuropsychological report" which raised the possibility of autism, an eating disorder, a depressive disorder, and an anxiety disorder.
4. On February 13, 2023, the complainant provided the BCPS team with a private psychological assessment from the [REDACTED] and requested that the student receive a psychological assessment and be assessed for Specific Learning Disability (SLD) and Autism Spectrum Disorder (ASD).
5. There is no documentation that the IEP team responded to the complainant's request.
6. On September 6, 2023, the complainant requested an IEP team meeting for the student.
7. On September 13, 2023, a BCPS IEP team member requested the complainant provide the school with the private assessment "so they could be discussed in the requested meeting."
8. On September 13, 2023, the complainant expressed concern regarding her daughter experiencing a "panic attack" and refusing to exit the car to enter the school building. The complainant conveyed her frustration at the school's failure to provide the necessary services for her daughter. Additionally, she expressed concern that despite providing the school with a private assessment recommending evaluation for ASD, a member of the IEP team "did not see fit to provide the required testing" in the meeting held on January 27, 2023.
9. On September 13, 2023, a BCPS special education staff responded to the complainant's email, stating that a full IEP team was required to address the concerns raised. They informed the complainant that another staff member would schedule the meeting accordingly.
10. On September 14, 2023, a BCPS school team member emailed the IEP team to inform them that the complainant had made an official request for an initial evaluation on September 6, 2023. The email further indicates that a full team is needed to review private assessments with members of the social-emotional team.
11. On September 14, 2023, the complainant emailed the BCPS IEP team regarding the student's lack of attendance for the day due to anxiety. The complainant expressed concern that the student has attempted suicide, and she wishes the school team would have provided support sooner.

12. On September 25, 2023, the complainant received a parent notification of the IEP meeting scheduled for October 3, 2023. The purpose of the meeting was to discuss the student's educational performance or potential need for initial special education services and to review the results of assessment reports.
13. On October 3, 2023, the IEP team convened per the parent's referral request to review the private neuropsychological assessment dated August 14, 2023, to determine eligibility. Recognizing the lack of educational data in the private assessment, the team agreed to conduct additional testing for academics and observation.
14. On October 10, 2023, the complainant provided consent for the student to undergo evaluation.
15. On November 12, 2023, BCPS completed an educational assessment for the student.
16. On November 28, 2023, the IEP team, including the complainant, convened to conduct an evaluation of the student, determine IDEA eligibility, and, if appropriate, develop an IEP for the student. The Prior Written Notice (PWN) generated after the meeting reflects that the IEP team reviewed the educational assessment, the student's psychological history, the private assessment, the current 504 plan, file review. The IEP team proposed and determined that the student was eligible for special education services under the IDEA as a student with an emotional disability that affects her social-emotional functioning and mathematics needs.
17. On January 2, 2024, the IEP team convened to develop an initial IEP based on the initial eligibility determination. The PWN generated after the meeting reflects the IEP team proposed that the student was eligible for special education services as a student with an Emotional Disability (ED) that impacts social-emotional behavior and mathematics. The complainant disagreed and expressed concern that the eligibility determination should be ASD. The complainant refused consent for the initial services outlined in the IEP, resulting in the IEP not being implemented for the student.
18. The IEP team proposed a follow-up meeting to further discuss the eligibility determination. It was decided that additional assessments needed to be ordered or new formal data needed to be presented to ascertain whether ASD was the primary disability.
19. There is no documentation that the student received the additional assessments recommended in the IEP meeting held on January 2, 2024.
20. On January 12, 2024, at the request of the complainant, the IEP team reconvened to reassess the student's eligibility determination. The PWN generated after the meeting reflects that after reviewing the August 14, 2023, private neuropsychological assessment and its recommendations, the IEP team proposed updating the eligibility coding from Emotional Disability (ED) to Autism Spectrum Disabilities (ASD).

DISCUSSIONS AND CONCLUSIONS:

ALLEGATION # 1

PROPER PROCEDURES IDENTIFYING A STUDENT WITH A DISABILITY

The "child find" requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services or who are suspected of having disabilities and being in need of special education and related services. It is the intent of State and federal law that interventions and strategies be

implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services. However, the public agency must ensure that this process does not delay or deny a student's access to special education services under the IDEA (34 CFR §300.111).

Based on the review, the IEP team must determine whether additional data is needed to determine if the student is suspected of being a student with a disability. The IEP team must complete the evaluation process within sixty (60) days of parental consent for assessments and no more than ninety (90) days from receipt of a written referral (COMAR 13A.05.01.06).

Child Find

In this case, the complainant alleges that she made several requests for the student to be evaluated due to mental health concerns and provided private assessments diagnosing ASD. However, the private assessments were not reviewed by the IEP team within the required timeline.

Based on Findings of Fact #4 through #10, #12 through #20, MSDE finds that the BCPS did not follow the proper procedures when identifying and conducting an initial evaluation to determine if the student is a student with a disability requiring special education and related services, since March 2023, in accordance with 34 CFR §§300.111 and .301-.311 and COMAR 13A.05.01.06. Therefore, this office finds that a violation did occur concerning 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 noncompliance is corrected in a timely manner.² 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.³ Ms. Alison Barbat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student Specific:

MSDE requires the BCPS to provide documentation by the end of June 14, 2024, that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the

² 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.

³MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

evaluation timeline violation and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

The BCPS must ensure 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 August 1, 2024, of the steps it has taken to ensure that the ██████████ School staff properly implements the requirements for conducting timely evaluations of students, that it complies with the requirements to consider information provided by parents on a timely basis, and that it assesses students in all areas of suspected disability. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations 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,

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

ALH/sj

c: Dr. Myriam Rogers, Superintendent, BCPS
Charlene Harris, Supervisor of Compliance in the Department of Special Education, BCPS
Dr. Jason Miller, Coordinator, Special Education Compliance, BCPS
██████████, ██████████, Principal, BCPS
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Stephanie James, Complaint Investigator, MSDE