

May 14, 2024

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #24-172

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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 March 15, 2024, MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of her son. 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 student has been provided with the occupational therapy services, speech-language services, and special education instruction since September 2023, as required by the student’s Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323.
2. The BCPS has not followed proper procedures when responding to a request for the student’s records made in March 2024, in accordance with 34 CFR §300.613.

BACKGROUND:

The student is seven years old and is identified as a student with Autism under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION AND RELATED SERVICES

FINDINGS OF FACT:

1. The student’s IEP in effect in September 2023 was developed on July 11, 2023. The IEP requires that the student receive weekly: four 40-minute sessions of special education services outside of the general education setting; one 30-minute session of occupational therapy inside the general education setting; and two 30-minute sessions of speech/language pathology services outside of the general education setting.
2. The IEP team convened on December 6, 2023, to conduct the student’s annual review, determine Extended School Year (ESY) services, and plan for compensatory services “due to missed related services.” According to the Prior Written Notice (PWN), the school-based team proposed that it provide the student compensatory services for missed speech-language services and occupational therapy services during the 2022-2023 school year. The PWN reflects that the school-based team was working with the Coordinator for Related Services to ensure that the student’s services would be made up virtually before or after school. The IEP services determined for the student included “... an inside general education classroom placement (3, 20-minute sessions per week), outside general education (4, 20-minute sessions per week): Speech Language Services for 2, 30-minute sessions per week; [and] OT - 30-minute sessions per week.” The least restrictive environment for the student was determined to be inside the general education setting for 80% or more of the school day.
3. The December 6, 2023, IEP requires that the student receive weekly: four 20-minute sessions of special education services outside of general education; three 20-minute sessions inside the general education setting; two 30-minute sessions of speech/language services outside the general education setting; and one 30-minute session of occupational therapy services outside of the general education setting.
4. While there is some documentation that the student was provided with specialized instruction, speech-language services, and occupational therapy services; it does not demonstrate that the student was consistently provided with specialized instruction, speech-language services, and occupational therapy services as required by the IEP.
5. There is documentation dated April 23, 2024, that at the December 6, 2023, IEP meeting the school-based IEP team agreed to provide seven 30-minute sessions of compensatory occupational therapy to be provided virtually after school beginning May 9, 2024, with an anticipated end date of June 14, 2024.
6. There is documentation that a subsequent IEP meeting has been scheduled for May 15, 2024, to clarify the nature and amount of compensatory services owed to the student and to develop a plan to implement those services.

CONCLUSION:

Based on the Findings of Fact #1 to #6, MSDE finds that the BCPS has not ensured that the student has been provided with the occupational therapy services, speech-language services, and special education instruction since September 2023, as required by the student’s IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred concerning the allegation.

ALLEGATION #2: ACCESS TO STUDENT RECORDS

FINDINGS OF FACT:

7. On March 4, 2024, the complainant emailed BCPS staff requesting to receive service logs for the student's speech-language, occupational therapy, and specialized instruction services from October 2023 to March 2024.
8. On March 7, 2024, BCPS staff emailed the complainant sharing that the service logs were requested from the speech pathologist and a request was made for the occupational therapy service logs and the special education data.
9. On March 12, 2024, BCPS staff emailed the complainant stating that "special ed does not keep logs, just work samples and data." The staff member shared that she had been pulling the student "out of the classroom" for 30 minutes at a time, "which is at least 40 minutes extra per week. So, he has received extra support time since the beginning of September [2023]." The staff member shared that she could send updated progress emails at the end of each week to inform her of the student's activities and instruction and provided information on what instruction was taking place in the student's math and reading classes.
10. On March 12, 2024, in an emailed response to the BCPS staff member, the complainant requested "any samples, data that includes any documentation, and notes" since the staff member had been meeting with the student for the duration of the school year.
11. On March 16, 2024, the BCPS supervisor provided the complainant with occupational therapy and speech-language service logs.
12. There is no documentation that BCPS provided the complainant with the data regarding specialized instruction.

CONCLUSIONS:

Based on the Findings of Fact #7, #8, and #11, MSDE finds that the BCPS has followed proper procedures when responding to a request for the student's speech-language and occupational therapy records since March 2024, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Based on the Findings of Fact #7, #9, and #12, MSDE finds that the BCPS has not followed proper procedures when responding to a request for the student's special education records since March 2024, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

As soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. (34 CFR § 300.323)

In this case, the student's IEP dated December 6, 2023, required that he receive four 20 minute sessions of special education instruction outside of the general education classroom. According to an email sent to the complainant on March 12, 2024, the student was receiving special education instruction outside of the general education classroom for an "extra 40 minutes per week," which is more time outside of the general education classroom than designated by his December 6, 2023, IEP. If the student requires additional special education instruction in order to receive a FAPE, his IEP must reflect the services he requires.

Based on the Findings of Fact #9, MSDE finds that the BCPS has not ensured that the student is being provided with the special education classroom instruction required by the IEP, since December 6, 2023, in accordance with 34 CFR §§ 300.323. Therefore, this office finds that a violation occurred.

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. 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Ms. Barmat 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 September 30, 2024, that the school system has:

- Provided the student with occupational therapy services, speech-language services, and special education instruction as required by the IEP;
- Provided the complainant access to the requested data regarding specialized instruction; and
- Convened an IEP team meeting to determine the amount and nature of compensatory services or other remedy to address the lack of provision of specialized instruction and speech and language services and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

The BCPS must ensure that the parent is provided with prior written notice of the team's decisions. The parent maintains 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 November 1, 2024, of the steps it has taken to ensure that the staff at [REDACTED] staff properly implements and documents the requirements for the implementation of specialized instruction and related services under IDEA. These steps must include staff development, as well as tools developed to monitor compliance. Monitoring must include a review of at least 15 randomly selected student records to review for the provision of specialized instruction and related services and the documentation of the services. The monitoring report must be submitted to MSDE on or before November 1, 2024.

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/ebh

c: Dr. Myriam Rogers, Superintendent, BCPS
Dr. Jason Miller, Coordinator, Special Education Compliance, BCPS
Charlene Harris, Supervisor of Compliance in the Department of Special Education, BCPS
Norma Villanueva, Compliance Specialist, BCPS
[REDACTED], Principal, [REDACTED], 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
Elizabeth B. Hendricks, Complaint Investigator, MSDE