

July 17, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Denise Mabry
Director of Compliance & Due Process
Baltimore City Public School
200 E. North Avenue, Room 204 B
Baltimore, Maryland 21202

RE: [REDACTED]
Reference: #24-236

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 May 21, 2024, the MSDE received a complaint from [REDACTED], 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. The BCPS has not developed an Individualized Education Program (IEP) that addressed the student’s identified behavioral needs since September 2023, in accordance with 34 CFR §300.324.
2. The BCPS did not ensure that the student was consistently provided with a dedicated Therapeutic Behavioral Aide (TBA) since September 2023 as required by the IEP, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is 12 years old and is identified as a student with Autism under the IDEA. The student attends [REDACTED] ([REDACTED]) and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. In its written response, the BCPS acknowledges that it did not develop an IEP that addressed the student's identified behavioral needs from September 29, 2023, to November 7, 2023.
2. On November 7, 2023, the IEP team convened to develop the student's IEP. The IEP listed the student's primary disability as Autism.

The Present Level of Academic Achievement and Functional Performance (PLAAFP) reflects the student as performing on the following levels:

- Task behavior - below age expectation;
- Social/Emotional/Behavioral - no level provided, information reflects that a safety plan was developed for the student; and
- Fading - Below level (the IEP team determined the student continued to need adult support from a TBA).

The IEP required the following instructional and assessment accommodations:

- Small group;
- Extended time (1.5x);
- Frequent breaks;
- Reduce distraction to self; and
- Reduce distraction to others.

The IEP required the following supplementary aids, services, program modifications, and supports:

- Adult support from a TBA, daily;
- Frequent eye contact/proximity control, daily;
- Advance preparation for schedule changes, weekly; and
- Use of positive/concrete reinforcers, weekly.

The IEP required the following goals:

- Task behavior: "By November 2024, when given explicit directions, and a time frame, [the student] will produce work independently, in a small group, or with a partner, in 4 out of 5 trials as measured by classroom assignments and/or teacher observation.
- Social-Emotional/Behavioral: "By November 2024, though direct instruction, modeling, and role-play, [the student] will demonstrate improved social awareness and social skills to increase positive participation in class and increase his ability to access academic taskings, in 4 out of 5 opportunities, as measure by informal procedures and teacher report."

The IEP required the following special education services:

- Three 30-minute sessions of classroom instruction inside general education for reading and written language provided by the general education teacher weekly;
- Three 30-minute sessions of classroom instruction inside general education for mathematics provided by the general education teacher weekly; and
- Two 30-minute sessions of classroom instruction outside general education for reading provided by the special education teacher weekly.

The IEP required one 30-minute session of psychological services outside general education weekly. The least restrictive environment required by the IEP was inside general education 80% or more of the school day.

3. In its written response, the BCPS further acknowledges that it did not ensure that the student was consistently provided with a dedicated Therapeutic Behavioral Aide since September 2023 as required by the IEP.

CONCLUSIONS:

ALLEGATION #1

IEP THAT ADDRESSES THE STUDENT'S BEHAVIORAL NEEDS

Based on the Finding of Fact #1, MSDE finds that the BCPS has not developed an Individualized Education Program (IEP) that addressed the student's identified behavioral needs from September 2023 to November 7, 2023, in accordance with 34 CFR §300.324. MSDE concurs with BCPS' conclusions and appreciates the school system's response to the investigation.

ALLEGATION #2

PROVISION OF A TBA

Based on the Finding of Fact #3, MSDE finds that the BCPS did not ensure that the student was consistently provided with a dedicated Therapeutic Behavioral Aide since September 2023 as required by the IEP, in accordance with 34 CFR §§300.101 and .323. MSDE concurs with BCPS' conclusions and appreciates the school system's response to the investigation.

CORRECTIVE ACTIONS and 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. 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. Nicole Green, Compliance Specialist, MSDE, to ensure the effective implementation of the action. Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student-Specific

By October 16, 2024, MSDE requires the BCPS to provide documentation that the school system has done the following:

- Convened an IEP team meeting and determined the amount and nature of compensatory services, or other remedy, to address the failure to develop an IEP for the student from September 2023 to November 7, 2023; and to determine if the failure to consistently provide the student with a therapeutic behavioral aide since November 7, 2023, had a negative impact on the student's ability to benefit the educational program. If the IEP 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 one year of the date of this Letter of Findings.

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

By October 16, 2024, MSDE requires the BCPS to provide documentation that it has completed the following with the school team at [REDACTED]:

- Provided professional development on the special education evaluation process and timelines for the development of the IEP and the provision of supplementary aids, supports, and services; and
- Provided professional development to TBAs concerning job duties, responsibilities, and documentation of the provision of services.

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.

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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. Sonja Santelises, Superintendent, BCPS
Dr. Courtney Hill, Director of Special Education, BCPS
Christa McGonigal, Special Education Compliance, BCPS
[REDACTED], Principal, [REDACTED], [REDACTED]
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
Nicole Green, Compliance Specialist, MSDE

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