


July 29, 2024





Ms. Allison Myers
Executive Director
Special Education Services
Baltimore County Public Schools
105 W Chesapeake Ave,
Towson, Maryland 21204

RE: 
Reference: #24-244

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention 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 April 8, 2024, MSDE received a complaint from Mr.  and Mrs.  hereafter, “the complainants” on behalf of 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 did not follow proper procedures when identifying the student to determine if he is a student with a disability requiring special education and related services, since May 2023, in accordance with 34 CFR §§ 300.301-.311 and COMAR 13A.05.01.06.
2. The BCPS did not ensure that Individualized Education Program (IEP) team meetings convened on December 21, 2023, included the required participants, in accordance with 34 CFR § 300.321.

BACKGROUND:

The student is 11 years old and attends  School. He currently is not identified as a student with a disability under the IDEA.

FINDINGS OF FACT:

1. On October 10, 2023¹, the IEP team convened to discuss the student's educational performance or potential need for special education services. The prior written notice (PWN) generated following the IEP team meeting, reflects the following:
 - the complainant expressed concerns with academic progress, academic difficulties, and testing results;
 - the IEP team reviewed existing data and determined additional assessments are needed to determine if the student has a disability; and
 - school-based members of the IEP team expressed concern that testing this soon after the student's arrival to the United States would not give a true representation of what the student's abilities are given the language barrier and history of early trauma.

There is documentation that the complainants were provided the PWN.

2. On October 15, 2023, the complainants provided written consent for the student to be evaluated.
3. On December 6, 2023, BCPS school staff sent the following documents to the complainants: educational, classroom observation, psychological, and speech-language assessment reports.
4. On December 12, 2023, the IEP team convened to discuss the results of the assessments. Meeting participants included the Administrator/Designee, General Educator, Parent/Guardian (both), Special Educator, School Psychologist, Speech-Language Pathologist (SLP). The IEP team completed a Specific Learning Disability (SLD) worksheet which reflects the following:
 - the student was not yet provided appropriate instruction in general education, consideration of exclusionary factors that must be considered when establishing handicapping conditions for an IEP: (1) potential hearing disability, (2) emotional influence - PTSD, (3) environmental, cultural, or economic disadvantage-adopted, (4) English language learner (ELL); and
 - the IEP team responded yes to the question of the lack of achievement primarily a result of any of the following: visual, hearing, or motor disability, limited English Proficiency environmental culture role or economic disadvantage, and lack of instruction in reading or math.

Based upon the information reviewed, discussed, and documented the IEP team determined, that the student is not a student with a specific learning disability who requires the provision of special education services in order to receive a free, appropriate public education under the Individuals with Disabilities Education Act (IDEA).

5. The PWN generated following the IEP team meeting on December 12, 2023, reflects the school-based staff determined the student does not qualify for special education service under the IDEA. The IEP team proposed that the student's needs continue to be addressed through his 504 Plan, which offers accommodations specific to the individual's physical and mental needs, including BCPS provided social work services. The complainants disagreed with the school-based team and shared that the student

¹ The meeting on October 10, 2023, was initially scheduled as an SST meeting to develop, review, and/or revise the student's Section 504 plan. On September 25, 2023, the meeting was changed to an IEP team meeting to discuss educational performance or the potential need for special education services.

will have additional private testing in January to determine if there is a learning disability. The IEP team "members considered the impact of their lack of formal schooling with less than 2 years of structured school experience and his language differences. Team members discussed [Student's] confusion, lack of independence, learning problems as being in part related to trauma, lack of instruction, adjustment issues, and cultural differences, etc., and did not recommend IEP evaluations."

CONCLUSIONS:

Allegation #1

EVALUATION

Child with a disability means a child evaluated in accordance with 34 CFR §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. 34 CFR § 300.8.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

- (i) Lack of appropriate instruction in reading, including the essential components of reading instruction
- (ii) Lack of appropriate instruction in math; or
- (iii) Limited English proficiency...

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in 34 CFR §§ 300.304 through .306:

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents. 34 CFR §300.309.

In this case, the IEP team determined that there was a number of exclusionary factors that precluded the student from being identified with a specific learning disability at this time, including lack of instruction, language, emotional conditions, hearing condition, and potential impact from other factors.

Based on Findings of Facts #1 through #5, MSDE finds that BCPS followed proper procedures when identifying the student to determine if he is a student with a disability requiring special education and related services, since May 2023, in accordance with 34 CFR §§ 300.301-.311 and COMAR 13A.05.01.06. Therefore, this office finds that a violation did not occur concerning this allegation.

Allegation #2

IEP TEAM MEETING PARTICIPANTS

The public agency must ensure that the IEP Team for each child with a disability includes: the parents of the child; not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); not less than one special education teacher of the child, or where

appropriate, not less than one special education provider of the child; a representative of the public agency who is qualified to provide, supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency and an individual who can interpret the instructional implications of evaluation results. 34 CFR § 300.321.

Based on Findings of Fact #4, MSDE finds that BCPS ensured that IEP team meetings convened on December 21, 2023, included the required participants, in accordance with 34 CFR § 300.321. Therefore, this office finds that a violation did not occur concerning this allegation.

TIMELINES:

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/ra

c: Dr. Myriam Rogers, Superintendent, BCPS
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