

August 2, 2024

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #24-248

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 May 6, 2024, MSDE received a complaint from [REDACTED], hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complaint 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 consistently provide the student with a flash pass since November 2023; and the complainant with a weekly report since January 2024 as required by the Individualized Education Plan (IEP) in accordance with 34 CFR §§ 300.304 and .324.
2. The BCPS did not ensure that the parent has been provided with a copy of the procedural safeguards notice since November 2023, in accordance with 34 CFR § 300.504.
3. The BCPS has not ensured that the student's behavioral needs have been identified and addressed since November 2023, in accordance with 34 CFR §§ 300.304 and .324.
4. The BCPS did not initiate Home and Hospital Teaching (HHT) instruction within the timelines required by COMAR 13A.05.01.10.

BACKGROUND:

The student is seven years old and is 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.

ALLEGATIONS #1 and #3 PROVISION OF FLASH PASS, AND WEEKLY REPORTS, AND IDENTIFY AND ADDRESS BEHAVIORAL NEEDS

FINDINGS OF FACT:

1. The student's initial IEP was developed on November 17, 2023. The IEP reflects the student's disability impacts in the following areas: communication, visual motor, math calculation, and reading phonemic awareness. The Present Level of Academic Achievement and Functional Performance (PLAAPF) reflects the "parent and teacher also reported that they are concerned about [the student's] ability to talk about his emotions and regulate his emotions properly." The IEP requires social work services as a related service 30 min per week inside the general education classroom.

The social/emotional/behavioral goal reflects that "by November 2024 given positive behavioral supports [Student] will improve personal social skills in the areas of coping skills as measured using self-calming activities and communicating his feelings for 3 out of 4 targeted trials."

The IEP requires a pragmatic language goal to support the student's ability to communicate his emotions. "By November 2024, given models and visuals and different hypothetical situations, [student] will label the feeling that he may have, tell why he would feel that way, and state 2 ways he can manage his emotions appropriately in 3 consecutive sessions."

The IEP requires supplementary aids and service of "access to pass and/or visuals to request that [student] a break outside of the classroom or needs more support to help navigate through feelings/emotions." This is required daily.

2. The IEP does not require the provision of weekly progress reports.
3. There is no documentation that the student was provided with a pass and/or visual to request a break.
4. There is documentation that the student was provided with social work services as required by the IEP.
5. On April 5, 2024, BCPS generated a letter informing the complainant that the student will be unenrolled from [REDACTED] on April 29, 2024.

CONCLUSIONS:

Provision of flash pass

Based upon the Findings of Fact #1, #3, and #5, MSDE finds that the BCPS has not provided the student with a flash pass from November 2023 through April 29, 2024, in accordance with 34 CFR §§ 300.304 and .324. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

Provision of weekly reports

Based upon the Findings of Fact #1 and #2, MSDE finds that the student's IEP did not require the provision of a weekly report since January 2024 as a result, BCPS was not required to provide them in accordance with 34 CFR §§ 300.304 and .324. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Identify And Address Behavioral Needs

Based upon the Findings of Fact #1, and #4, MSDE finds that the BCPS has ensured that the student's behavioral needs have been identified and addressed since November 2023, in accordance with 34 CFR §§ 300.304 and .324. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

ALLEGATION #2

PROVISION OF THE PROCEDURAL SAFEGUARDS

FINDING OF FACT:

6. On October 11, 2023, the complainant was provided with the procedural safeguards.

DISCUSSION AND CONCLUSION:

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents: (1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year; (3) In accordance with the discipline procedures in § 300.530(h); and (4) Upon request by a parent. (34 CFR § 300.504.)

Based upon the Finding of Fact #6, MSDE finds the BCPS provided procedural safeguards on October 11, 2023, in accordance with 34 CFR § 300.504. Therefore, this office finds that a violation did not occur concerning this allegation.

ALLEGATION #4

PROVISION OF HOME AND HOSPITAL TEACHING SERVICES

FINDINGS OF FACT:

7. On January 30, 2024, the BCPS application for the instructional program for homebound or hospitalized students was completed by the student's provider.

8. On February 21, 2024, a letter for the BCPS Home and Hospital program was sent to the complainant informing her that the:
 - student has been approved for chronic intermittent instruction as of February 8, 2024;
 - name of the assigned BCPS tutor;
 - when the complainant contacts the BCPS HHT office, the tutor will contact the complainant in order to schedule a date/time for service; and
 - tutor will complete, sign, and date the “request for reimbursement form,” at the end of each instructional session.
9. There is no documentation that the IEP team met to determine the manner in which instructional services will be provided to the student.

DISCUSSION AND CONCLUSION:

Once a local school system determines a student is eligible for HHT services, the IEP team should be prepared to meet within 10 school days. If the IEP team cannot meet within 10 school days, HHT may still begin so that the student has access to instruction. (COMAR 13A.03.05.03.) The IEP team shall meet to review and revise the student's IEP to determine the instructional services to be provided to the student while receiving HHT services. (COMAR 13A.05.01.10.)

Based on the Findings of Fact #7 through #9, MSDE finds that the BCPS did not convene an IEP team meeting to determine HHT instructional services since February 2024, in accordance with COMAR 13A.05.01.10. Therefore, this office finds that a violation occurred concerning this allegation.

CORRECTIVE ACTION AND TIMELINE:

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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.^[2] Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

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.

Student-Based

MSDE requires the BCPS to provide documentation by October 1, 2024, that the BCPS has convened an IEP team meeting and determined if the violation concerning the provision flash pass and HHT services, had a negative impact on the student's ability to benefit from the educational program. If the 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 a 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.

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

ALH/ra

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
[REDACTED], Principal, [REDACTED], BCPS
Alison Barmat, Chief, Family Support and Dispute Resolution Branch, MSDE
Nicole Green, Compliance Specialist, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Dr. Paige Bradford, Chief, Specialized Instruction, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Rabiatu Akinlolu, Complaint Investigator, MSDE