

August 19, 2024

Ms. Robin Winternitz
Educational Consultant
821 Delray Drive
Forest Hill Maryland, 21050

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

RE: [REDACTED]
Reference: #24-282

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 on the final results of the investigation.

ALLEGATIONS:

On June 21, 2024, MSDE received a complaint from Ms. Robin Winternitz, hereafter, “the complainant,” 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) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The BCPS has not developed an Individualized Education Program (IEP) that addresses the student's identified academic needs since June 2023¹, in accordance with 34 CFR § 300.324.
2. The BCPS has not ensured that the student has been consistently provided with the speech- language services as required by the IEP since June 2023, in accordance with 34 CFR § 300.101 and .323.
3. The BCPS did not provide prior written notice (PWN) of the IEP team's decisions from the IEP team meetings held since June 2023, in accordance with 34 CFR § 300.503.

¹ The initiation letter included an allegation date prior to June 2023. MSDE has authority to investigate allegations of a violation that occurred no more than one year from the date the complaint was received. Therefore, while there are allegations that the violation occurred prior to June 2023, MSDE did not investigate them.

4. The BCPS did not provide a copy of the IEP document within five business days after the IEP team meetings held since June 2023, in accordance with COMAR 13A.05.01.07.
5. The BCPS did not ensure that the IEP team considered the parent information and concerns at the IEP meeting held since June 2023, in accordance with 34 CFR § 300.324.
6. The BCPS did not ensure that the parent was provided with a report of the student's progress toward achieving the annual IEP goals since June 2023, in accordance with 34 CFR §§ 300.101 and .323.

BACKGROUND:

The student is 14 years old and is a student with a Specific Learning Disability (SLD) under the IDEA. He attends [REDACTED] and has an IEP that requires special education instruction and related services.

ALLEGATION #1 and #2

DEVELOPMENT OF THE IEP AND PROVISION OF SPEECH-LANGUAGE SERVICES

FINDINGS OF FACT:

1. The IEP in effect in June 2023 was developed on January 19, 2023. The IEP reflects areas impacted by the student's disability are reading comprehension, math problem solving, written language expression, and communication.

The present levels of academic achievement and functional performance (PLAAFP) narrative includes parental input regarding the student's educational program, as well as how the student is accessing the general education curriculum and what areas require support.

The IEP requires instructional and assessment accessibility features: audio amplification, bookmark (flag items for review), blank scratch paper, eliminate answer choices, general administration directions clarified, general administration directions read aloud and repeated as needed, highlighting tool, headphones or noise buffers, line reader masking tool, magnification/enlargement device, notepad, pop-up glossary, redirect student, spell check or external spell check device, writing tools, graphic organizer, audio materials, text to speech for mathematics, science, and government sections, text and graphics, small group, frequent breaks, and reduce distractions to self.

The IEP requires the following instructional and assessment accommodations: calculation device and mathematics tools (on calculation and NON calculation sections of mathematics assessments), monitor test response, and extended time (time and half).

The IEP requires supplementary aids, services, program modifications, and supports:

- Daily as needed – have student repeat and/or paraphrase information, allow use of highlighters during instruction and assignments, allow use of manipulatives, allow use of organizational aids, breakdown assignments into smaller units, provide frequent changes in activity or opportunities for movement, provide manipulative and/or sensory activities to promote listening and focusing skills, and preferential seating; and
- Daily – chunking of texts, alerted/modified assignments, adult support; and
- Monthly – speech-language pathologist consult.

The IEP requires 18 hours 45 minutes of special education instruction per week outside of the general education setting provided by a special education teacher and instructional assistant. The IEP also requires 30 minutes per week of speech-language services outside of the general education setting.

The IEP requires progress reports to be provided quarterly.

2. The IEP developed on January 2, 2024, reflects areas impacted by the student's disability include reading comprehension, math problem solving, written language expression, and communication. The PLAAFP does not include parental input regarding the student's education program but includes how the student is accessing the general education curriculum and what areas require support.

The IEP continues to require the same:

- instructional and assessment accessibility features;
- instructional and assessment accommodations;
- special education instruction outside of the general education classroom;
- speech-language service;
- provision of progress reports; and
- supplementary aids, services, program modifications, and support.

The IEP requires an additional supplementary aid and support of "other instructional supports provide with choices" daily, as needed.

3. There is documentation that the student was provided with speech-language services as required by the IEP.

CONCLUSION AND DISCUSSION:

Development of the IEP

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. (34 CFR § 300.324). In this case, the IEP team did not capture the concerns of the parents for enhancing the education of their child as part of the IEP developed on January 2, 2024, as required.

Based on the Finding of Fact #2, MSDE finds that the BCPS did not consider the concerns of the parents when developing an IEP that addresses the student's identified academic needs since January 2, 2024, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation occurred concerning the allegation.

Provision of Speech-Language Services

Based on the Findings of Fact #1 through #3, MSDE finds that the BCPS has ensured that the student has been provided with the speech-language services as required by the IEP since June 2023, in accordance with 34 CFR § 300.101. Therefore, this office finds that a violation has not occurred concerning the allegation.

ALLEGATION #3, #4, and #6

PROVISION OF PWN, IEP DOCUMENT, AND PROGRESS REPORT

FINDINGS OF FACT:

4. There is no documentation that the parent was provided with the IEP document or reports of progress towards the achievement of the annual IEP goals since June 2023.
5. On January 8, 2024, the PWN developed on January 2, 2024, was emailed to the parents.

CONCLUSION:

Provision of the PWN

Based on the Findings of Fact #2 and #5, MSDE finds that the BCPS did provide PWN of the IEP team's decisions from the IEP team meetings held since June 2023, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation has not occurred concerning the allegation.

Provision of IEP Document After an IEP Team Meeting

Based on the Findings of Fact #2, and #4, MSDE finds that the BCPS did not provide a copy of the IEP document within five business days after the IEP team meetings held since June 2023, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred concerning the allegation.

Provision of Progress Reports

Based on the Findings of Fact #1, #2, and #4 MSDE finds that the BCPS did not ensure that the parent was provided with a report of the student's progress toward achieving the annual IEP goals since June 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred concerning the allegation.

ALLEGATION #5

ADDRESSING PARENT CONCERNS

FINDINGS OF FACT:

6. The PWN developed on January 2, 2024, reflects the parents shared that the school year "is not going as well as they would like." They inquired about Schoology; how to help the student at home; and expressed concerns about him not getting the required services. The parents shared that the student receives private OT services. The parents also shared that the student was "diagnosed with Autism last school year" and the new diagnosis information will be emailed to the IEP team. In response to the parents' concerns, the school staff shared that the student is provided with instruction outside of the general education classes and he has the support of an instructional assistant for all academic classes. The student does not have an additional dedicated adult who sits with him. The team agreed to update the IEP to add the student "requires someone to sit next to him to help make sure he understands the lessons and to help him with his work. He needs to be given work in chunks as well as given choices to help him complete work."
7. There is no documentation that the school staff was provided with documentation of new diagnosis to review following the meeting on January 2, 2024.

CONCLUSION:

Based on the Findings of Fact #6 and #7, MSDE finds that the BCPS ensured that the IEP team considered the parent information and concerns at the IEP meeting held since June 2023, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation has not occurred concerning the allegation.

CORRECTIVE ACTIONS 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.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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.³ Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student- Specific

MSDE requires the BCPS to provide documentation by November 1, 2024, that the BCPS has:

- a. Provided the parents with copies of the student's finalized IEP; and
- b. Provided the parents with the reports of progress since June 2023; and
- c. Convened an IEP team meeting to ensure the student's IEP includes the concerns of the parents for enhancing the education of their child; and
- d. Determined if the violations had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedies 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.

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.

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

School-Based

MSDE requires the BCPS to provide documentation by November 1, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the inclusion of parent input regarding their child's education into the IEP, failure to ensure the provision of IEP document five-days after IEP team meetings, and provision of progress reports as required under IEP under IDEA and COMAR. These steps must include staff development, as well as tools developed to monitor compliance. Monitoring must include a review of at least ten randomly selected student records to review for the provision of IEP document five-days after IEP team meetings, and provision of progress reports as required by the IEP. The monitoring report must be submitted to MSDE on or before December 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 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

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