

December 6, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Denise T. Mabry
Baltimore City Public Schools
200 E. North Avenue, Room 204 B
Baltimore, Maryland 21202

Re: [REDACTED]
Reference: #25- 031

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 on the final results of the investigation.

ALLEGATIONS:

On October 11, 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 School (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 did not follow proper procedures when disciplinarily removing the student from school on May 28, 2024, in accordance with 34 CFR §§ 300.530 and .531 and COMAR 13A.08.03.
2. The BCPS did not ensure that a discussion was held during the May 30, 2024, IEP team meeting to appropriately determine the need for Extended School Year (ESY) services, in accordance with 34 CFR § 300.106, COMAR 13A.05.01.07B(2), and COMAR 13A.05.01.08B(2).
3. The BCPS did not ensure that the IEP team addressed parental concerns regarding the request for transportation services for the student during the May 30, 2024, IEP meeting, in accordance with 34 CFR § 300.324.
4. The BCPS did not ensure that the IEP team reviewed and revised, as appropriate, the student’s IEP to address the lack of expected progress toward achieving the IEP goals, since October 2023 in accordance with 34 CFR § 300.324.

BACKGROUND:

The student is 11 years old and is identified as a student with Other Health Impairment (OHI) under the IDEA. During the 2023-2024 school year, the student attended [REDACTED]. The student currently attends [REDACTED]. He has an IEP that requires the provision of special education instruction.

FINDINGS OF FACT:

ALLEGATION #1

DISCIPLINARY REMOVAL

1. On May 28, 2024, the student was removed from class due to reports of “inappropriate statements made towards other students.” The student remained outside the classroom for an extended period of time and did not receive instruction.
2. There is no documentation that the student’s IEP was implemented during the time the student remained outside of the classroom.
3. On June 2, 2024, a school administrator responded to the complainant's May 29, 2024, email. The email reflects the BCPS’ attempt to discuss the May 28, 2024, incident with the complainant and provided an opportunity to meet. There is documentation that the student did not return to school for the remainder of the school year.
4. In its written response, the BCPS acknowledges a procedural violation regarding the allegation. BCPS recognizes that the student was present at school on the day of the incident, during which he was sent to the office for over 30 minutes. BCPS counts this as a period of in school suspension and acknowledges that it should have been recorded in the BCPS discipline tracking system, but it was not.

DISCUSSION AND CONCLUSION:

The IDEA and COMAR provide protection to students with disabilities who are removed from their instructional setting in excess of ten school days in a school year. A student with a disability may be removed from the student’s current placement for up to ten consecutive school days for incidents of misconduct in a school year if the cumulative effect of the removals does not constitute a change in placement (34 CFR § 300.530).

In this case, the student was not removed from school in excess of ten school days, therefore, the disciplinary protections under IDEA are not applicable.

Based on Findings of Fact #1 through #3, MSDE finds that the student was not removed from school in excess of 10 school days during the school year 2023-2024; therefore, BCPS was not required to implement procedures for disciplinarily removing the student from school on May 28, 2024, in accordance with 34 CFR §§ 300.530 and COMAR 13A.08.03. This office finds that a violation did not occur concerning the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

Provision of Special Education Services

The local education agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR § 300.101).

Based on Finding of Fact #2, MSDE finds that the BCPS did not ensure that the student was provided with special education instruction required by the Individualized Education Program (IEP) on May 28, 2024, in accordance with §300.101. Therefore, this office finds that a violation occurred.

ALLEGATIONS #2 & #3

ESY AND TRANSPORTATION DISCUSSION DURING IEP MEETING

5. On May 30, 2024, the IEP team convened to conduct an annual review for the student. The Prior Written Notice (PWN) generated after the meeting reflects that the IEP team reviewed the criteria for ESY and determined that the student continues to be eligible for special education services.
6. The May 30, 2024, IEP reflects, "Based on a review of assessments, teacher input, parent input, and observations, the team feels that ESY is necessary at this time to help [the student] meet his goals and objectives and to decrease regression or lack of progress." The IEP team determined that the student requires one and a half hours of specialized instruction outside the general education classroom to address academic deficits and three hours per week of specialized instruction outside of the general education classroom to further address academic deficits.
7. On May 30, 2024, the IEP team also discussed the eligibility criteria for a student to receive special education transportation. The PWN reflects that the IEP team reviewed the transportation checklist and determined that the student did not qualify for transportation. The complainant disagreed with this decision and was advised to "contact her representative at North Avenue."
8. There is documentation that the IEP team reviewed the "Baltimore City Checklist to Determine Need for Transportation as a Related Service" The document reflects that the student's IEP did not meet the qualifications based on safety and disability factors, school location factors, or medical factors.
9. There is documentation that the student was enrolled at [REDACTED] to receive ESY services from July 1, 2024, to August 1, 2024, during which the student was present for three days.
10. On July 8, 2024, the complainant emailed a member of the IEP team informing them that "yes, she agreed to send the student to ESY" and the student attended three days, but she was not aware that the student would attend a self-contained special education classroom with students that were "low functioning" in a "highly restrictive behavior modification program." The complainant expressed disagreement with his summer placement and notes that the program the student was in was "not even a part of the [REDACTED] summer school or school program." The complainant shared that the student reported the work he was receiving was "baby work."

CONCLUSIONS:

Extended School Year

Based on Findings of Fact #5, #6, #9, and #10, MSDE finds that the BCPS did ensure that a discussion was held during the May 30, 2024, IEP meeting to appropriately determine the need for ESY services, in accordance with 34 CFR § 300.106, COMAR 13A.05.01.07B(2), and COMAR 13A.05.01.08B(2). Therefore, this office finds that a violation did not occur concerning the allegation.

Transportation

Based on Findings of Fact #7 and #8, MSDE finds that the BCPS did ensure that the IEP team addressed parental concerns regarding the request for transportation services for the student during the May 30, 2024, IEP meeting, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #4

ADDRESS THE LACK OF PROGRESS TOWARD IEP GOALS

11. The report of the student's progress dated October 27, 2023, March 5, 2024, and May 30, 2024, towards the achievement of the annual academic goals in the area of reading phonics, math problem solving, and reading comprehension, reflects that the student is "Making sufficient progress to meet goal."
12. The report of the student's progress dated October 27, 2023, and May 30, 2024, towards the achievement of the annual academic goals in the area of written expression, reflects that the student is "Making sufficient progress to meet goal", however, the progress dated March 5, 2024, reflects "Not making sufficient progress to meet goal (IEP team needs to meet to address insufficient progress).
13. On May 30, 2024, the IEP team met to discuss the student's progress and revised the written expression goal in which the student did not make sufficient progress during the second quarter.
14. The report of the student's progress dated June 7, 2024, towards the achievement of the annual academic goals in the area of reading phonics, math problem solving, reading comprehension, and written expression reflects that the annual goals are a "Newly Introduced skill; progress not measurable at this time" as the IEP team had revised the IEP goals at the IEP meeting on May 30, 2024.
15. The report of the student's progress dated October 2, 2024, towards the achievement of the annual academic goals in the area of reading phonics, math problem solving, reading comprehension, and written expression reflects that the student is "Making sufficient progress to meet goal.

CONCLUSION:

Based on Findings of Fact #11 through #15, MSDE finds that the BCPS did ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achieving the IEP goals, since October 2023 in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation did not occur concerning the allegation.

CORRECTIVE ACTIONS AND TIMELINES:

The IDEA requires that State complaint procedures include those for 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, the 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 manner¹. 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, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action². Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student-Specific

- a. MSDE requires the BCPS to provide documentation by January 31, 2025, that the IEP team has convened and determined whether the violation related to the lack of special education services on the day of the incident 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.
- b. The [REDACTED] school shall provide the parent with an incident report and a suspension letter for the events of May 28, 2024. Additionally, if not time-barred, the BCPS must document the incident in the BCPS discipline tracking system.

The BCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant 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 February 1, 2025, confirming that the administration and staff at [REDACTED] have received professional development on the proper procedures for documenting and implementing the requirements for the disciplinary removal of students with IEPs from class or school. The documentation must describe how the BCPS will evaluate the effectiveness of these measures and monitor compliance to ensure that such violations do not recur.

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.

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 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/sj

c: Dr. Sonja Santelises, Superintendent, BCPS
Christa McGonigal, Educational Specialist II, BCPS
[REDACTED], [REDACTED], Principal, BCPS
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Paige Bradford, Section Chief, Programmatic Support and Technical Assistance, MSDE
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
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