

February 6, 2025

Ms. Alyssa R. Fieo
Education Attorney/Assistant Public Defender
Juvenile Protection Division
Maryland Office of the Public Defender
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Baltimore, Maryland 21202

Ms. Allison Myers
Executive Director
Department of Special Education
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #25-175

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 December 11, 2024, MSDE received a complaint from Ms. Alyssa R. Fieo, 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 followed proper procedures when identifying and evaluating the student to determine if he is a student with a disability requiring special education and related services, since December 2023, in accordance with 34 CFR §§ 300.301-311 and COMAR 13A.05.01.06.
2. The BCPS did not follow proper procedures when the Individualized Education Program (IEP) team determined the placement in which the student would receive special education instruction during disciplinary removal since November 4, 2024, in accordance with COMAR 13A.05.01.10C(6)(b).

BACKGROUND:

The student is 15 years old and is identified as a student with other health impairments (OHI) under the IDEA. He attends the [REDACTED] program provided by the [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. On January 18, 2024, the student was placed by the BCPS in the [REDACTED] program due to a disciplinary incident. While enrolled in the BCPS [REDACTED] program students:
 - Receive instruction from a teacher with their peers through online courses;
 - Meet virtually with their teachers and classmates during regularly scheduled times; and
 - Work independently and in small groups through learning activities.

Student progress and grades are determined by students' demonstrated understanding through independent assignments and successful participation in whole group, small group, and individual activities with the teacher. The incident involved bringing a weapon onto school property. At the time of the removal, the student had not been referred for eligibility under the IDEA.

2. On August 6, 2024, the parent emailed the BCPS requesting a "complete evaluation of [the student] to determine if he has a disability, and if so, what programs and services are needed to meet his needs."
3. On August 25, 2025, the student was enrolled at the [REDACTED], BCPS, and is currently continuing virtual learning.
4. On September 16, 2024, the IEP team convened to discuss the student's educational performance and potential need for special education services. The prior written notice (PWN) generated after the meeting reflects that based on a review of records and information gathered from the parent and Child Find referral interviews, the IEP team agreed to proceed with conducting assessments to determine eligibility. The IEP team determined assessments were needed in the areas of reading, writing, math, cognitive, intellectual, social-emotional behavior development (depression/anxiety), and rating scales for attention deficit hyperactivity disorder (ADHD).
5. On October 15, 2024, the parent provided consent for assessments.
6. While an IEP team meeting was scheduled for October 16, 2024, the BCPS rescheduled the meeting with the intent to provide "prior five-day notice to review" an educational assessment.
7. On October 21, 2024, the IEP team convened to review assessments.
8. On November 21, 2024, the IEP team convened to develop the initial IEP. The PWN generated after the IEP team meeting reflects that IEP team determined that based on the evidence from the outside psychological report, BCPS psychological, and educational assessments, the student requires accommodations, supports, and specialized instruction to address the impact of his disability. The IEP team determined the student was eligible for special education services as a student with OHI. The PWN reflects that the IEP team required a continuation meeting to finish drafting the IEP.

9. On November 27, 2024, the BCPS emailed the complainant a notice to schedule the next IEP team meeting. The BCPS provided three potential dates. A mutually agreed upon date of January 10, 2025, was selected.
10. On January 10, 2025, the IEP team convened to continue the development of the initial IEP. The PWN generated after the meeting reflects that the IEP reviewed the draft IEP and no disagreements were noted. It is further reflected that the complainant reported “that at minimum [the student] should be in person at the alternative learning school.” “There is a reinstatement meeting coming up in January, which would occur one year after the incident that took place on or about January 18, 2024... the Office of Law stating that a reinstatement meeting would be held for [the student] in January 2025.”
11. The student’s IEP developed on January 10, 2025, reflects the Least Restrictive Environment (LRE) as inside the general education classroom with direct supports delivered by the general, special educator, and instructional assistant. The IEP team considered the continuum of placement: inside the general education classroom with natural supports, and inside the general education classroom with direct supports delivered by the general, special educator, and the instructional assistant. In addition, it is reflected that “to access grade level material, [the student] requires special education services to be delivered inside the general education setting. To address [the student’s] executive functioning, he requires 1:1 support with a special educator outside the general education setting.”

DISCUSSIONS AND CONCLUSIONS:

Allegation #1 Proper Procedures for Identifying a Student with a Disability

Upon receipt of a request for evaluation under the IDEA, the public agency may implement interventions within the regular school program, but the evaluation must also occur as soon as possible following the referral and within timelines required by State law (*Letter to Anonymous*, 21 IDELR 998, United States Department of Education Office of Special Education Programs, 1994). When a student is referred for evaluation to determine eligibility under the IDEA, in accordance with State regulations, an IEP team must meet to review existing data, information from the parent, instructional interventions and strategies, current classroom-based assessments, and observations by teachers and related service providers (COMAR 13A.05.01.06).

Based on the review, the IEP team must determine whether additional data is needed to determine if the student is suspected of being a student with a disability. The IEP team must complete the evaluation process within sixty (60) days of parental consent for assessments and no more than ninety days from receipt of a written referral (COMAR 13A.05.01.06).

In this case, while the complainant provided consent to evaluate on October 15, 2024, the complainant also requested assessments to be completed in writing on August 6, 2024. Therefore, the 90-day timeline to complete assessments started on August 6, 2024. The BCPS completed the evaluation review and determined the student eligible for special education services on November 21, 2024.

Based on the Findings of Fact #2, #4, #5, #7, and #8, MSDE finds that the BCPS has not followed proper procedures when identifying and evaluating the student to determine if he is a student with a disability requiring special education and related services, since December 2023, in accordance with 34 CFR §§ 300.301-.311 and COMAR 13A.05.01.06. Therefore, MSDE finds a violation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

IEP Development Timeline

The school system must ensure that an IEP team meets to develop an IEP for a student with a disability within 30 days of the evaluation (COMAR 13A.05.01.08). In this case, the student was determined eligible for special education services on November 21, 2024, and developed an IEP on January 10, 2025.

Based on the Findings of Facts #8 through #11, MSDE finds that the BCPS has not developed an initial IEP within the required timelines since November 21, 2024, in accordance with COMAR 13A.05.01.08. Therefore, MSDE finds a violation.

Allegation #2 Placement Determination

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP Team. The placement decision must be made in conformity with the least restrictive environment (LRE) provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home. When determining the placement of a student who has been removed for disciplinary actions, the IEP team must ensure that the instructional setting for the provision of educational services to a student who has been removed from school in accordance with 34 CFR § 300.121(d) and COMAR 13A.08.03 may not be a student's home (COMAR 13A.05.01.10).

In this case, the student was enrolled in the BCPS receiving [REDACTED] due to a behavioral incident that took place on January 18, 2024. At the time of his placement determination, the student was not suspected of having a disability or eligible for special education services.

The student was determined eligible for special education services on November 21, 2024. The IEP team developed an IEP and determined the student's LRE based upon the needs of the student on January 10, 2025. The IEP determined the student would receive special education services inside the general education classroom with direct supports delivered by the general, special educator, and the instructional assistant. The BCPS [REDACTED] program is considered a virtual general education classroom which allows the student to synchronously interact with the teacher and other peers, as opposed to a placement in the home that would not permit the student's instruction to take place with other students.

Based on the Findings of Fact #1, #3, and #11, MSDE finds that the BCPS did follow proper procedures when the IEP team determined the placement in which the student would receive special education instruction during disciplinary removal since November 4, 2024, in accordance with COMAR 13A.05.01.10C(6)(b). Therefore, MSDE does not find a violation.

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.

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 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 action.² 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 March 28, 2025, that the IEP team has convened and determined whether the violation related to following proper procedures for identifying a student with a disability and the timely development of an initial IEP had a negative impact on the student's ability to benefit from the education 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 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.

School-Based

MSDE requires the BCPS to provide documentation by March 28, 2025, of the steps it has taken to ensure that [REDACTED] staff properly implements the requirements for following the proper procedures for identifying a student with a disability and the timely development of an initial IEP. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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. The written request for reconsideration should be provided to Tracy Givens, Section Chief, Dispute Resolution via email Tracy.Givens@maryland.gov. 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.

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 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 year to complete. If noncompliance is not corrected in a timely manner, the 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.

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/sd

c: Dr. Myriam Rogers, Superintendent, BCPS
Charlene Harris, Supervisor of Compliance, Special Education, BCPS
Dr. Jason Miller, Coordinator, Special Education Compliance, BCPS
Norma Villanueva, Compliance Specialist, BCPS
[REDACTED], Principal, [REDACTED], BCPS
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Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicole Green, Compliance Specialist, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Sarah Denney, Complaint Investigator, Dispute Resolution, MSDE