



April 25, 2022

[REDACTED]  
[REDACTED]  
[REDACTED]

Dr. Kathrine Pierandozzi  
Executive Director  
Department of Special Education  
Jefferson Building, 4<sup>th</sup> Floor  
105 W Chesapeake Avenue  
Towson, MD 21204

RE: [REDACTED]  
Reference: #22-097

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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 February 24, 2022, the MSDE received a complaint from Ms. [REDACTED], 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) with respect to the above referenced student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the student has been consistently provided with special education instruction, supports, and related services required by the Individualized Education Program (IEP) since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323. Specifically, you allege the following:
  - a. The student was not provided with a “communication device”;
  - b. The student was not provided with speech and language;
  - c. The student was not provided with transportation services; and

- d. The student was not provided with a “1:1 aide”.
2. The BCPS has not ensured that the IEP addresses the student’s identified life skills, adaptive physical education, behavior, and occupational therapy needs since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.320 and .324.
3. The BCPS has not ensured that the progress reported towards the achievement of the annual IEP speech and language therapy goals since the start of the 2021-2022 school year were consistent with the data, in accordance with 34 CFR §300.320.
4. The BCPS has not ensured that the IEP team addressed the parent’s concerns regarding the student’s safety during transportation, in accordance with 34 CFR §300.324.

### **BACKGROUND:**

The student is six (6) years old and is identified as a student with Autism under the IDEA. He attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

### **ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION, SUPPORTS, AND RELATED SERVICES**

### **FINDINGS OF FACTS:**

1. The student’s IEP in effect at the start of the 2021-2022 school year was developed on August 26, 2021. The IEP requires that the student be provided with speech and language services for twenty (20) minutes twice a week, an assistive technology consultation “periodically”, adult support daily, and transportation as a related service.
2. The student’s August 26, 2021 IEP reflects that he does not require an assistive technology device but requires assistive technology services and that the team will investigate tools/supports and implement a trial to determine effectiveness of tools used in the assistive technology trial. However, there is no documentation that a trial was implemented or data was collected for the student.
3. The notes maintained by the assistive technology school staff on September 29, 2021, reflect the specifications of the recommended “device” for the student. The IEP team meeting summary from March 3, 2022, reflects the school did not provide a communication device for the student at the beginning of school year 2021-2022. The student used low tech options such as a “core board and visuals” daily in the classroom. Additionally, the notes maintained by the assistive technology school staff on March 14, 2022, reflect that the device is “currently an appropriate communication support” and should be added to the student’s IEP. The documentation does not indicate the type or name of the device. However, the recommendation that the student be provided with the use of the device has not been added to his IEP.

4. A letter from the BCPS staff to the complainant dated September 9, 2021, reflects that no speech/language pathologist was assigned to the student's school. The IEP team meeting summary from March 3, 2022, reflects that the student was not provided with eleven out of twenty-four sessions since the start of the school year. The summary further reflects that two of the missed sessions were made up, the remaining sessions were to be made up "throughout the year."
5. The student's IEP reflects that he requires "direct adult support throughout his school day to provide direct supervision related to his physical safety throughout the school setting including remaining in the assigned location, and to provide direct assistance and support with engagement in classroom routines, facilitation of joint attention and social interaction, and independent self-care needs including toileting." However, there is no documentation that direct adult support throughout the student's school day has been provided.
6. An email from the BCPS staff to the complainant dated August 27, 2021, reflects that the complainant was "driving the student to start the school year." Additionally, it instructs the complainant at the appropriate time to "contact the school office to make transportation arrangements." There is documentation that the school staff arranged for transportation from the BCPS transportation staff on January 26, 2022 following the complainants request. The email reflects that the student was previously a "car rider."
7. Documentation from the March 3, 2022 IEP team meeting reflects the team's discussion of the complainant's recent request to initiate transportation services for the student. The documentation from the meeting reflects the complainant's previous request that services not be provided because the student was a "car rider."
8. There is documentation that the student was provided with transportation services beginning on February 18, 2022.

## **CONCLUSIONS:**

### **Provision of Transportation Services**

Based on the Findings of Fact #1 and #6- #8, the MSDE finds that there is documentation that the student was provided with transportation services upon the complainant's request as required by the IEP since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

### **Provision of Assistive Technology**

Based on the Findings of Facts #1 - #3, the MSDE finds that there is no documentation that the student was consistently provided with a communication device required by the IEP, since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to aspect of the allegation.

### **Provision of Speech/Language Services**

Based on the Findings of Facts #1 and #4, the MSDE finds that there is no documentation that the student was consistently provided with the speech/language services required by the IEP, since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to aspect of the allegation.

### **Provision of Adult Support**

Based on the Findings of Facts #1 and #5, the MSDE finds that there is no documentation that the student was consistently provided with adult support as required by the IEP, since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to aspect of the allegation.

**ALLEGATION #2: AN IEP THAT ADDRESSES THE STUDENT'S IDENTIFIED LIFE SKILLS, ADAPTIVE PE, BEHAVIOR AND OCCUPATIONAL THERAPY NEEDS**

### **FINDINGS OF FACTS:**

9. The IEP reflects that the student has identified needs in the areas of communication, social emotional/behavioral, academics, visual perception and motor. The IEP includes specialized instruction, supports, related services, and annual goals to assist the student with improving his skills in these areas.
10. The student's present level of performance in the area of social emotional/behavioral states that he demonstrates "deficiencies in social behavioral functioning, and that the student needs to increase joint attention, social interaction and interactive play, and engagement in classroom routines and transitions." The student's social/emotional behavioral goals were developed to improve his inattentiveness and participation in class, ability to follow classroom rules and routines, appropriate engagement with school staff and peers, and cooperating with peers and adults during play to accomplish a mutual goal.
11. The student's social/behavior supports include frequent changes in activity or opportunities for movement, a "home-school" communication system, provision of manipulatives and sensory items, strategies to initiate and sustain attention, use of positive corrective reinforcers, and advance preparation for schedule changes. Additionally, the student is provided a picture schedule to assist with classroom engagement and transitions, and a "first/then display." The IEP also requires adult support to provide "direct assistance and support in the classroom routines, and the facilitation of joint attention and social interaction."
12. The student's present level of performance in the area of physical: visual perceptual/motor reflects that he has "strengths" in fine motor tasks. The IEP also indicates that the student needs to establish hand dominance, visual motor skills for imitation of pre-writing strokes, fine motor skills for mature grasp patterns when using

writing instruments, use of school manipulatives and self-care skills for improved participation in school-based routines. The IEP requires consultation with an occupational therapist to “develop strategies and educate classroom staff in order to support fine motor needs.” The student’s annual IEP goal in this area states that the student “will participate in classroom-based tasks involving use of a functional grasp of writing instruments and indicating answers on paper using purposeful strokes (vertical, horizontal, or circular), with supervision and no more than 1 cue per task.”

13. The student’s IEP requires adult support as a supplemental aide to provide direct support with independent self-care needs including toileting. Additionally, the IEP requires consultation with an occupational therapist to “develop strategies and educate classroom staff to support activities of daily living/self-care.” However, there is no documentation that life skills is an identified need on the student’s IEP.
14. The IEP Team Meeting Summary from March 3, 2022, reflects that the team discussed the complainant’s concern regarding adaptive physical education (PE). The notes maintained by the student’s PE teacher reflect that the student is “active in gym class and with support is able to follow along.” The IEP team explained that time was needed for the student to adjust to school and collect data and determined that adaptive PE was not an area of need for the student. However, based on the complainant’s request, the IEP team agreed to conduct a formal adaptive PE assessment.

### **CONCLUSIONS:**

Based on the Findings of Facts #9 - #12, the MSDE finds that the student’s IEP addresses his identified behavior and occupational therapy needs since the start of the 2021 - 2022 school year, in accordance with 34 CFR §§300.320 and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #13 and #14, the MSDE finds that there is no documentation that the student had needs in the areas of adaptive PE and life skills and that these areas were not required to be addressed in his IEP, since the start of the 2021 - 2022 school year, in accordance with 34 CFR §§300.320 and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

### **ALLEGATION #3:                    PROGRESS REPORTS CONSISTENT WITH THE DATA**

### **FINDINGS OF FACTS:**

15. Reports on the student’s progress towards achieving annual IEP goals dated November 5, 2021, for the noun and verb identification receptive language goal and expressive language goal contains data to support the conclusion that the student was making sufficient progress to achieve the goal within a year.
16. Reports on the student’s progress towards achieving annual IEP goals dated January 25, 2022, for the expressive language goal contains data to support the

conclusion that the student was making sufficient progress to achieve the goal within a year.

17. Reports on the student's progress towards achieving annual IEP goals dated November 5, 2021 and January 25, 2022, for the student's spatial concept receptive language goal indicates the goal was not yet introduced.
18. Reports on the student's progress towards achieving annual IEP goals dated January 25, 2022, for the noun and verb identification receptive language goal indicate that the student was making sufficient progress towards achieving the goal. However, there is no documentation that supports this conclusion.

### **CONCLUSIONS:**

Based on the Findings of Facts #15 - #17, the MSDE finds that the progress reported on the noun and verb identification and spatial concept receptive and expressive language annual IEP goals on November 5, 2021 and the expressive language and spatial concept receptive language annual IEP goals on January 25, 2022 were consistent with the data, in accordance with 34 CFR §300.320. Therefore, this office does not find that a violation has occurred with respect to this aspect of the allegation during this time period.

However, based on the Finding of Fact #18, the MSDE finds that the progress reported on the noun and verb identification receptive language annual IEP goal on January 25 2022, is not consistent with the data, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation during this time period.

### **ALLEGATION #4:                   RESPONDING TO THE PARENT'S TRANSPORTATION SAFETY CONCERNS**

### **FINDING OF FACT:**

19. There is no documentation that, during the time period in question, the complainant raised concerns to the IEP team regarding the student's safety while receiving transportation services.

### **CONCLUSION:**

Based on Findings of Fact #19, the MSDE finds that there is no documentation to support the allegation that the complainant raised concerns regarding the student's safety during transportation, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

### **CORRECTIVE ACTIONS/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.

The MSDE has established reasonable time frames below to ensure that non-compliance is corrected in a timely manner.<sup>1</sup> 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [Diane.Eisenstadt@maryland.gov](mailto:Diane.Eisenstadt@maryland.gov).

### **Student-Specific**

The MSDE requires the BCPS to provide documentation by June 1, 2022 that the student is being provided with a communication device, speech and language services, and adult support as required by the IEP.

The MSDE requires the BCPS to provide documentation by June 30, 2022 that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the lack of provision of the communication device, speech and language services, and adult support and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

The MSDE requires the BCPS to provide documentation by June 30, 2022 that the IEP team has convened and determined whether the violation related to progress consistent with the data 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 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.

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<sup>1</sup> 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, 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.

<sup>2</sup> The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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The BCPS must ensure that the parent is provided with 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**

The MSDE requires the BCPS to provide documentation by June 30, 2022 of the steps taken to ensure that the violation does not recur at [REDACTED] School.

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. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Early Intervention/Special Education Services

MEF/tg

c: Conya Bailey  
Jason Miller  
Charlene Harris  
[REDACTED]  
Tracy Givens  
Gerald Loiacono  
Diane Eisenstadt