




February 1, 2023




Dr. Allison Myers, Executive Director  
Baltimore County Public Schools  
Department of Special Education  
Jefferson Building, 4<sup>th</sup> Floor  
105 West Chesapeake Avenue  
Towson, Maryland 21204

RE:   
Reference: #23-103

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 December 5, 2022, MSDE received a complaint from Ms.  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:

MSDE investigated the following allegations:

1. The BCPS has not provided the student with specialized instruction in the placement required by the Individualized Education Program (IEP), since September 22, 2022, in accordance with 34 CFR §§300.101, .114, .116, and .323.
2. The BCPS did not ensure that the student’s Behavior Intervention Plan (BIP) was consistently implemented and that social/behavioral supports were consistently provided as required by the IEP since December 5, 2021<sup>1</sup>, in accordance with 34 CFR §§300.101 and 323.
3. The BCPS has not ensured that the IEP team reviewed and revised, as appropriate, the IEP to address the student’s lack of expected progress toward achieving the IEP goals, since December 5, 2021, in accordance with 34 CFR §300.324.

<sup>1</sup> While the complainant alleged that the violation occurred prior to this date, only those violations that are alleged to have occurred within one year can be resolved through a State complaint investigation (34 CFR §300.153).

4. The BCPS has not ensured that the student's IEP addresses her attendance and behavior needs since December 5, 2021, in accordance with 34 CFR §300.324.
5. The BCPS has not provided the parent with written notice to the IEP team meeting convened on March 16, 2022, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.

**BACKGROUND:**

The student is nineteen years old and is identified as a student with a Specific Learning Disability under the IDEA. She is enrolled at [REDACTED] School and has an IEP that requires the provision of specialized instruction.

**ALLEGATION #1:**

**PLACEMENT REQUIRED BY THE IEP**

**FINDINGS OF FACTS:**

1. The student's IEP, in effect on September 22, 2022, was developed on March 16, 2022. The IEP requires that the student receive 12.5 hours per week in the general education setting and 20 hours per week outside of the general education setting.
2. There is documentation that on August 29, 2022, the student was enrolled at [REDACTED] School. There is further documentation that on September 22, 2022, the student was unenrolled from school due to "lack of interest," enrolled in an unidentified "alternative program" on December 21, 2022, and enrolled in her home school on January 18, 2023.
3. There is no documentation that the IEP team met to discuss the student's placement since March 16, 2022, or that the parent received prior written notice that the student's placement was changed.

**CONCLUSION:**

Based on the Findings of Facts #1 - #3, MSDE finds that BCPS has not provided the student with specialized instruction in the placement required by the IEP, since September 22, 2022, in accordance with 34 CFR §§300.101, .114, .116, and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATION #2 and #4:**

**IMPLEMENTATION OF THE BIP AND PROVISION OF  
SOCIAL/BEHAVIORAL SUPPORTS AND IEP ADDRESSES  
ATTENDANCE AND BEHAVIOR NEEDS**

**FINDINGS OF FACTS:**

4. The student's BIP developed on March 13, 2020, indicates that the student "skips classes" and uses her cell phone during instruction. The BIP requires the following interventions to assist the student:
  - teachers should contact various school staff when the student skips class;
  - escort the student to class when she is out of location;
  - remind the student to put her phone away; if she does not comply, contact administration;
  - teachers should periodically "circulate through the classroom to increase student attention

- to task and monitor cell phone usage;
- teacher should provide corrective feedback and encouragement and reinforce students positive behavior;
- do not allow the student to leave class;
- monitor the student's time out of class; if she does not return contact the case manager or administrator;
- strive for daily positive interactions with the student;
- build student connections;
- maintain a high ratio of positive interactions with at least three positive teacher-student interactions;
- have private conversations with the student about her IEP and goals to provide her a better understanding of her disability and the tools she will need for self-advocacy;
- reinforce inclusion in the magnet program and the tools needed to be successful;
- teachers should spend two minutes per day for ten consecutive days "engaging the student in a positive conversation about topics of interest to that student";
- provide a cool down break when the student is emotionally escalated; and
- link preferred activities/items to work completion.

Consequences to the student's problem behavior are notice to case manager or administrator, phone calls home, require parent conferences, and in school suspension.

5. There is no documentation that the student's BIP has been implemented since December 5, 2021.
6. The student's IEP in effect on December 5, 2021, was developed on March 17, 2021. The IEP identifies needs in the area of "mathematics, reading comprehension, written language content, and career/vocational." The IEP requires a BIP, and the following social/behavior supports:
  - weekly home-school communication;
  - daily encouragement to ask for assistance;
  - periodically as needed crisis intervention.
7. The student's IEP developed on March 16, 2022, identifies needs in the area of "mathematics, reading comprehension, and written language content. The IEP continues to require a BIP, and the following social/behavior supports:
  - weekly home-school communication;
  - daily encouragement to ask for assistance;
  - student should be "availed of support from the Social Emotional Learning; Teacher, during times of anxiety."
8. There is no documentation that the student was consistently provided with the social/behavioral supports required by her IEP since December 5, 2021.
9. On March 16, 2022, the IEP team met to conduct an annual review, determine Extended School Year eligibility, and develop a transition plan. The "IEP Team Summary" drafted after the IEP team meeting reflects that the IEP team reviewed the student's progress, report card, attendance, and teacher reports. During the IEP team meeting, the student's teachers noted that the student has "poor attendance", is "frequently absent", has only attended once during third quarter, that "attendance is the single biggest factor affecting her grade", and that the student had "79 absences"

in her yearbook class. The IEP team also discussed the following student behaviors: refuses to complete assignments; uses her cell phone during class; does not participate; and gets frustrated when redirected.

10. Following the review of the student's information, the IEP team determined that the student was not making progress due to her attendance. The IEP team, however, did not determine if any revisions to the IEP were warranted due to the student's behaviors or attendance. Periodic crisis intervention as a support was removed from the student's IEP; however, this decision is not reflected in the prior written notice.

### **CONCLUSIONS:**

#### **Implementation of the BIP and Provision of Social/Behavioral Supports**

Based upon Findings of Facts #4 - #8, MSDE finds that the BCPS did not ensure that the student's BIP was consistently implemented and that social/behavioral supports were consistently provided as required by the IEP since December 5, 2021, in accordance with 34 CFR §§300.101 and 323. Therefore, this office finds that a violation has occurred with respect to the allegation.

#### **An IEP that Addresses the Student's Attendance and Behavior Needs**

Based upon Findings of Facts #6, #7, #9, #10 and #11, MSDE finds that the BCPS has not ensured that the student's IEP addresses her attendance needs since December 5, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Based upon Findings of Facts #4, #6, #7, #9 and #10, MSDE finds that the BCPS has ensured that the student's IEP addresses her behavior needs since December 5, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

### **ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, program, or educational placement of students or the provision of a FAPE to students. This notice must include information about the decisions made, the basis for the decisions, the data used when making the decisions, and the options considered by the team (34 CFR §300.503). The purpose of providing prior written notice is to ensure that parents have sufficient information in order to determine whether they wish to exercise their right to access the dispute resolution procedures if they disagree with the IEP team's decisions.

Based upon Findings of Facts #7, and #10, MSDE finds that the BCPS did not provide proper written notice of the IEP team's decision to remove crisis intervention from the student's program at the IEP team meeting held on March 16, 2022, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred.

### **ALLEGATION #3:**

### **ADDRESSING THE LACK OF PROGRESS**

### **FINDINGS OF FACTS:**

11. Reports of the student's progress reported on January 31, 2022 and March 8, 2022, for the student's annual mathematics calculation, reading comprehension, and written language goals reflect the

student was not making sufficient progress to achieve the goal. The student's "frequent absences prevented the completion of work samples that would demonstrate progress on this goal."

12. There is documentation that the IEP team convened on March 16, 2022, and reviewed the student's progress. However, there is no indication that the IEP team addressed the student's lack of progress towards achieving the annual IEP goals.
13. Reports of the student's progress reported on April 1, 2022 and May 16, 2022, for the student's annual mathematics calculation, reading comprehension, and written language goals reflect the student was not making sufficient progress to achieve the goal. The student's "frequent absences from school and classes have prevented her from completing work samples that would demonstrate progress on this goal." There is no documentation that the IEP team convened and addressed the student's lack of progress towards achieving the annual IEP goal.

**CONCLUSION:**

Based upon Findings of Facts #11 - #13, MSDE finds that the BCPS has not ensured that the IEP team reviewed and revised, as appropriate, the IEP to address the student's lack of expected progress toward achieving the IEP goals, since December 5, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATION #5:**

**IEP TEAM MEETING NOTICE**

**FINDINGS OF FACT:**

14. There is documentation that a Parent Notification of the IEP Team Meeting scheduled for March 16, 2022, was generated on February 11, 2022. There is no documentation that the notification was provided to the parent.

**CONCLUSION:**

Based upon Findings of Fact #14, MSDE finds that the BCPS has not provided the parent with written notice to the IEP team meeting convened on March 16, 2022, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D. Therefore, this office finds that a violation has occurred with respect to 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, 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 non-compliance is corrected in a timely manner.<sup>2</sup> This office will follow up with the public agency to ensure that it completes the required actions

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<sup>2</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, 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.

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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>3</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

**Student Specific:**

MSDE requires the BCPS to provide documentation by March 1, 2023, of the following actions:

- a. That the IEP team has convened a meeting to address the student's attendance needs and the impact if any on her IEP, address the student's lack of expected progress towards her annual IEP goals and discuss and determine the appropriate placement for the student;
- b. That the student is being provided with social/behavior supports and implementation of the BIP as required by the IEP;
- c. That the IEP team has determined the amount and nature of compensatory services or other remedy to redress the placement, BIP, and social/behavior supports violations and develop a plan for the provision of those services within a year of the date of this Letter of Findings;
- d. That it has provided the complainant with proper written notice of the decisions made at the IEP team meeting on March 16, 2022; and
- e. That it has provided the complainant with written notice to the IEP team meeting scheduled as a result of this Letter of Findings.

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:**

MSDE requires the BCPS to provide documentation by April 1, 2023, of the steps it has taken to ensure that the staff at [REDACTED] School properly implements the requirements for appropriate placement and BIPs, the provision of supports, prior written notice, written notice to IEP meetings, addressing the lack of expected progress, and IEPs that address student's needs under the IDEA. These steps must include staff development, as well as tools developed to monitor the action steps, a monitoring schedule and provision of the completed monitoring tool to MSDE by May 1, 2023. 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 outlined in this Letter of Findings 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 (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

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<sup>3</sup> 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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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,

Dr. Deann M. Collins  
Deputy Superintendent  
Office of the Deputy Superintendent of Teaching and Learning

DMC/tg

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