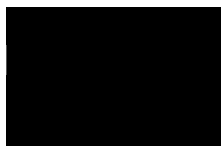




Mohammed Choudhury
State Superintendent of Schools

June 16, 2023



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

RE: [REDACTED]
Reference: #23-178

Dear Parties:

Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 March 20, 2023, MSDE received a complaint from Mr. [REDACTED] and Mrs. [REDACTED] hereafter, "the complainants," on behalf of the above-referenced student. In that correspondence, the complainants 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 ensured that the student has been consistently provided with the transition activities, speech/language, occupational therapy related services, and supplementary services and accommodations, required by the Individualized Education Program (IEP) since July 2022, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS did not ensure that the student has been provided with the special education instruction required by the IEP from a certified special education teacher since July 2022, in accordance with 34 CFR §§300.101, .156, and .323.
3. The BCPS has not ensured that the student's visual and visual motor needs have been identified and addressed since July 2022, in accordance with 34 CFR §300.324.

4. The BCPS has not ensured that the student's IEP contains a transition plan based on age-appropriate assessments since July 2022, in accordance with 34 CFR §300.320.
5. The BCPS did not ensure that a reevaluation has occurred at least every three years, in accordance with 34 CFR §300.303.
6. The BCPS did not ensure that the IEP team convened to review the student's IEP before January 10, 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.
7. The BCPS has not provided access to documents in the education record in response to a request made by the complainant since March 2023, in accordance with 34 CFR §300.613.

BACKGROUND:

The student is 21 years old and attends [REDACTED] ([REDACTED]) He is identified as a student with Autism under the IDEA and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The IEP, in effect at the beginning of the 2022-2023 school year, was developed on January 10, 2022. The student's disability impacts him in the following domains: consumer math, math calculation, reading comprehension, reading vocabulary, speech and language pragmatics, speech and language receptive language, functional living skills, self-management, self-help, and visual perceptual motor. The IEP requires that the student receive specialized classroom instruction outside of the general education setting for 27 hours per week by a special education teacher, and/or instructional assistant. The IEP requires speech/language (SLP) four times per week for 30 minutes per week, and occupational therapy (OT) twice per week for 30 minutes per session. The IEP includes the following statement, "an annual IEP team was held on 1/10/2022. At this time, the team determined that there were no areas identified for re-evaluation, but the team will reconvene in September 2022 to order assessments necessary for post-secondary placement." The IEP reflects a projected evaluation date of November 18, 2022.
2. The January 10, 2022, IEP includes transition activities in the following areas: "requesting assistance using multimodal communication, community based instruction, employment training, in-school vocational training, employment training- follow multi-step directions to complete vocational task, daily living- use communication device to communicate wants and needs, activities of daily living- practice personal hygiene, independent living- follow school based routines and schedules, and independent living- practice purchase in various settings."
3. The student's January 10, 2022, IEP requires that he be provided with the following supplementary aids and services:
 - as needed- visual supports, chunking of text(s), crisis intervention;

- daily- 2-1 adult aid, allow use of manipulatives, effective teaching strategies, use of pictures to support reading passages whenever possible, use of positive concrete reinforcements, strategies to support and sustain attention, adaptive equipment, sensory strategies, support for school staff and progress updates for parents; and
 - quarterly- occupational therapist consult for school personnel/parental supports.
4. There is documentation that nine hours of OT services were missed between July 2022 and March 24, 2023. The provider logs reflect some sessions were missed due to the clinical/therapist being absent/unavailable.
 5. There is documentation that fifteen hours and thirty minutes of speech/language services were missed between July 2022 and March 24, 2023. The provider logs reflect some sessions were missed due to clinical/therapist absent/unavailable.
 6. There is documentation of the daily provision of one-to-one service from July 2022, through April 2023.
 7. There is documentation of occupational therapist consultation for school personnel/parental supports for quarter three of the 2022-2023 school year.
 8. There is no documentation that the following supplementary aids and services were provided to the student: visual supports; chunking of text(s); crisis intervention; use of manipulatives; effective teaching strategies; use of pictures to support reading passages whenever possible; use of positive concrete reinforcements; strategies to support and sustain attention; adaptive equipment; sensory strategies; support for school staff; progress updates for parents; and quarter one or quarter two occupational therapy consult for school personnel/parental supports.
 9. There is some documentation of the daily provision of 2-1 adult support, as required by the IEP.
 10. There is no documentation of the following transition activities:
 - in- school vocational activities;
 - community-based instruction activities when possible;
 - Employment Training- opportunities to follow multi-step directions to complete vocational tasks; and
 - Independent Living- practice purchasing in various settings.
 11. On September 14, 2022, the IEP team met to conduct an evaluation of the student. The Prior Written Notice (PWN) developed following the IEP team meeting reflects the purpose of the meeting was to order evaluation/re-evaluation assessments. The IEP team recommended that the following assessments be completed for the student: educational assessment; functional behavior assessment (FBA); and psychological assessment. The team expressed concern with a possible cortical visual impairment (CVI) due to the student's difficulty navigating the school and interaction with school materials. The team proposed, and agreed to, order assessments to plan for and address the student's adult services needs. The teacher of the visually impaired requested to observe the student prior to making any recommendations, and to update the team on any recommendations for assessments.

12. There is no documentation that a teacher of the visually impaired observed the student as recommended by the IEP team on September 14, 2022. The IEP reflects an amendment on October 11, 2022. The student's IEP was updated to include the following statement, "the IEP team met on 09/14/2022, and determined that a psychological assessment would be conducted by BCPS staff, and an educational, and functional behavior assessment would be conducted by [REDACTED] staff to obtain current levels of performance to help plan for transition to adult services." The IEP also reflects an evaluation date of September 14, 2022.
13. On November 14, 2022, a notice of Individualized Education Program (IEP) team meeting was generated for the purpose of reviewing and revising the IEP, address functional behavioral assessment and/or behavioral intervention plan, consider postsecondary goals and transition services, and review assessment results. The proposed meeting was to take place on December 8, 2022.
14. To assess the student's transition needs, the IEP team assessed the student using the Brigance Comprehensive Inventory of Basic Skills II (CIBS II). The CIBS II is a criterion referenced assessment designed to identify the level of mastery the student has achieved. in readiness, ELA, and Math. The IEP team did not review this data and include the results in the IEP developed for the student.
15. On January 30, 2023, the IEP team met to review and revise the IEP and review assessments (educational, psychological, functional behavior assessment) of the student. The PWN developed on January 30, 2023, reflected that the parents received the meeting invitation, procedural safeguards, and drafts of all documents prior to the meeting. This meeting occurred on this date as a result of the parents request to reschedule the December 8, 2022, meeting.
16. The January 30, 2023, PWN did not include the following: description of the action proposed or refused by the school system, explanation of why the school system proposes or refuses to take this action, description of any options the school district considered prior to this proposal, reasons the above, listed options were rejected, description of evaluation procedures, tests, records, or reports the school district used as a basis for the proposal or refusal, other factors relevant to the action proposed. The PWN reflects a continuation was needed due to time constraints.
17. On March 3, 2023, [REDACTED] emailed updated reports for the upcoming IEP meeting, and the IEP progress report to the complainants. The educational assessment conducted in January 2023 was also included.
18. On March 4, 2023, an email was sent to [REDACTED] by the complainants, requesting
 - "the most recent previous educational assessment, not the ones conducted in January;"
 - a chronological list of the student's teachers for the 2022-2023 school year, to include "the start and stop date of each;"
 - a list of dates for the provision of SLP services; and
 - a list of dates for the provision of OT services.
19. On March 13, 2023, an email was sent by the complainants to [REDACTED] requesting all reports of abuse and neglect of the student.
20. On March 7, 2023, the student's prior educational assessment was sent to the complainants.

21. On March 21, 2023, an email was sent by the complainants to [REDACTED] requesting the exact copies of notes and reports for OT services this school year.
22. There is no evidence that [REDACTED] responded to the complainants to review the complete educational record.
23. There is documentation that the special educator responsible for providing instruction to the student is certified to provide specialized instruction in the State of Maryland.

DISCUSSION/CONCLUSIONS:

ALLEGATION #1: PROVISION OF TRANSITION ACTIVITIES, SPEECH/LANGUAGE, OCCUPATIONAL THERAPY, AND SUPPLEMENTARY SERVICES AND ACCOMODATIONS

Transition services means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education (34 CFR § 300.43).

Based on the Findings of Facts #1 through #8, MSDE finds the BCPS did not consistently provide transition activities, speech/language, occupational therapy related services, and supplementary services and accommodations, as required by the IEP since July 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION FROM A CERTIFIED SPECIAL EDUCATOR

Based on the Findings of Fact #23, MSDE finds that BCPS did ensure that the student has been provided with the special education instruction required by the IEP from a certified special education teacher since July 2022, in accordance with 34 CFR §§300.101, .156, and .323.

ALLEGATION #3: IDENTIFY AND ADDRESS VISUAL MOTOR NEEDS

The student's IEP identified and addressed the student's visual needs through the provision of OT services and supplementary aids, and services. The BCPS did not consistently provide the services as required by the IEP. Additionally, in the fall of 2022, the IEP team proposed an observation of the student to determine the need for additional vision support. The BCPS did not ensure that the observation of the student occurred.

Based on Finding of Facts #1, #2, #9 through #10, MSDE finds the BCPS has not ensured that all visual and visual motor needs have been identified and addressed since July 2022, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #4: DEVELOPMENT OF TRANSITION PLAN BASED ON AGE-APPROPRIATE ASSESSMENTS

The public agency must ensure the IEP includes appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services (including courses of study) needed to assist the child in reaching those goals (34 CFR §300.320).

Transition assessments may include formal and/or informal assessments. Formal assessments include achievement and intelligence tests, adaptive behavior scales, behavior rating scales, SAT, etc. Informal assessments, include classroom observations, records, reviews, questionnaires, teacher generated assessments, etc.

Based on the Findings of Facts #1 and #13 and #15, the student's IEP contains a transition plan based on age-appropriate assessments/observation from July 2022 through January 30, 2023, in accordance with 34 CFR §300.320. Based on the Findings of Fact #14, the BCPS has not ensured that the student's IEP contains a transition plan based on age-appropriate assessments since January 2023, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation has occurred with respect to this allegation.

ALLEGATION #5: RE-EVALUATION PROCEDURES

A public agency must ensure that a re-evaluation of each child with a disability is conducted if the public agency determines that the educational or related service's needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, or if the child's parent or teacher requests a reevaluation (34 CFR §300.303).

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of that determination and the reasons for the determination; and the right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. The public agency is not required to conduct the assessment unless requested to do so by the child's parents (34 CFR §300.305).

Although multiple assessments were completed, the IEP team did not meet for the purpose of reviewing the assessments to plan for post-secondary placement within ninety days as agreed on in September 2022.

Based on Finding of Facts #3 and #4, MSDE finds that the re-evaluation procedures were not completed in accordance with 34 CFR §300.303. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #6: REVIEW/REVISION OF IEP ANNUALLY

Each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals described, and in the general education curriculum, if appropriate, the results of any reevaluation, information about the child provided to, or by, the parents, the child's anticipated needs or other matters (34 CFR §300.324(b)).

Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place (34 CFR §300.322(a)).

If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including video conferences and conference calls (34 CFR §300.328).

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as (1) detailed records of telephone calls made or attempted and the results of those calls; (2) copies of correspondence sent to the parents and any responses received; and (3) detailed records of visits made to the parent's home or place of employment and the results of those visits (34 CFR §300.322(d)).

Based on Finding of Facts #1, #13 and #14, MSDE finds that the BCPS did not ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, this office finds a violation occurred with respect to this allegation.

ALLEGATION #7: PROVISION OF REQUESTED DOCUMENTS

Education records means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except as a temporary substitute for the maker of the record. Records of the law enforcement unit of an educational agency or institution, subject to the provisions of 34 CFR §300.611.

The public agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing or resolution session pursuant and in no case more than 45 days after the request has been made. The right to inspect and review education records under this section includes: (1) the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (2) the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and (3) the right to have a representative of the parent inspect and review the records (34 CFR §300.613).

Based on the Finding of Facts #16 through #21, MSDE finds that the BCPS has not provided access to documents in the education record in response to a request made by the complainant since March 2023, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation has occurred with respect to this allegation.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

The public agency must ensure that a PWN includes:

- A description of the action proposed or refused by the district.
- An explanation of why the district proposes or refuses to take the action.
- A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
- A statement that the parents have protection under Part B's procedural safeguards and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
- Sources for parents to contact to obtain assistance in understanding the provisions of Part B.
- A description of other options that the IEP team considered and the reasons why those options were rejected.
- A description of other factors relevant to the district's proposal or refusal. (34 CFR §300.530)

Based upon Findings of Fact #15, MSDE finds that BCPS did not provide proper written notice of the IEP team's decision on January 31, 2023, and March 9, 2023. The team did not provide an explanation of why BCPS proposes or refuses to take the action, description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors relevant to the district's proposal or refusal, in accordance with 34 CFR §300.530. Therefore, this office finds that a violation occurred.

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 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 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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² 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 August 1, 2023, that it has taken the following actions:

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.

- a. Provided the student with transition activities, speech and language therapy and consult, occupational therapy and consult, daily updates to the parents, use of pictures to support reading passages, allow use of manipulatives, chunking of text, strategies to increase appropriate bathrooming, crisis intervention, sensory strategies, and adaptive equipment (slant board or study carrel) as required by the IEP if the student is still enrolled; and
- b. Provided the parents with proper written notice of the decisions made at the January 30, 2023, and March 9, 2023, IEP team meetings; and
- c. Provide the parents with an opportunity to inspect and review the requested educational records; and
- d. Convened an IEP team meeting to complete the student's re-evaluation to include a discussion of the findings of the TVI regarding the student's vision needs, develop appropriate transition goals based upon age-appropriate transition assessments, and complete the annual review of the student's IEP and update the student's re-evaluation date. Determine the amount and nature of compensatory services or other remedy related to the provision of speech and language therapy, occupational therapy, and transition activities and develop a plan for the provision of those services within one year of the date of this Letter of Findings. BCPS must also determine the amount and nature of compensatory services or other remedy to redress and develop a plan for the provision of those services within a year of the date of this Letter of Finding to address the lack of provision of the speech and language consult, occupational therapy consult, daily updates to the parents, use of pictures to support reading passages, allow use of manipulatives, chunking of text, strategies to increase appropriate bathrooming, crisis intervention, sensory strategies, age appropriate transition assessments, provision of education records, the delay in the completion of the re-evaluation.

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.

Please note that the fact that the student is no longer eligible as a student with a disability under the IDEA at the time he reaches the age of 21, does not preclude the student from being provided with compensatory services commensurate with his needs. Those may include, but are not limited to, accessing community resources/services, community-based instruction, job sampling, search and retention skills, supplemental instruction/tutoring and pre-vocational/employment support services.

School Based:

MSDE further requires that the BCPS provide documentation by September 1, 2023, identifying all eligible students under the IDEA placed by BCPS at [REDACTED] for school year 2022-2023 who did not receive timely annual IEP meetings, and/or transition activities based on age appropriate assessments, and/or did not receive related services pursuant to their IEP, and/or failed to receive proper written notice, and/or failed to receive timely re-evaluations. The IEP team must convene and determine the amount and nature of compensatory services or other remedy to be provided to the students for the violations and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings. BCPS must continue monitoring its students placed at [REDACTED] for the 2023-2024

school year to ensure the following: timely annual review meetings, proper prior written notice, provision of related services, timely reevaluations, appropriate transition activities based on their IEPs, and provide monitoring reports to MSDE by November 15, 2023, January 31, 2024, March 30, 2024, and June 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 (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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann Collins
Deputy Superintendent
Division of Early Intervention/Special Education Services

DMC:ra

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