



August 3, 2023




Ms. Allison Myers  
Baltimore County Public Schools  
Jefferson Building, 4<sup>th</sup> Floor  
105 W Chesapeake Avenue  
Towson, Maryland 21204

RE:   
Reference: #23-252

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 June 6, 2023, MSDE received a complaint from Ms.  hereafter “the complainant”, on behalf of her grandson<sup>1</sup>. 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 did not follow proper procedures when the student transferred from another state and enrolled in the BCPS at the start of the 2022- 2023 school year, in accordance with 34 CFR §300.323(f).
2. The BCPS did not ensure that the Individualized Education Program (IEP) developed for the student addressed his social/emotional and behavioral needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.324.
3. The BCPS has not ensured that the parent was provided with quarterly progress reports toward achieving annual IEP goals since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.320 and .323.

<sup>1</sup> The complainant is the student’s grandmother serving as his parent pursuant to 34 CFR §300.30 under the IDEA. The biological mother also has educational rights pursuant to 34 CFR §300.30 under the IDEA.

4. The BCPS did not provide the parent with a copy of the completed IEP document within five business days after the IEP team meetings convened since the start of the 2022-2023 school year, in accordance with COMAR 13A.05.01.07.
5. The BCPS did not provide proper written notice of IEP team decisions from the IEP team meetings convened since the start of the 2022-2023 school year, in accordance with 34 CFR §300.503.

**BACKGROUND:**

The student is six 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. Prior to the 2022-2023 school year, the student attended a public school in [REDACTED] where he was also identified as a student with a disability under the IDEA.

**FINDINGS OF FACTS:**

1. The student enrolled in the BCPS on August 29, 2022, with an IEP dated April 14, 2022, from [REDACTED] which required special education services to be provided outside the general education classroom for “more than 97% of the time” in a “moderate- severe pre-K LEAP class.”
2. The student’s [REDACTED] IEP required the provision of direct specialized academic instruction outside of the general education setting for 7,320 minutes per month, speech and language services for 240 minutes per month, and occupational therapy (OT) sessions of 120 minutes per month. The student also required transportation as part of the provision of a free appropriate public education (FAPE).
3. There is email correspondence on August 30, 2022, between BCPS communicating about the comparable service process the school needs to implement to start services immediately at [REDACTED]. The parent was not included in this communication.
4. On September 28, 2022, the IEP team met to develop an initial IEP and to discuss Extended School Year (ESY) services for the student. During the meeting, the family provided input on his present levels of performance. The related services providers shared the skills that they would work on with the student in implementing his IEP. The team agreed to convene in November for the annual review.
5. While there is documentation that the school staff were providing special education services to the student from the beginning of the 2022-2023 school year to September 28, 2022, there is no documentation that the BCPS made a determination, in consultation with the complainant and student’s mother, of the comparable services the student required to receive a FAPE until BCPS developed a Maryland IEP.
6. There is no documentation the complainant was provided with a copy of the completed IEP document within five business days after the IEP team meetings convened on September 28, 2022.
7. On September 29, 2022, the mother received a copy of the “IEP Team Summary” via mail.
8. On November 9, 2022, the IEP team met to conduct an annual review of the IEP and discuss ESY. The team used current data, assessments to determine that the student requires support in the areas of

reading comprehension, math calculation, fine motor, communication, self-management. The IEP team determined that the student required 30 hours per week of specialized instruction outside of the general education classroom in a self-contained classroom, 30 minutes per week of OT services outside of the general education classroom, one hour per week of speech and language therapy outside of the general education classroom, and transportation as a related service. The IEP also required that the student receive one hour of math services per week inside the general education setting in a co-taught math classroom, one and half hours per week to address his reading and writing goals inside the co-taught language arts classroom, 15 minutes of services per week inside of the co-taught science classroom to address reading and writing goals and 15 minutes of services per week inside of the co-taught social studies classroom to address reading and writing goals.

9. During the meeting, the IEP team shared input on the student's present levels of academic and functional performance, reviewed the supplementary aids and services, reviewed the new goals created for the student based on current data, and recommended ESY services for the student. The IEP team also determined that the student required placement in a regional program that provided additional social/emotional and behavioral support.
10. There is no documentation that the complainant was provided with a copy of the completed IEP document within five business days after the IEP team meeting convened on November 9, 2022.
11. There is no documentation that the complainant was provided prior written notice of IEP team decisions from the IEP team meeting convened November 9, 2022.
12. On March 23, 2023, a parent conference was held with the complainant and school staff via telephone to discuss the complainant's medical, academic, and behavioral concerns. The school team shared their updates and the complainant shared what worked in the past. The complainant expressed concern about the student starting to "bite." At the conclusion of the meeting, the complainant stated that she wants to be aware of what is going on with the student at school and wants to work together as a team.
13. On May 3, 2023, the IEP team met to discuss the complainant's concerns regarding the student's academic performance, OT services, and ESY. During the meeting, the IEP team determined that the student's disability impacts his ability to communicate his wants and needs, understand academic concepts, and complete grade level assignments. The team noted that the student needs time to process and understand academic tasks and that he needs visual support for understanding routine and structure in a small classroom with similar peers.
14. During the meeting, the IEP team discussed the student's LRE and rejected LRE "A" and "B" as the student requires a "continuum of services as his complex learning impacts his academic progress in the core academic area and his ability to make sufficient progress towards his goals in spite of the significant accommodations made to the general education setting."
15. During the meeting, the mother shared that she has seen improvement although she lives out of town. The mother also shared she has seen a decrease in his progress in OT as he mimics the behaviors he sees. The mother feels she is "out of the loop" and is not getting enough updates. School-based members of the IEP team stated that all documentation is shared with the student's grandmother who is serving as the guardian. The OT and speech and language pathologist updated the mother on the student's progress and the mother was "happy to hear about his progress."

16. There is documentation the mother was provided with a copy of the completed IEP document on May 3, 2023.
17. There is no documentation that the complainant was provided prior written notice of IEP team decisions from the IEP team meetings convened May 3, 2023.
18. There is documentation that the mother received the contact information and an update of the student's progress from the speech and language pathologist and the OT to ensure the parent is able to communicate with them directly if she has questions.
19. There is documentation the student did not receive any behavioral referrals throughout the school year that would require the IEP to address his behavioral needs.
20. Although there is documentation that IEP progress reports were created for the student, there is no documentation that the complainant was provided with the reports, as required by the IEP.

**CONCLUSION:**

**ALLEGATION #1: PROVISION OF COMPARABLE SERVICES AND PLACEMENT DETERMINATION**

If a student with a disability who had an IEP that was in effect in a previous public agency in another State transfers to a public agency in a new State and enrolls in a new school within the same school year, the new public agency (in consultation with the parent) must provide FAPE to the student including services comparable to those described in the child's IEP from the previous public agency, until the new public agency conducts an evaluation; develops, adopts, and implements a new IEP (34 CFR §300.323).

Based on the Finding of Facts #1 to #5, #8, and #9, MSDE finds the BCPS did not follow proper procedures when the student transferred from another state and enrolled in the BCPS at the start of the 2022- 2023 school year, in accordance with 34 CFR §300.323(f). There is no documentation or evidence that there was a discussion or consultation with the complainant about the services that would be provided at the student's new school. Therefore, this office finds that a violation did occur with respect to the allegation.

**ALLEGATION #2: IEP THAT ADDRESS THE STUDENT'S BEHAVIORAL NEEDS**

Based on the Finding of Facts #12, #13, #15, #18, and #19, MSDE finds the BCPS did ensure that the IEP developed for the student addressed his social/emotional and behavioral needs since the start of the 2022-2023 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to the allegation.

**ALLEGATION #3: PROVISION OF QUARTERLY PROGRESS REPORTS**

The BCPS must ensure the provision of written information about the student's progress toward their IEP goals and that the written information is based on the data collection method required by the IEP (34 CFR §§300.101, .320, and .323).

Based on the Finding of Fact #20, MSDE finds the BCPS has not ensured that the parent was provided with quarterly progress reports toward achieving annual IEP goals since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATION #4: PROVISION OF COMPLETED IEP**

Based on the Finding of Facts #6, #10, and #16, MSDE finds the BCPS did not provide the parent with a copy of the completed IEP document within five business days after the IEP team meetings convened since the start of the 2022-2023 school year, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATION #5: PROVISION OF PRIOR WRITTEN NOTICE OF THE IEP TEAMS DECISION**

Based on the Finding of Facts #7, #11, and #17, MSDE finds the BCPS did not provide prior written notice of IEP team decisions from the IEP team meetings convened since the start of the 2022-2023 school year, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation 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 noncompliance 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 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.<sup>3</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:**

MSDE requires the BCPS to provide documentation by the September 30, 2023, that the IEP team has taken the following action:

- a. Provided the parent a copy of the quarterly progress reports toward achieving the annual IEP goals for school year 2022- 2023.
- b. Provided the parent with the PWN and IEP documents created after all IEP team meetings convened since the start of the 2022-2023 school year.

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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.

<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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- c. The IEP team has convened and determined whether the violation related to the delay in following proper procedures and providing the student with comparable services upon his enrollment in the BCPS at the start of the 2022-2023 school year 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.

The BCPS must ensure that the complainant is provided with prior written notice of the team's decisions.

### **Similarly Situated Students**

MSDE requires the BCPS to provide documentation by October 31, 2023, that it has identified students who have transferred into the BCPS since August 1, 2022 through the date of this letter, who at the time of their transfer required placement in either a public or private separate special education school. For each student identified, the BCPS must determine if proper procedures were followed when determining comparable services. If the BCPS, in its review, determines that proper procedures were not followed when determining comparable services, it must convene an IEP team meeting for the identified student and determine the appropriate compensatory services or other remedy to redress the delay in determining and providing the student with services.

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

DC/sj

c:	Darryl L. Williams		Nicole Elliott
	Allison Myers	Alison Barmat	Diane Eisenstadt
	Conya Bailey	Gerald Loiacono	Stephanie James
	Charlene Harris	Paige Bradford	