



August 7, 2023



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

RE: [REDACTED]
Reference: #23-262

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 13, 2023, MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleges that the Baltimore County Public School System (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegation:

1. The BCPS has not followed proper procedures when developing the student’s Individualized Education Program (IEP) since June 2023, in accordance with 34 CFR §§300.106, .320, and .324.

BACKGROUND:

The student is 10 years old and is identified as a student with Autism under the IDEA. He attends [REDACTED] School. The student has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

ALLEGATION #1:

DEVELOPMENT OF THE IEP

1. The IEP team at [REDACTED] School met on January 11, 2023, to review and revise the student’s IEP.

2. The IEP in place at that time required the student to receive 25 hours weekly of classroom instruction outside of general education. The IEP from this meeting, dated January 5, 2023, states, “[The student] is a student in our RSEL delivery model and will receive all services outside of general education. He is currently [transitioning] back to general education with a 1 hour-daily session in ELA [with a participation checklist and adult support].”
3. The IEP contained two goals designed to assist the student with emotional regulation. One goal supported the student in expressing emotions, the other goal supported the student in accepting change. Progress reporting dated March 24, 2023, states that the student was making sufficient progress to meet both goals.
4. The IEP also required that the student receive four thirty-minute sessions of social work services outside of the general education setting, equaling two hours per month of counseling from the school social worker.
5. The student also had a BIP in place dated January 27, 2020.
6. According to the Prior Written Notice (PWN) for the January 11, 2023, meeting, the school system proposed a gradual increase in the general education setting, but this proposal was rejected. The explanation states that the student has met with “...a great deal of success inside of his RSEL delivery model.” The student had not received any office referrals or needed crisis intervention during the school year; however, “[the student] has not been inside of a general education classroom since kindergarten, [and] in the past he made threats of self-harm when presented with the idea of going into general education. [He has been coached] for this change and he is becoming open to the idea.”
7. The team considered the harmful effects of not providing the student access to the general education setting with his non-disabled peers, but due to the student’s history of struggling with transitions, the team agreed that a gradual transition would be more appropriate. The team noted in the prior written notice that the student’s behavior “...indicates that he is consistently on task and engaged in learning with minimal prompting and support from staff. His services can be provided by a general educator.”
8. At the end of the second marking period in December, the student’s grades in math, science, and social studies had fallen one letter grade from “A” to “B.” He had an “A” in library media, physical education, and art; a “B” in skills and conduct; and a “C” in music. However, his grade had fallen from an “A” to a “D” in ELA.
9. The student’s behavior intervention log reveals that in February 2023, during the third marking period, the student had an increase in concerning behaviors. These behaviors included “[eloping] out of the building because he didn’t understand his work and wanted to go home;” “[eloping] out of the music cottage to avoid work only 2 minutes after getting to music;” and the “Student was being bothered in class and decided to walk out of the building.” These three incidents occurred over the span of three consecutive school days, and each incident required a “call for additional staff.” The

final behavioral incident in February consisted of the student's "failure to follow directions" because he did not want to go to the library.

10. Notes from service records for this student show that on February 8, 2023, there was a "team with the student's parents to discuss his recent transition to the general education class. The team discussed the outcome and the student's feelings about increasing his hours in the general education class." There is no PWN from this meeting.
11. The student's behavior continued to decline in March, and a serious incident occurred on March 14, 2023, when the student "[refused] to go to [the general education classroom], [refused] to follow directions, [and threatened] to kill [himself]". This occurrence also required a "call for additional staff." The incident lasted for 105 minutes. There is no documentation of an IEP team meeting, parent contact, or an emergency counseling session after this incident.
12. A second serious incident occurred on March 21st when the student "refused to sit down or follow directions in the cafeteria." Service records show that on this day there was "...a meeting with parents about some unfamiliar behaviors and we decided to add to his [social-emotional] goal." There is no other documentation from this meeting, and there is no indication of an additional social-emotional goal being added to the IEP that was currently in place for this student at that time.
13. By the end of the third marking period the student had pulled his grades in ELA, science, and social studies back up to an "A." He maintained a "B" in math.
14. The student's behavior declined significantly in April during which time the student garnered six more referrals. According to the student's behavior intervention log, on April 11, 2023, the student "Eloped from class to avoid [going to class]. Tried to elope out of the building. Went into crisis, continued to try to elope and became aggressive." This incident lasted 75 minutes. On April 18th, the student "[Made] threats to himself, met with [a staff member], and then eloped out of the building. When brought back in he became aggressive and refused to follow directions." This incident lasted 60 minutes. There is no documentation of an IEP team meeting, parent contact, or an emergency counseling session after either of these incidents.
15. On April 25th, the student had two serious incidents within the span of two hours. The first incident occurred when the student "[e]loped out of the building when it was time for lunch." This incident lasted 65 minutes. The second occurrence came shortly thereafter when the student "[r]efused to go to [the general education] class." This incident lasted 55 minutes. There is no documentation of an IEP team meeting, parent contact, or an emergency counseling session after either of these incidents.
16. The student again "[e]loped out of the building to avoid work" on April 27, 2023, lasting 90 minutes; and on the April 28, 2023, the student "[e]loped from class" lasting 30 minutes in duration. Service records indicate that the student had a group counseling session on the afternoon of April 27, 2023, but there is no other documentation of an IEP team meeting, parent contact, or an emergency session after either incident.

17. Apart from the April 11th occurrence, every other incident in the month of April required a “call for additional staff.”
18. Service records indicate that the student received one more group counseling session before the IEP team met again on May 10, 2023. The prior written notice for this meeting states that the purpose of the meeting was to “...conduct an annual review of [the student’s] IEP and to determine if he qualifies for extended school year services.”
19. Service record notes state, “The team met to discuss [the student’s] transition and his social-emotional state when he was transitioning into the regular general education class. The team decided the transition was too much to process and may need to be implemented at the start of the year.”
20. The prior written notice from this meeting reflects:
 - o “The team determined that [the student’s] data supports continued growth in his area of need and services should be continued to support [the student] in the RSEL setting.”
 - o “Mom feels like he is not ready for general education, but the SEL classroom might not be right either because he is triggered by other students.”
 - o “The behaviors seemed to begin about a month after he started to transition into the general education classroom...”
 - o The complainant shared that the student does not feel like he has made many friends and feels isolated, but she did not necessarily want to move him again after he had such a challenging time with the gradual transition into general education.
 - o “The team [agreed] that [the student] would continue in the RSEL in the fall.”
 - o The school social worker suggested “reinitiating therapy” for the student and expressed that “[once] he is back in therapy and finds ways to manage his anxiety...he could be successful in the right environment.”
 - o The special educator stated that the student “...does not have any academic concerns and therefore he does not continue to have any academic goals. His behavior is not impacting his academics. This was accepted.”
21. There is no documentation that the team discussed ESY at this meeting.
22. The IEP developed after the May 10, 2023, team meeting reflects updates to the student’s present level of academic achievement and functional performance, emotional regulation goals, and classroom instruction services.
 - o PLAAFP behavioral self-management updates reflect “... [the student] has been expressing more anxiety about attending classes without his SEL peers...During times of tremendous distress, [the student] will occasionally elope from his assigned location or even run out of the building...His mother reports that she rarely sees such responses to anxiety at home...but she is concerned about the increase in maladaptive behaviors [the student] has

been exhibiting at school. Due to these concerns, [his mother] has communicated with the school social worker about reinitiating outside therapy.”

- The IEP states that this area does impact the student’s academic achievement and/or functional performance.
- PLAAFP behavioral self-management updates reflect “While [the student] has made some progress toward achieving this goal, he continues to struggle with accepting changes, and specifically with traveling to general education classrooms as instructed...He continues to struggle with managing transitions...As [the student] begins to prepare for the transition from elementary to middle school, it is critically important that he work toward managing change in healthy, developmentally appropriate ways.”
 - The IEP states that this area does impact the student’s academic achievement and/or functional performance.
- The student’s instruction and assessment accessibility features and accommodations remained the same as those provided in his previous IEP.
- The student’s supplementary aids, services, program modifications, and supports remained the same as those provided in his previous IEP.
- Adult support is provided in the May 10, 2023, and January 5, 2023, IEPs. Both documents state that “[The student] needs additional adult support during all times throughout the day for the safety of himself and others. [The student] needs support to follow directions, provide breaks, attend to tasks, and comply with teacher directions. [The student] has a history of eloping from the building and should be monitored closely throughout the entirety of the school day. This support should be used in all academic classes and special area classes.”
 - The documentation to support this decision states: “[The student] is a [second grade] student at [redacted] School who is receiving special education services for a Developmental Delay (Behavior, Communication). [The student] receives his special education supports and services through the Social Emotional Learning Support (SELS) program at Lansdowne, which features a small, self-contained classroom environment, low student-to-teacher ratio, classroom-wide social/emotional supports, and crisis intervention when necessary.”
- The student’s emotional regulation goal for expressing emotions was updated to state:
 - By May 2024, during four out of five observed opportunities, [the student] will distinguish between expected and unexpected emotional responses to real and contrived scenarios and identify how he would respond emotionally to real and contrived anxiety-provoking situations.

- The student's emotional regulation goal for accepting change was updated to state:
 - By May 2024, during four out of five observed opportunities, [the student] will identify at least five calming strategies that he can use to manage changes, transitions, and unexpected events; substitute negative self-talk with positive affirmations (I can do this, this is hard but I can ask for help, etc.) when confronted with challenging situations; and implement calming strategies when faced with unexpected or undesired changes or transitions.
- Progress reporting on these goals dated June 13, 2023, states that the student is making sufficient progress to meet these goals.
- The Extended School Year consideration reflects that the nature and severity of the student's disability warrants ESY, "Due to [the student's] social and behavioral needs." However, it also states that the student was not eligible for ESY services "Due to [the student's] level of independence..."
- The student's instructional services remained the same as his previous IEP with 25 hours weekly of classroom instruction outside of general education in the RSEL delivery model. However, the discussion surrounding this decision was changed from "He is currently [transitioning] back to general education with a 1 hour-daily session in ELA" to "If/when possible, [the student] will begin to slowly transition to the general education setting for up to 1 hour a day."

23. The student ended the fourth marking period with an "A" in math, skills and conduct, and physical education. However, his grades in ELA, science, and social studies had fallen from an "A" to a "C;" and his grades in library media and art fell from an "A" to a "B." He never achieved higher than a "C" in music.

24. The student had twenty-nine absences from January 5, 2023, to May 24, 2023.

CONCLUSIONS:

In developing each child's IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team must also consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (34 CFR § 300.324) Additionally, each public agency must ensure that extended school year services are available as necessary to provide FAPE. (34 CFR §300.106)

Documentation from the student's May 10, 2023, IEP team meeting states that he required additional adult support during his inclusion in the general education setting. However, there is no indication that the student received this support outside of the time of crisis. The student also has a behavior intervention plan that has not been updated since 2020; however, there is no indication that the team considered updating or revising the student's BIP considering his increase in behavioral concerns and serious incidents.

Moreover, although the prior written notice from the May 10th meeting states that ESY would be discussed during the meeting, there is no documentation that this occurred. When ESY was finally discussed, the team used a standard of the student's "independence" to determine that he was not eligible for services, and did not discuss the student's regression/recoupment, or the possibility of significant jeopardy to the student's progress over the next school year.

Based on the Finding of Facts #9, #11, #12, #14 to #18, and #21 to #24, MSDE finds the BCPS has not followed proper procedures when developing the student's Individualized Education Program (IEP) since June 2023, in accordance with 34 CFR §§300.106, .320, and .324. Therefore, this office finds that a violation did occur 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.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

The student's IEP team should reconvene no later than October 1, 2023, to address academic and behavioral supports that should be made available to the student, including reviewing and revising his BIP and the provision of 1:1 assistance during the school day. The team should also meet to consider the provision of ESY, and if it is determined that ESY should have been afforded to this student, the team should determine the amount of compensatory services or other remedy that will be available to the student in this regard. Finally, the IEP team must review the student's IEP to ensure that it contains the correct information regarding the student's current school and instructional delivery model.

School-Based:

MSDE requires that the staff at [REDACTED] School conduct an audit of students with BIPs and ensure that they have been reviewed and revised annually. The results of the audit must be reported to MSDE by December 1, 2023. MSDE further requires that staff at [REDACTED] School review the student's IEPs to ensure that they are receiving the services, including the supplementary aids, as required by their IEP. The results of this audit must be provided to MSDE by December 1, 2023. Finally, by October 15,

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

2023, BCPS must provide professional development regarding decision-making for ESY, and the standard required to ensure the team is making clear decisions based on the appropriate standard.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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

DMC/ebh

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