



Mohammed Choudhury
State Superintendent of Schools

March 13, 2023



Dr. 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: #23-123

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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 January 9, 2023, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of her son, 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 ensured that the student has been provided with specialized instruction, crisis intervention, encouragement to request assistance, frequent eye contact/proximity control, changes in activity, opportunities for movement, strategies to initiate and sustain attention, use of positive/concrete reinforcers, support by school counselor, and speech and language services, as required by the student’s Individualized Education Program (IEP) since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS did not provide proper written notice of the April 27, 2022, IEP team’s eligibility decision, and the decision to add social/behavioral supports, in accordance with 34 CFR §300.503.
3. The BCPS did not follow proper procedures when developing the student’s IEP present levels of academic achievement and functional performance since April 27, 2022, in accordance with 34 CFR §§300.320 and .324.

4. The BCPS has not followed proper procedures when disciplinarily removing the student from school since January 3, 2023, in accordance with 34 CFR §§300.530 – 300.536, COMAR 13A.08.03, and COMAR 13A.05.01.10
5. The BCPS did not ensure that the IEP team considered the parent's information and concerns at the IEP meeting held in January 2023, in accordance with 34 CFR §300.324.
6. The BCPS has not followed proper procedures when responding to a request to inspect and review the student's education record since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.613.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with an Other Health Impairment (OHI) disability under the IDEA. He is currently enrolled at [REDACTED] School and has an IEP that requires the provision of specialized instruction and related services.

ALLEGATION #1:

PROVISION OF SPECIALIZED INSTRUCTION AND SUPPORTS

FINDINGS OF FACTS:

1. The student's IEP in effect at the start of the 2022 - 2023 school year was developed on April 27, 2022. The student's IEP requires:
 - twenty-two hours and thirty minutes per week of specialized instruction for reading/[E]nglish, science, social studies, and math;
 - thirty minutes per week of speech and language services;
 - one hour per month of counseling services;
 - crisis intervention, as needed;
 - daily encouragement to request assistance;
 - daily frequent eye contact/proximity control;
 - daily changes in activity or opportunities for movement;
 - daily strategies to initiate and sustain attention; and
 - daily use of positive/concrete reinforcers.
2. There is documentation that the student was provided with specialized instruction for reading/English and mathematics. However, it does not demonstrate that it was provided for science and social studies since the start of the 2022-2023 school year as required by the IEP.
3. There is no documentation that the student was provided with speech and language services as required by the IEP since the start of the 2022-2023 school year.
4. There is documentation that the student was provided with counseling services as required by the IEP since the start of the 2022-2023 school year.
5. There is documentation that the student was provided with crisis intervention as required by the IEP since the start of the 2022-2023 school year.

6. There is no documentation that the student was provided with encouragement to request assistance, frequent eye contact/proximity control, changes in activity or opportunities for movement, and daily strategies to initiate and sustain attention as required by the IEP since the start of the 2022-2023 school year.

CONCLUSION:

Based upon Findings of Facts #1, #2, #3, and #6, MSDE finds that the BCPS did not ensure that the student was provided with specialized instruction in science and social studies, encouragement to request assistance, frequent eye contact/proximity control, changes in activity, opportunities for movement, strategies to initiate and sustain attention, use of positive/concrete reinforcers, and speech and language services as required by the IEP since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Based upon Findings of Facts #1, #4, and #5, MSDE finds that the BCPS did ensure that the student was provided with crisis intervention, and support by the school counselor, as required by the IEP since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

ALLEGATION #2:

PROVISION OF PRIOR WRITTEN NOTICE

FINDINGS OF FACTS:

7. On April 27, 2022, the IEP team met to discuss the results of assessment reports, review and revise the IEP, determine ESY services, and develop a transition plan. The prior written notice drafted after the meeting reflects that the IEP team considered assessment data, teacher reports, and observations. The IEP team determined that the student continued to be eligible for special education and related services as a student with a specific learning disability (SLD).
8. The student's IEP developed at the April 27, 2022, IEP team meeting, reflects OHI as the student's primary disability.
9. The IEP team further determined that the student would receive "guidance counseling services for the 2022-2023 school year," and that a daily point sheet would be distributed. There is no documentation that the parent was provided written notice of the April 27, 2022, IEP team's decision to add encouragement to request assistance, frequent eye contact/proximity control, changes in activity or opportunities for movement, strategies to initiate and sustain attention, and use of positive/concrete reinforcers, to the student's social behavioral support section of the student's supplementary aids and services.

CONCLUSIONS:

Based upon Findings of Facts #7 to #9, MSDE finds that the BCPS did not provide proper prior written notice of the eligibility decision. The team found the student eligible as a student with a SLD; however, the IEP indicates the student is eligible as a student with an OHI. Further, BCPS did not provide proper prior written notice of the IEP team's decision to add social/behavioral supports, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #3:

**DEVELOPMENT OF PRESENT LEVELS OF ACADEMIC
ACHIEVEMENT AND FUNCTIONAL PERFORMANCE
(PLAAFP)**

FINDINGS OF FACTS:

10. The student's IEP in effect at the start of the 2022-2023 school year reflects the student has identified needs in the areas of reading, mathematics, communication and social/emotional/behavioral.
11. The student's PLAAFP in the area of reading reflects the student functions in the "low average range with a grade equivalency of 4.9." There is documentation of the student's rate of growth for 2019-2020 as below grade and state level standards and a 3.8 reading level for the 2020-2021 school year. The PLAAFP further reflects the student's standard scores from April 2022 in broad reading, letter word identification, passage comprehension, work attack, oral reading, and sentence reading fluency. The IEP team determined that reading impacts the student's academic achievement/functional performance.
12. The student's PLAAFP in the area of mathematics reflects the student functions in the "very low average range with a grade equivalency of 3.5." There is documentation of the student's rate of growth for 2019-2020 as below grade and state level standards and a 3.0 math level for the 2020-2021 school year. The PLAAFP further reflects the student's standard scores from April 2022 in broad math, applied problems, calculation, and math facts fluency. The IEP team determined that mathematics impacts the student's academic achievement/functional performance.
13. The student's PLAAFP in the area of writing reflects the student functions in the "low average range with a grade equivalency of 4.7." There is documentation of the student's rate of growth for 2019-2020 as below grade and state level standards and a 4.0 writing level for the 2020-2021 school year. The PLAAFP further reflects the student's standard scores from April 2022 in broad written language, spelling, writing samples, and sentence writing fluency. The IEP team determined that writing impacts the student's academic achievement/functional performance.
14. The student's PLAAFP in the area of communication reflects the student functions "below age level expectancies when compared to same age peers." There is documentation of the student's rate of growth for 2019-2020 is below age level expectations. The PLAAFP further reflects the student can retell a fictional text in an organized manner by including story grammar markers with 70% accuracy with 1-2 verbal prompts, and can provide at least two similarities and two differences between two nouns with 70-80% accuracy using sentence starters with picture support. The IEP team determined that communication impacts the student's academic achievement/functional performance.
15. The student's PLAAFP in the area of social/emotional/behavioral reflects the student functions below grade level expectations in the areas of self-management and responsible decision-making. There is documentation of the student's third quarter grades for the 2021-2022 school year. The PLAAFP further reflects that the student appears to be performing at the early middle school level in responsible decision making. The IEP team determined that social/emotional/behavioral impacts the student's academic achievement/functional performance.

16. The student's IEP, developed on April 27, 2022, reflects that his disability affects his involvement and progress in the general educational curriculum by limiting his access to reading, math, and writing related instruction.

CONCLUSION:

Based upon Findings of Facts #10 to #16, MSDE finds that the BCPS followed proper procedures when developing the student's IEP present levels of academic achievement and functional performance since April 27, 2022, in accordance with 34 CFR §§300.320 and .324. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #4

DISCIPLINARY PROCEDURES

FINDINGS OF FACTS:

17. On January 3, 2023, the student was involved in an incident resulting in a disciplinary removal beginning January 3, 2023. Following this incident, the BCPS proposed disciplinary removal of the student for more than 10 days.
18. Prior to the January 3, 2023, incident, the student had six cumulative days of prior disciplinary removals during the 2022-2023 school year.
19. On January 9, 2023, the IEP team held a manifestation determination meeting. The Manifestation Determination Team Summary reflects that parent was present at the meeting. During the meeting, the team determined the proposed removal was for more than ten consecutive days and constituted a change in placement based on this and prior removals. The IEP team reviewed "formal assessments, diagnosis, parental input, and teacher input." The IEP team further determined that the student's "actions were not an act of impulse." The incident was determined not to be a manifestation of the student's disability.
20. The team further determined the student's behavior was not a direct result of the school not implementing the student's IEP. The school team acknowledged, the student has not received speech and language services due to staff shortages. However, this "IEP service does not impact the behavior subject to disciplinary actions."
21. During the removal, the student was to receive services in an alternative program.

CONCLUSION:

Based upon Findings of Fact #17 to #21, MSDE finds that the BCPS has followed proper procedures when disciplinarily removing the student from school since January 3, 2023, in accordance with 34 CFR §§300.530 – 300.536, COMAR 13A.08.03, and COMAR 13A.05.01.10. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #5:

PARENTAL CONCERNS

FINDINGS OF FACTS:

22. The prior written notice drafted after the January 9, 2023, IEP team meeting reflects that the IEP team considered assessments (including an outside assessment from [REDACTED] diagnosis, parental input, and teacher observations. Additionally, the IEP team considered a May 2022 IEP Team Summary, an April 2022 draft IEP.
23. The complainant raised concerns about the student's disability classification being changed from specific learning disability on the draft IEP provided to the parent prior to the IEP team meeting to OHI on the completed April 2022 IEP. The team clarified the April 2022 eligibility determination, and on January 9, 2023, "created an eligibility document," that reflects the April 2022 IEP's disability classification of OHI. The complainant shared concerns about the staff changes in the special education department. The BCPS staff assured the complainant that the new staff did not create new IEP documents. The parent expressed further concerns about the use of a daily point system. The IEP team determined that the prior IEP team suggested the use of a daily point system but did not add it to the student's IEP.
24. The complainant requested that the student be withdrawn from BCPS and requested to cancel the IEP meeting scheduled for January 11, 2023. The student was withdrawn by the complainant from [REDACTED] School on January 31, 2023.

CONCLUSION:

Based upon Findings of Facts #22 to #24, MSDE finds that the BCPS did ensure that the IEP team considered the parent's information and concerns at the IEP meeting held in January 2023, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #6

REQUEST FOR RECORDS

FINDINGS OF FACTS:

25. There is documentation that on January 15, 2023, the complainant requested to review the student's educational record for any "IEP, eligibility determination, finalized disability team reports/IEP plan summary, testing results, any additional required documents for Specific Learning Disability, and any other documentation for such dates in relation to 4/27/2022-11/15/2022."
26. There is no documentation that the BCPS has responded to the complainant's request.

CONCLUSION:

Based upon Findings of Fact #25 and #26, MSDE finds that the BCPS has not followed proper procedures when responding to a request to inspect and review the student's education record since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.613. 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 non-compliance 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 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 April 1, 2023, of the following actions:

- a. Provided the parents with a prior written notice of the IEP team's eligibility decision, and the decision to add social/behavioral supports from the April 27, 2022, IEP team meeting;
- b. Provided the parents with the requested records, specifically, the student's "IEP, eligibility determination, finalized disability team reports/IEP plan Summary, testing results, any additional required documents for Specific Learning Disability, and any other documentation for such dates in relation to 4/27/2022-11/15/2022;"
- c. Convened an IEP team meeting to determine if the violations identified in this Letter of Findings regarding the provision of encouragement to request assistance, frequent eye contact/proximity control, changes in activity, opportunities for movement, strategies to initiate and sustain attention, and use of positive/concrete reinforcers 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; and
- d. Convened an IEP team meeting to determine the amount and nature of compensatory services or other remedy to redress the lack of provision of specialized instruction in science and social studies and speech and language services and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

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.

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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:

MSDE requires the BCPS to provide documentation by April 25, 2023, of the steps it has taken to ensure that the staff at [REDACTED] School properly implements the requirements for the provision of specialized instruction, related services, supplementary aids and accommodations, and prior written notice 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 identified 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 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]
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Gerald Loiacono
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Tracy Givens