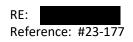


June 16, 2023



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



Dear Parties:

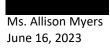
The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On March 20, 2023, and May 9, 2023, MSDE received a complaint from Mr. And the and Mrs. And M

MSDE investigated the following allegations:

- 1. BCPS has not ensured that the student has been consistently provided with the transition activities, speech and language services, occupational therapy services, and supplementary services and accommodations required by the Individualized Education Program (IEP) since September 2022, in accordance with 34 CFR §§300.101 and .323.
- 2. BCPS has not ensured that the student has been provided with the special education instruction required by the IEP from a certified special education teacher since September 2022, in accordance with 34 CFR §§300.101, .156, and .323.
- 3. BCPS has not ensured that the student's vision needs have been identified and addressed since September 2022, in accordance with 34 CFR §300.324.



- 4. BCPS has not ensured that the student's IEP contains a transition plan based on age-appropriate assessments since September 2022, in accordance with 34 CFR §300.320.
- 5. BCPS has not followed proper procedures when conducting a reevaluation of the student, since September 2022, in accordance with 34 CFR §§300.303 .306, and COMAR 13A.05.01.06.
- 6. BCPS did not ensure that the IEP team convened to review the student's IEP before January 9, 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.
- BCPS did not ensure the proper procedures were followed when responding to a request to inspect and review the student's educational record since March 2023, in accordance with 34 CFR §300.613.

BACKGROUND:

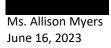
The student is twenty-one years old and is identified as a student with Autism under the IDEA. He is placed by the BCPS at and has an IEP that requires the provision of specialized instruction and related services.

FINDINGS OF FACTS:

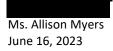
- 1. The IEP in effect at the start of the 2022-2023 school year was developed on January 10, 2022. The IEP requires specialized instruction for twenty-seven hours per week outside of the general education setting, occupational therapy for one hour per week, and speech and language therapy for two hours per week. The IEP requires that the student be provided with the following supplementary aids and supports:
 - visual supports as needed;
 - effective teaching procedures daily;
 - use pictures to support reading passages whenever possible;
 - allow use of manipulatives daily;
 - chunking of text as needed;
 - strategies to increase appropriate bathrooming as needed;
 - crisis intervention daily;
 - frequent eye contact/proximity control daily;
 - strategies to initiate and sustain attention daily;
 - use of positive/concrete reinforcers daily;
 - adaptive equipment (slant board or study carrel) daily;
 - adaptive equipment (dynamic display speech generating device) daily;
 - sensory strategies daily;
 - speech and language pathologist consult periodically;
 - occupational therapist consult quarterly;
 - adult support daily; and
 - progress updates for parents daily.

The IEP further requires the following transition activities:

- Academic multimodal communication to appropriately gain attention;
- Employment Training to build job readiness skills;
- Daily Living Activities request items he wants or needs;



- Academic participate in community-based instruction activities;
- Daily Living Activities practice school-based routines and schedules;
- Employment Training follow multi-step directions to complete vocational tasks;
- Independent living practice consumer math skills by purchasing in various environments; and
- Independent living identifying functional sight words and safety signs.
- 2. There is documentation that the student has been provided with visual support, adult support, adaptive equipment (dynamic display speech generating device), frequent eye contact/proximity control, strategies to initiate and sustain attention, use of positive/concrete reinforcers, as required by the IEP.
- 3. There is documentation that the student was not provided with 16.5 hours of speech and language therapy and 13 hours of occupational therapy between July 1, 2022, and March 31, 2023, as required by the IEP.
- 4. There is documentation that the student was provided with an occupational therapy consultation during the 2022-2023 school year in quarters two and three. There is no documentation that the student received an occupational therapy consultation during the 2022-2023 school year in quarter one as required by the IEP.
- 5. While there is some documentation that the student was provided with effective teaching procedures, there is no documentation that the classroom staff is trained in effective teaching strategies regarding behavior and communication, as required by the IEP.
- 6. While there is some documentation that the parent received progress updates, there is no documentation that the parents were provided progress updates daily, as required by the IEP.
- 7. There is no documentation that the student was provided with a speech and language consult, use of pictures to support reading passages, the 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.
- 8. While there is some documentation that the student was provided with a "device" to communicate and appropriately gain attention, there is no documentation that a multimodal device or strategy was used, as required by the IEP.
- 9. There is no documentation that the student was provided with employment training to build job readiness skills, community-based instruction activities, follow multi-step directions to complete vocational tasks, practice consumer math skills by purchasing various environments, and identifying functional sight words and safety signs as required by the IEP.
- 10. There is documentation that the student has been provided with daily living activities to request items he wants or needs, as required by the IEP.
- 11. There is documentation that the student has been provided with special education instruction from a certified special education teacher, as required by the IEP.
- 12. The Prior Written Notice (PWN) generated following the September 14, 2022, IEP team meeting, reflects that the IEP team discussed the student's visual needs. The BCPS Teacher of the Visually



Impaired (TVI) was present at the meeting. The school staff expressed concerns regarding the student's ability to navigate "terrain (shiny surfaces), inability to go into certain rooms, going into bathrooms, navigating stairs (turns foot to be parallel to the stairs), does not look straight at materials and has more difficulty with things flat on a surface". The IEP team determined the following assessments were needed:

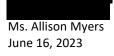
- classroom observation by the TVI to determine further assessment needs;
- formal educational assessment;
- functional behavior assessment; and
- psychological assessment to include adaptive scores.

The IEP team agreed to reconvene in ninety days to review the assessments. There is documentation that the IEP team reconvened on January 31, 2023.

- 13. There is documentation that a psychological assessment was completed for the student on November 10, 2022.
- 14. There is documentation that the TVI emailed the school staff on November 3, 2022, with the results of her student observation and a request for a follow up IEP team meeting to discuss if a vision assessment is needed. The TVI recommended:
 - use of a slant board;
 - use of real money;
 - use of wikki stix to create a name box;
 - try word bubble technique; and
 - use a black background to reduce distractions.

There is no documentation that the vision observation results were reviewed with the IEP team.

- 15. On January 30, 2023, and March 9, 2023, the IEP team met to review the student's educational, psychological, and functional behavior assessments and to review and revise the student's IEP. The meeting was originally scheduled for December 8, 2022; however, the parents requested the meeting be rescheduled in January 2023. The IEP team did not complete the review of the IEP and agreed to schedule a "continuation" IEP team meeting. The prior written notice generated on January 30, 2023, further reflects the IEP team proposed or refused the following actions:
 - continued eligibility;
 - re-evaluation statewide participation;
 - alternative framework;
 - present levels;
 - supplementary aids and services;
 - instructional testing and accommodations;
 - behavior/BIP;
 - goals/objectives;
 - transition;
 - special transportation;
 - ESY; and
 - LRE.



While there is documentation that the IEP team considered areas of the student's IEP, there is no documentation of the basis for the IEP team's decisions. The IEP team reconvened on March 9, 2023, and "still did not finish reviewing the IEP". There is no documentation that the student's IEP was updated.

- 16. While there is documentation that IEP team meetings were scheduled for the student on May 31, 2023, and June 13, 2023, there is no documentation that these meetings were convened or the decisions of the IEP team.
- 17. While the January 10, 2022, IEP reflects that the student was last evaluated on September 14, 2019, and that his evaluation must be completed by September 14, 2022, there is no documentation that the re-evaluation was completed on September 14, 2022.
- 18. There is no documentation that the student's transition plan is based on age-appropriate assessments.
- 19. On March 4, 2023, the complainant emailed the school staff to request the student's assessments prior to January 2023, a list of the staff assigned to his classroom, speech and language and occupational therapy service logs.
- 20. On March 13, 2023, the complainant emailed to request all reports of abuse and neglect of the student.
- 21. On March 21, 2023, the complainant emailed to request occupational therapy session notes.
- 22. There is no documentation that BCPS responded to the complainant's requests to review the student's educational records since March 2023.

DISCUSSION/CONCLUSIONS:

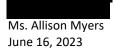
Allegation #1: PROVISION OF TRANSITION ACTIVITIES, SPEECH AND LANGUAGE SERVICES, OCCUPATIONAL THERAPY SERVICES, AND SUPPLEMENTARY SERVICES AND ACCOMMODATIONS

Provision of Transition Activities

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 upon Findings of Facts #1, #8, and #9, MSDE finds that the BCPS has not ensured that the student has been consistently provided with the following transition activities: multimodal communication to appropriately gain attention, employment training to build job readiness skills, community based instruction



activities, follow multi-step directions to complete vocational tasks, practice consumer math skills by purchasing various environments, and identifying functional sight words and safety signs as required by the IEP since September 2022, 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 Fact #1 and #10, MSDE finds that the BCPS has ensured that the student has been consistently provided with daily living activities to request items he wants or needs as required by the IEP since September 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Provision of Speech and Language Therapy and Occupational Therapy

Based on Findings of Facts #1 and #3, MSDE finds that the BCPS has not ensured that the student has been consistently provided with speech and language therapy and occupational therapy as required by the IEP since September 2022, 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.

Provision of Supplementary Aids, Supports, and Services

Based on Findings of Facts #1 and #2, MSDE finds that the BCPS has ensured that the student has been provided with visual support, adult support, adaptive equipment (dynamic display speech generating device), frequent eye contact/proximity control, strategies to initiate and sustain attention, use of positive/concrete reinforcers as required by the IEP since September 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on Findings of Facts #1, #4 to #7, MSDE finds that the BCPS has not ensured that the student has been consistently provided with an occupational therapy consult in the first quarter, classroom staff is trained in effective teaching strategies regarding behavior and communication, provision of daily updates, speech and language consult, 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 since September 2022, 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.

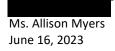
Allegation #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION FROM A CERTIFIED SPECIAL EDUCATOR

Based on Findings of Fact #11, MSDE finds that the BCPS has ensured that the student has been provided with the special education instruction required by the IEP from a certified special education teacher since September 2022, in accordance with 34 CFR §§300.101, 156, and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #3:

IDENTIFY AND ADDRESS VISUAL MOTOR NEEDS

Based on Findings of Facts #12 to #14, MSDE finds that the BCPS has not ensured that the student's vision needs have been identified and addressed since September 2022, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation has 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 Findings of Fact #18, MSDE finds that the BCPS has not ensured that the student's IEP contains a transition plan based on age-appropriate assessments since September 2022, 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 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.

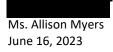
Based on Findings of Facts #12 to #17, MSDE finds that the BCPS has not followed proper procedures when conducting a re-evaluation of the student, to ensure it was completed within ninety days of the date assessments were recommended by the IEP team, since September 2022, in accordance with 34 CFR §§300.303 - .306, and COMAR 13A.05.01.06. Therefore, this office finds that a violation has 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.

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 individual or conference telephone calls.

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(c)-(d)).

Based upon Findings of Facts #1 and #16, MSDE finds that the BCPS did not ensure that the IEP team convened to review the student's IEP before January 9, 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation has 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 upon Findings of Facts #19 to #22, MSDE finds that the BCPS did not ensure the proper procedures were followed when responding to a request to inspect and review the student's educational record 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 VIOLATION 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;

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- 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; and
- A description of other factors relevant to the district's proposal or refusal. (34 CFR §300.503).

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 IEP 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 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 August 1, 2023, of the following actions:

• 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

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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bathrooming, crisis intervention, sensory strategies, and adaptive equipment (slant board or study carrel) as required by the IEP if the student is still enrolled;

- Provided the parents with proper written notice of the decisions made at the January 30, 2023, and March 9, 2023, IEP team meetings;
- Completed age-appropriate transition assessments;
- Provide the parents with an opportunity to inspect and review the requested educational records; and
- 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. It must also determine the amount and nature of compensatory services or other remedy to redress 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, and the delay in completing the annual IEP review, and develop a plan for the provision of those services within a year of the date of this Letter of Finding.

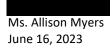
The BCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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 requires the BCPS to provide documentation of professional development completed by September 1, 2023, to ensure that the staff at properly implements the requirements for the provision of transition activities, related services, supplementary aids and services, proper written notice, conducting a re-evaluation, age-appropriate transition assessments, an annual review, and provision of education records, under the IDEA and COMAR. Provide documentation that the classroom staff is trained in effective teaching strategies regarding behavior and communication. BCPS must also develop a monitoring tool to ensure the consistent implementation of transition activities, related services, and supplementary aids and services for students at the set of the

MSDE further requires that the BCPS provide documentation by September 1, 2023, identifying all eligible students under the IDEA placed by BCPS at 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 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 M. Collins Deputy Superintendent Office of the Deputy Superintendent of Teaching and Learning

DMC/tg

- c: Darryl Williams Jason Miller Charlene Harris Alison Barmat
- Diane Eisenstadt Nicol Ellicott Paige Bradford Tracy Givens Gerald Loiacono