


July 11, 2023




Ms. Allison Myers
Executive Director
Special Education Services
Baltimore County Public Schools
105 W Chesapeake Ave,
Towson, Maryland 21204

RE: 
Reference: #23-223

Dear Parties:

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

ALLEGATIONS:

On May 16, 2023, MSDE received a complaint from Ms. , hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that 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. BCPS has not ensured that the student is being provided with the special education classroom instruction required by the Individualized Education Program (IEP), since May 2022, in accordance with 34 CFR §§ 300.101 and .323.
2. BCPS did not ensure that the IEP team convened to review the student’s IEP before March 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.
3. BCPS did not ensure that the IEP team considered the parent’s information and concerns, including the recommendations of an independent assessment provided by the parent, at the IEP meeting during the 2022-2023 school year¹, in accordance with 34 CFR §300.324.

¹ In its initial correspondence with the parties, MSDE erroneously identified a specific IEP team meeting occurring on April 12, 2023. No such meeting occurred. In conducting this investigation, MSDE considered the BCPS response to information and concerns shared by the complainant at each IEP team meeting convened for the student during the 2022-2023 school year.

4. BCPS has not ensured that the student's progress towards achievement of the annual goals was measured as described in the IEP, since May 2022, in accordance with 34 CFR §§300.320 and .323.

BACKGROUND:

The student is 14 years old and is assigned to [REDACTED] School. He is identified as a student with Specific Learning Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1

PROVISION OF SPECIAL EDUCATION CLASSROOM INSTRUCTION

FINDINGS OF FACTS:

1. The IEP in effect in May 2022 reflects the IEP requires five fifteen minute sessions of specialized instruction per week to address the student's needs in math calculation and problem solving, by the general education teacher in the general education setting.
2. There is no documentation that the general education teacher provided specialized instruction in collaboration with the special education teacher.

DISCUSSION/CONCLUSIONS:

When a general education teacher collaborates with a special educator and/or related service provider who is qualified in the area of the student's need, the general educator is capable of and qualified to deliver SDI. Technical Assistance Bulletin #19-01. In this case, there is no documentation or evidence, or any requirement by the IEP, that a special educator collaborated, consulted, or in any way advised the general educator, who is the sole service provider for the student, on the provision of specialized instruction.

Based on Finding of Fact #1 and #2 MSDE finds that the BCPS did not ensure that the general education teacher collaborated with a special educator who is qualified in the area of the student's need in accordance with MSDE Technical Assistance Bulletin #19-01. Therefore, MSDE finds that a violation did occur with this aspect of the violation.

ALLEGATION #2 & #3:

**CONDUCTING AN ANNUAL REVIEW OF THE STUDENT'S IEP AND
CONSIDERATION OF PARENT INFORMATION AND CONCERNS**

FINDING OF FACTS:

3. The student's IEP in effect at the beginning of the 2022-2023 school year, was developed on March 2, 2022. The IEP reflects the disability impacts the student in the areas of math calculation, math problem solving, and written language mechanics. The IEP requires that the student receive instructional and assessment accessibility features and accommodations, and supplementary aids, services, program modifications, and supports. The IEP also requires daily specialized classroom instruction for fifteen minutes per day within the general education classroom, by the general education teacher.

4. On February 17, 2023, the BCPS sent the complainant notice of an IEP team meeting to be convened on March 1, 2023. Following additional correspondence with the complainant where she requested later dates for the proposed IEP team meeting, the IEP team agreed to meet on May 11, 2023.
5. On May 11, 2023, the IEP team met to conduct an annual review of the student's IEP. The IEP developed on May 11, 2023, reflects that the student's disability impacts him in the areas of math calculation, math problem solving, self-management (e.g., executive functioning, organization, attention, etc.), and employment. The IEP requires that the student receive instructional and assessment accessibility features and accommodations, and supplementary aids, services, program modifications, and supports. The IEP team determined that the student would receive specialized classroom instruction for fifteen minutes per day outside of the general education classroom, by a special education teacher and an instructional assistant. The IEP team also determined that the student would receive ten thirty-minute sessions per month of specialized classroom instruction inside of the general education classroom. This service will be delivered by a general educator through consultation with a special educator or a special educator for direct specialized instruction. An instructional assistant will also support instruction inside of the general education classroom.
6. During the IEP team meeting, the complainant shared that the student had recently been hospitalized for, diagnosed with, and was taking medication for, ADHD and depression. In response, the IEP team requested documentation related to the student's discharge from the hospital and informed the parent that the IEP team could address his needs related to ADHD regardless of the disability previously identified by the team. The complainant also shared concerns related to the student's math present level not containing a grade level equivalent. The IEP team agreed to conduct additional informal assessments to include additional information in this area. The complainant also shared that she believed it was not appropriate for the student to receive specialized instruction from only a general education teacher and requested work samples from the student's teachers. In response to a suggestion for self-contained classes, she shared that she believed the student required continued instruction in the general education setting, as removing the student from that setting would have a negative impact on his mental health. The IEP team noted that this was a prior decision of the IEP team and agreed to address the concern when the IEP team reconvened.
7. On May 23, 2023, the IEP team met to complete the student's annual review. The complainant raised concerns with the student's service delivery and monitoring of progress on the student's prior IEP. In response to the complainant's concerns, the IEP team explained that the student's instruction will be provided by a general educator and/or special educator and that the student would receive instruction in math outside of the general education classroom. The IEP team agreed to schedule an IEP team meeting in the first quarter of the 2023-2023 school year to review the student's progress.
8. During the May 23, 2023, IEP team meeting, the IEP team also determined that the student would receive compensatory services to address the delay in conducting the student's annual review.
9. On June 12, 2023, the IEP team met to address the problems identified in the state complaint, and review/revise the student's IEP. During the meeting, the complainant shared her continued concerns that the student required instruction from a special educator, that the student was not making progress on his math goals, and that the data reported on the student's second and third quarter progress report was not sufficient. The complainant further shared that the student's hospitalization was due to the emotional impact of not being able to pass his classes. The complainant requested an IEE to determine the student's current strengths, needs, and performance as compensatory services to address the complainant's allegation that the student did not receive appropriate services. In response, the BCPS staff explained that an IEE could only be requested if the BCPS conducted an

evaluation that the parent's disagreed with. The IEP team agreed to note the complainant's concerns related to the setting for the student's instruction. In response to the complainant's concerns the IEP team responded that the general educator can provide specially designed instruction, others providers can be considered by the team such as a special educator, or instructional assistant, and a special education consultation may also be considered to support the general education teacher. The team used information from the informal assessments to update the student's needs in social/emotional and behavioral areas and to develop supports to address on-task behavior, work completion, and requesting assistance. The team also agreed to the following revisions of the IEP: monitor use of agenda book and assignment submission and use of positive/concrete reinforcers for on-task behaviors. The IEP team considered and agreed to conduct an educational assessment to examine reading, writing, and mathematics strengths and needs, as well as a psychological assessment to include social-emotional functioning.

10. The prior written notice generated following the June 13, 2023, IEP team meeting also reflects a discussion of the discharge paperwork following the student's hospitalization. The discharge summary has medical diagnoses of ADHD, Major Depressive Disorder, and Dyslexia. The discharge summary did not include assessment reports or data and the team discussed that these are medical diagnoses which are not the same as assessments for an educational disability. There is no documentation that an independent assessment was conducted for the student during the 2022-2023 school year.

DISCUSSION/CONCLUSIONS:

Allegation #2:

Annual Review of the Student's IEP

Based on the Finding of Facts #3, and #4, MSDE finds that the BCPS has not ensured that the IEP team convened to review the student's IEP before March 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 occurred with respect to this allegation.

Notwithstanding, based on the Finding of Facts #5 through #9, on May 11, 2023 and May 23, 2023, BCPS ensured that the EP team convened to review the student's IEP. Additionally, the IEP team met on June 12, 2023, to determine compensatory services needed to remediate the impact of the delayed IEP meeting for the student. Therefore, no additional student-based corrective action is necessary to address the violation.

Allegation #3:

Consideration of the Parent's Concerns and Information Provided to the IEP Team

Based on the Finding of Facts #6 and #7, MSDE finds that although the BCPS considered some of the parent's concerns and information provided to the IEP team, the IEP team did not consider the complainant's concerns related to the setting in which the student would receive instruction and the student's service provider since May 2022. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding this violation, MSDE further finds based on the Finding of Facts #9 and #10, the IEP team reconvened for the student and appropriately addressed the complainant's concerns related to the student's social/emotional needs. Therefore, no additional student-based corrective action is required to address this violation.

ALLEGATION #4:

MEASUREMENT OF PROGRESS TOWARDS ACHIEVEMENT OF THE ANNUAL GOALS

FINDING OF FACTS:

11. The student's March 2, 2022, IEP reflects the following Math Calculation goal: "By March 2023, when given a set of 10 fraction denominators, a calculator, and fraction bar chart, [the student] will independently add, subtract, multiply, or divide solving the problem with 70% accuracy in 2 out of 3 target trials. Method of measurement: informal procedures classroom-based assessment."
12. The fourth quarter IEP progress reports developed on June 16, 2022, discussion reflects the student was making sufficient progress to meet the goal: "According to classroom- based assessments, [the student] is completing math problems involving rational numbers with an average of 70% in 1 out of 3 targeted trials. When given a fifth-grade calculation informal assessment, [the student] was able to solve addition and subtraction problems of fractions with like denominators with 100% accuracy. When given a set of 10 fraction problems with unlike denominators, a calculator, and a fraction bar chart, [the student] is able to independently, add, subtract, multiply, or divide solving the problem with 70% accuracy in 2 out of 3 targeted trials.[the student] is still having difficulty finding the least common denominator when adding and subtracting fractions with unlike denominators; however, he is able to successfully multiply and divide problems involving fractions. Without a calculator, [the student] demonstrates difficulty with adding and subtracting decimals (25% accuracy) and errors are noted in not carrying/borrowing when required. It is noted that [the student] consistently will not show his work/set problems which may impact accuracy."
13. The first quarter IEP progress report developed on November 4, 2022, reflects that the math calculation goal was not addressed during the first quarter of the 2022-2023 school year.
14. The second quarter IEP progress reports developed on January 17, 2023, reflect that the student was making sufficient progress and that: "when given a set of 10 fraction problems with unlike denominators, a calculator, and a fraction bar chart, [the student] is able to find the least common denominator with 100% accuracy in 3 out of 3 trials. In 2 out of 4 trials he did not convert the numerator correctly in order to add/subtract the fractions. In trial 3, given teacher direction, [the student] was able to find the common denominator to add or subtract the fractions with 60% accuracy."
15. The third quarter IEP progress reports developed on March 24, 2023, reflect the student was making sufficient progress towards meeting the goal. "When given a set of 10 fraction problems with unlike denominators, a calculator and a fraction bar chart, [the student] is able to independently add, subtract, multiply, or divide solving the problem with 70% accuracy in 2 out of 3 targeted trials. [the student] is still having difficulty finding the least common denominator when adding and subtracting fractions with unlike denominators; however, he is able to successfully multiply and divide problems involving fractions.
16. The student's March 2, 2022, IEP reflects the following Math problem solving goal: "By March 2023, when given a set of word problems with rational numbers, [the student] will write and solve a linear equation for the variable using visual or arithmetic strategies (e.g., graphs, calculator, algebra tiles) with 80% accuracy for 2 out of 3 sets of problems." The method of measurement required by the IEP is informal procedures and classroom-based assessments.

17. The fourth quarter IEP progress reports developed on June 16, 2022, reflects the student was making sufficient progress to meet the goal. "When given an informal assessment measuring sixth-grade level problem solving skills, [the student] earned 25% accuracy when not provided with a calculator or other resources. He was directed to write an equation and solve the problem. He was able to write the correct equation for 50% of the problems, however, errors with calculations impacted his overall accuracy."
18. The first quarter IEP progress report developed on November 4, 2022, states: "This concept was not addressed during the first marking period. Informal/anecdotal classroom data indicates that [the student] is performing with an average of 70% on curriculum-based unit assessments."
19. The second quarter IEP progress reports developed on January 17, 2023, reflect the student was making sufficient progress to meet the goal. "Given a set of word problems [the student] is able to solve for the solution accurately with 100% accuracy. When writing the linear equation, he did not accurately write equations using a variable."
20. The third quarter IEP progress reports developed on March 24, 2023, reflects the student is making sufficient progress to meet the goal. "When given a set of word problems, [the student] is able to write and solve a linear equation for the variable using visual or arithmetic strategies (e.g. graphs, calculator, algebra tiles) with 80% accuracy for 2 out of 3 sets of problems. Based on Math 8 unit assessments, [the student] earned 75%, 68%, and 85% on problem sets related to linear equations."

DISCUSSION/CONCLUSIONS:

Based on Finding of Facts #12 to #20, MSDE finds that while the BCPS has ensured that the student's progress towards achievement of the annual IEP goals was measured as described in the IEP, for many of the progress reports created since May 2022, the progress report created for the student's math problem solving goal was not measured in the manner required by the IEP in the first quarter 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 this aspect of the allegation.

Notwithstanding, based on the Finding of Facts #9 and #10, MSDE finds that the IEP team discussed the student's progress at the June 12, 2023, IEP team meeting and agreed to collect additional assessments to determine the student's abilities. Therefore, no additional student-based corrective action is necessary to address the violation.

CORRECTIVE ACTION/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.² 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.

² 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.

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.³ 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 September 30, 2023, of the following action:

- a. Convene an IEP team meeting to determine the impact of the lack of specially designed instruction by the general education teacher in collaboration with a special educator.
- b. Provide documentation that the IEP team has determined whether the violations related to the violations related to provision of specially designed instruction in collaboration/consultation with a special education teacher in his IEP 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 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 September 30, 2023, of the steps it has taken to ensure that staff at the student's school properly understand and implement their responsibilities under the IDEA. This includes the requirements for conducting annual reviews of student's IEPs, appropriately monitoring progress on annual goals, considering information and concerns shared by parents, and describing the ongoing collaboration between general education and special education teachers when providing special education instruction on the student's IEP and during IEP team meetings. The documentation must include professional development and a description of how the BCPS will evaluate the effectiveness of the steps taken and a monitoring schedule to ensure that the violations 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

³ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

[REDACTED]
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student, including issues subject to this State complaint investigation, consistent with the IDEA. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

DMC:ra

c: Darryl Williams
Jason Miller
Charlene Harris
Conya Bailey
[REDACTED]
Gerald Loiacono
Diane Eisenstadt
Rabiatu Akinlolu
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