



July 14, 2023



Ms. Allison Myers, Executive Director
Department of Special Education
Baltimore County Public Schools
6901 Charles Street
Towson, Maryland 21204

RE: [REDACTED]
Reference: #23-230

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 May 16, 2023, MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The BCPS did not ensure that proper procedures were followed when determining the student’s educational placement for the 2023-2024 school year, in accordance with 34 CFR §§300.114 -.116.
2. The BCPS did not provide a written invitation to the IEP team meeting held on February 1, 2023, that contained information about the purpose of the meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.
3. The BCPS did not ensure that the complainant was provided with a report of the student’s progress toward achieving the annual IEP goals for the second quarter of the 2022-2023 school year, in accordance with 34 CFR §§300.320 and .323.
4. The BCPS did not provide the student’s parents with prior written notice of the IEP team’s decisions from the IEP team meeting held on February 1, 2023, in accordance with 34 CFR §300.503.

5. The BCPS did not consider possible language barriers to ensure that the student's parent understood the proceedings and outcome of the February 1, 2023, IEP team meeting in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
6. The BCPS has not ensured that accessible copies of each assessment, report, data chart, draft IEP, or other documents the IEP team plans to discuss at the IEP team meeting on May 25, 2023, have been provided to the parent at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.03B.

BACKGROUND:

The student is 15 years old and is identified as a student with autism under the IDEA. He attends [REDACTED]. The student has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1:

EDUCATIONAL PLACEMENT

FINDINGS OF FACTS:

1. At the start of the 2022-2023 school year, the student was placed in the "Communication Learning Support Classroom" at [REDACTED] School. His IEP in place prior to May 4, 2023, requires that he receive instruction inside and outside of the general education setting. The student's IEP indicates that the areas affected by his disability include communication, reading, mathematics, social/emotional/behavioral, physical education, and employment. The student utilizes an augmentative communication device to communicate and requires models and prompts to use the device functionally.
2. On February 1, 2023, the IEP team convened to discuss the results of a recently completed Functional Behavior Assessment (FBA) and to review/revise the IEP and Behavior Intervention Plan (BIP). The behaviors of concern that were addressed during the meeting included aggression (hitting, kicking, biting, hand grabbing, and pushing), as well as the student being out of area (leaving the instructional area or adult by more than 3 feet without permission).
3. On May 4, 2023, the IEP team met to "review and revise the IEP and to discuss placement options/least restrictive environment." After the February 1, 2023, IEP team meeting, the student's maladaptive behavior at school had increased significantly. The prior written notice from this meeting states that the team "added crisis intervention on the supplementary aids page" and "The team is considering a more restrictive placement. The team is in agreement that [the student's] needs can be met at [REDACTED] Ms. [REDACTED] shared that an intake meeting will be scheduled for [the student]..." The prior written notice further states that "[The student] requires crisis intervention. During times of need, additional staff support will be needed when [the student] is attempting to elope from his designated area, when engaging in times of continuous aggression...The team is in agreement that the supports [the student] requires are beyond what is able to be provided within the CLS program." To support the decision, the IEP team noted the following rationale:
 - a. "[The student] often elopes through the classroom to the vent, to play with the doorknob, or to

- see another student.
- b. He elopes from the classroom into the bathroom, to the cafeteria, and to the gym.
 - c. Recently, [the student] has been eloping out of the building.
 - d. He does not consistently respond to visual, verbal, or gestural prompts to return to his assigned location.
 - e. When prompted to return to his location, or blocked from eloping, [the student] may become aggressive. His aggression is defined by hitting, biting, kicking, grabbing, pushing students and/or staff.
 - f. [The student] typically hits the staff hard on the back and arms.
 - g. If he is on the ground, he will try to kick and hit the teacher's legs and feet.
 - h. [The student] requires crisis intervention, during these times of need additional staff support will be needed with [the student] if attempting to elope from his designated area and engaging in times of continuous aggression.
 - i. [The student] needs a designated one to one support staff to be with him throughout his entire day.
 - j. He requires frequent, consistent reinforcement...
 - k. He needs prompting to remain on task, participate, respond, and complete given activities/assignments.
 - l. He needs redirection back to task and to remain in his area.
 - m. He requires continuous monitoring and redirection of inappropriate behavior in the bathroom.
 - n. When eating he is in need of support to use utensils and reminders/redirection to only eat his food as he will try to take food that is not his.
 - o. Staff need to supervise transitions within the classroom as well as outside.
 - p. From 3/16/23-4/19/23 [the student] has shown an increase in his behaviors.
 - q. He is showing on average 5 aggressive behaviors a day and is eloping an average of 2 times an hour.
 - r. [The student] has shown a decrease in the amount of work he is completing in class. His interests have changed, and he has shown a decrease in the amount of food he eats at lunch.
 - s. When [the student] gets out of his area, he is usually blocked until he is pushing staff back, he likes to elope out to the hallway, outside, to the cafeteria, and does elope to the bathroom on occasion."
4. On May 25, 2023, the IEP team met again to review and revise the IEP and to discuss parent concerns related to the proposed placement. The prior written notice generated following the meeting states, "Initially, [the student's father] disagreed with the recommended placement. After [a discussion] regarding the program at [REDACTED] he shared that he would be willing to try. [The student's father] called Mom during the team. She is in disagreement with the proposed placement. The team shared that parents may contact the Law Office regarding the disagreement." The prior written notice further states that the team would like the parents to observe instruction at [REDACTED] "The team feels it would be beneficial for the family to observe during instruction to get a better idea of what the students are doing academically."

5. During the IEP team meeting, the IEP team noted that: "Since February, [the student] has had bowel movements on the floor of the restroom 10 times. When [the student] needs to use the bathroom, he removes all of his clothing. [The student] requires close proximity in the restroom in order to appropriately utilize the toilet. When he has a bowel movement, staff typically need to shut down the bathroom in the main hallway so that no other students are able to access it. [The student] has disrobed, sat/kneeled on the floor, and refused to leave the bathroom for periods of up to one and a half hours...When [the student] elopes out of the room, he often requires substantial staff support in order to maintain his safety, [and] the safety of others, and to block areas that are not available to him such as the cafeteria or doors leading outside. When this occurs, staff typically need to close off the hallway so that no other students can utilize it and reroute the students to alternate hallways...[The student] requires crisis intervention, during these times of need additional staff support will be needed when [the student] is attempting to elope from his designated area and engaging in times of continuous aggression...[the student] needs a designated one to one support staff to be with him throughout his entire day."
6. The IEP team again concluded that the student's current placement could not support the student's needs. In voicing her disagreement, the parent stated that the proposed placement would not allow the student to develop skills and that the academic supports the student requires were not available to him at the proposed placement. In response, the school-based staff noted "that there are students of a variety of ability levels at [REDACTED]. They have students who are able to read and write, and students go to work at a job site. She shared that when [the student's father] observed, he expressed concern with students in wheelchairs. During the observation, students were not engaged in academics as it took place while the students were eating breakfast. She asked [the student's father] to give [the student] a chance at [REDACTED]. Staff shared that [the student's] increase in maladaptive behaviors and safety issues indicate that he needs more support than [REDACTED] has available." The team further shared that [REDACTED] uses the same curriculum as the student's home school but includes additional behavioral supports not available at his home school including staff who have specialized training to support students with significant behavioral needs and physical space that would allow the student to be safe when outside.
7. The student's IEP developed on May 25, 2023, requires that he be provided services "outside of the general education setting that allows his instruction to be delivered with low student to teacher ratio, a focus on functional and academic skills, communication, social skills that are embedded in instruction with opportunities for communication that is not available at his home school. [The student's] communication, academic delays, and significant modifications to the general education program are not provided in [the student's] home school. An appropriate classroom placement in a different school is needed in order to accommodate [the student's] needs."

CONCLUSION:

Each public agency must ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR

§300.114). Each public agency must also ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services (34 CFR § 300.115).

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Additionally, the child's placement must be determined at least annually; is based on the child's IEP; and is as close as possible to the child's home. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs, and a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum (34 CFR § 300.116).

In this case, the staff at the student's school made the determination that the student required specialized supports and services in a more restrictive placement that were not available at the student's current placement. Based on the Finding of Facts #1 to #7, MSDE finds the BCPS did ensure that proper procedures were followed when determining the student's educational placement for the 2023-2024 school year, in accordance with 34 CFR §§300.114 -.116. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #2:

IEP MEETING INVITATION

FINDINGS OF FACTS:

8. The Parent Notification of the IEP Team Meeting was sent to the parents on January 18, 2023, for the IEP team meeting scheduled for February 1, 2023.
9. The notification lists an administrator, special educator, general educator, student, and both parents as participants who were expected to attend.
10. There is no documentation that anyone other than the parties listed on the invitation attended the meeting.
11. The information/documents listed to be discussed at the meeting were the draft IEP, Functional Behavior Assessment, and Behavior Intervention Plan.
12. The prior written notice for this meeting does not reflect that any other information than what was listed on the meeting invitation was discussed.

CONCLUSION:

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 (1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) scheduling the meeting at a mutually agreed on time and place. The notice required must indicate the purpose, time, and location of the meeting and who will be in attendance; and inform the parents of the participation of other

individuals on the IEP Team who have knowledge or special expertise about the child. (34 CFR §300.322) (COMAR 13A.05.01.07D).

Based on the Finding of Facts #8 to #12, MSDE finds that the BCPS did provide a written invitation to the IEP team meeting held on February 1, 2023, that contained information about the purpose of the meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #3:

PROGRESS REPORTS

13. The student's IEP dated November 9, 2022, reflects that the student had annual IEP goals in the areas of communication, reading, mathematics, behavior, manding, and adapted physical education.
14. Progress reports on the student's goals were provided to the complainant on November 4, 2022.
15. On December 20, 2022, the IEP team met to conduct an annual review of the student's IEP. The prior written notice for the December 20, 2022, meeting states, "The team reviewed teacher reports. Comments at the time of the report were as follows: Adapted PE: [The student] is provided with modified equipment and activities. He needs constant reminders to get on task. It is challenging to get [the student] to complete the activities in class. Health: [The student] is a pleasure to have. He always enters the room loud and proud! He more recently has been completing his assignments especially with help from his adult support. They make quite the team! Art: [The student] has been doing better at coming to art and staying in his assigned location. He doesn't often complete the art projects with the class but is starting to follow directions better and will complete other assigned tasks during class. Music: [The student] struggles a lot in music. His struggles with following directions make it difficult for him to complete movement/listening tasks required to do activities in music. Any interventions used are meant to keep [the student] from walking around the room and touching items and people. Progress toward previous goals was reviewed. [The student] has achieved his goals in communication, reading, behavior, manding, and adapted PE. He has not yet achieved goals in the areas of reading (sequencing), and math." The team removed "manding" as a goal for the student in the revised IEP.
16. The December 20, 2022, IEP provides the following with regard to the student's updated present level of academic achievement and functional performance:
 - a. **Communication:** "[The student] has met his goal for the 2021-2022 IEP: He will improve his expressive language skills by using multiple means of communication (i.e., signs, gestures, voice output device, pictures etc.) to greet, request, and protest, given faded visual and verbal cues and adult support in 2 out of 5 targeted trials, [the student] will improve his receptive language skills by identifying familiar people, actions, or objects/pictures by pointing/touching, given gestural/verbal cues with 40% accuracy. He uses gestures to protest in 2 of 5 trials. He can identify objects by pointing with a choice of two with 60% accuracy. [The student's] teacher, Ms. [REDACTED] describes his oral language as having a significant affect on his educational performance in the classroom. He will verbalize a single word occasionally when asked a question but is mostly a non-verbal communicator. He does have an iPad to assist with communication but needs maximum 1:1 support to initiate using the device consistently."

- b. **Reading:** "12/12/2022: [The student] has been working on identifying high frequency words from a field of three, the last informal assessment was given on 12/5/22 when [the student] scored a 22/40 words correctly (55%). [The student's] scores from identifying 40 frequency words from a field of 3 are inconsistent and he does not always choose the same word correctly. He is scoring on average a 67% accuracy rate in 2 out of 3 targeted trials. [The student] was recently given 15 high frequency words to identify in groups of 3, these words are go, more, my, hi, all done, want, eat, drink, open, play, up, help, stop, turn, down. [The student] was able to identify 9 out of 15 words correctly (60% accuracy) on 12/12/22. [The student] was given the capital letters of the alphabet in a field of three, he was able to identify 16 of the 26 letters of the alphabet. In class we are reading the novel Holes, and we are reading from the unique learning systems in science. Out of three targeted trials of answering WH questions, the student scored a 6/8, 4/6, and 3/7. He was specifically working on what, who and where questions from the text. [The student] has been reading the entire text, then asked the questions, and re-read that page if he needs supports. When working on a WH web from a unique learning systems article, [the student] was able to complete 3 of the sections with no prompts, while he needed errorless learning on the why, and 2 verbal and 2 gestural prompts to complete the what portion. While working on sequencing text, [the student] reads the entire text, then he reads just the page that he is going to sequence (if it works out that way), he is given 4 events from the story and a distractor. [The student] most recently was 12/12/12 when he sequenced 1/3, 2/3, 3/3 (or he sequenced 1 out of 3 short stories correctly). [The student] has been inconsistent with his data tracking over the beginning of this year due to significant interfering behaviors."
- c. **Mathematics:** "12/12/2022: [The student] continues to show the same inconsistencies in math class, as he has in reading and across his day. On 12/5/22, [the student] was asked to identify 8 colors, he was able to identify 7 of those 8 colors missing the color purple. He was able to identify 3/6 shapes independently, and 6/6 shapes with 2 verbal prompts. When given 3 numbers (between 1 and 10) [the student] was able to identify 7/10 numbers (missing 9, 1, 5). [The student] was given 11, 12, 13 and was unable to identify any of those numbers."
- d. **Behavioral:** "Current 12/12/2022: After a medication change on November 3, [the student] has had improvements in his behavior. After reviewing the ABC data, it was determined that the function of [the student's]s elopement behavior is attention, and aggression is attention. The elopement behavior is defined as [the student] leaving his area by more than 3 feet without permission. [The student] is often eloping through the classroom to the vent, to play with the doorknob to see another student. His aggression is defined by hitting, biting, kicking, grabbing, pushing students and/or staff. [The student] typically hits the staff hard on the back and arms. If he is on the ground, he will try to kick and hit the teacher's legs and feet. [The student] often bites his own hand too when he is feeling upset, which can sometimes be a warning sign that [the student] is upset. Since November 3, we have seen a tremendous decrease in behaviors. For example, [the student] is going days without hitting/pushing when he was having up to 27 hits in a 40 minute period before. There was not enough data to report on class disruption; however, when [the student] is eloping or being aggressive it is disruptive to his class, causing other students to get upset, and takes the teachers attention away from teaching. From the frequency data, it has been reported that [the student] is being aggressive 2.89 times an hour, he is

disrupting class .03 times an hour, he is out of his area 20% of the day and is eloping .43 times an hour.”

- e. **Adapted PE:** “He required directed adult support to follow directions and participate in PE activities.”

17. Due to the development of all new goals in the areas of communication, reading, behavior, and adapted PE in the December 20, 2022, IEP, the team was unable to obtain data on those goals for the 2nd quarter and this information was provided to the parent on January 17, 2023.

18. Progress reports on the student’s goals were provided to the parent on March 24, 2023.

CONCLUSION:

In this case, the complainant alleges that she did not receive a progress report for the second quarter of the 2022-2023 school year. However, the BCPS did ensure that the parents received a report indicating that progress on the newly created goals was not measurable at the end of the second quarter. Furthermore, the parent was provided additional information regarding progress on the prior goals during the IEP team meeting convened shortly before the end of the second quarter of the 2022-2023 school year.

Based on the Finding of Facts #13 to #18, MSDE finds that the BCPS did ensure that the complainant was provided with a report of the student’s progress toward achieving the annual IEP goals for the second quarter of the 2022-2023 school year, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #4:

PRIOR WRITTEN NOTICE

19. The prior written notice from the February 1, 2023, meeting, dated on the same date states, “The PWN was sent home with [the complainant] on 2/1/2023.”

20. It is documented that the complainant attended the IEP team meeting on February 1, 2023.

21. The prior written notice for the February 1, 2023, IEP, provides a written explanation of the purpose of the notice, a description of the action(s) proposed or refused by the school system, an explanation of why the school system proposed or refused to take this action, a description of any options the school district considered prior to the proposal, and other factors relevant to the action(s) proposed.

CONCLUSION:

Prior written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child (34 CFR § 300.503). The notice must include a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a statement that the parents of a child with a disability have protection under the procedural safeguards and, if this 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 the law; a description of other options that the IEP team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal.

Based on the Finding of Facts #19 to #21, MSDE finds that the BCPS did provide the student's parent with proper written notice of the IEP team's decisions from the IEP team meeting held on February 1, 2023, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #5:

LANGUAGE CONSIDERATIONS

22. The prior written notice dated November 9, 2022, indicates the student's mother participated in the November 9, 2022, IEP meeting. There is no documentation that the parent requested or was provided with an interpreter before or during this meeting.
23. The prior written notice dated December 20, 2022, indicates that the student's parents did not attend the meeting, but provided permission to proceed.
24. The prior written notice dated February 1, 2023, indicates that the student's mother participated in the February 1, 2023, IEP meeting. There is no documentation that the parent requested or was provided with an interpreter during this meeting.
25. The prior written notice dated May 4, 2023, indicates that the student's father participated in the May 4, 2023, IEP meeting. There is no documentation that the parent requested or was provided with an interpreter at this meeting.
26. The prior written notice dated May 25, 2023, indicates that the student's father attended the May 25, 2023, IEP meeting.
27. The prior written notice for the May 25, 2023, IEP team meeting states "[The student's father] called mom at 9:29. [The student's father] asked her to speak in English, but she did not. [The student's father] interpreted for her... [The student's father] shared that he understands that [REDACTED] would be a good option for [the student] but his wife does not currently agree with this placement. He shared that he will have to convince [the complainant]."
28. The prior written notice from this meeting also states, "On 5/19, the IEP chair asked the parent at pick-up if an interpreter was needed for the team. Parent declined an interpreter."
29. There is no documentation that either parent has previously expressed concerns regarding language barriers with regard to their participation in the IEP development and education decisions made for their son.

CONCLUSION:

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. The public agency must also take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English (34 CFR § 300.322).

Based on the Finding of Facts #22 to #29, MSDE finds that the BCPS did not consider possible language barriers to ensure that the student's parent understood the proceedings and outcome of the February 1, 2023, IEP team meeting in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07. However, due to previous interactions with the parents, it was not a consideration that the team would have seen the need to make. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #6: PROVISION OF DOCUMENTS 5 DAYS PRIOR TO THE IEP MEETING

30. The notice of documents provided to the student's parents in anticipation of the May 25, 2023, IEP team meeting dated May 18, 2023, states, "...the following information/documents are attached and may be discussed at the meeting: Teacher Reports and Draft IEP.

31. The prior written notice from this meeting, dated May 25, 2023, states "All documents reviewed at the IEP meeting were sent home in [the student's] backpack at least 5 days in advance of the meeting. The parent was given a copy of the Parental Rights/Maryland Procedural Safeguard Notice as there was a disagreement."

CONCLUSION:

Consistent with, COMAR 13A.05.01.03B appropriate school personnel shall provide the parent of a student with a disability an accessible copy of each assessment, report, data chart, draft Individualized Education Program (IEP), or other document the IEP team or other multidisciplinary team plans to discuss at that meeting, at least 5 business days before the scheduled meeting.

Based on the Finding of Facts #30 and #31, MSDE finds that the BCPS has ensured that accessible copies of each assessment, report, data chart, draft IEP, or other documents the IEP team plans to discuss at the IEP team meeting on May 25, 2023, have been provided to the parents at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.03B. Therefore, this office finds that a violation did not occur with respect to the allegation.

TIMELINES:

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

c: Darryl L. Williams
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