



October 27, 2023



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

RE: [REDACTED]
Reference: #24- 028

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 August 29, 2023, MSDE received a complaint from [REDACTED] and [REDACTED] hereafter “the complainants,” on behalf of 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 developed an Individualized Education Program (IEP) that addressed the student’s identified behavioral needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.324.
2. The BCPS has not ensured that the student’s IEP contains appropriate measurable goals and a statement of the student’s present levels of academic achievement and functional performance since the start of the 2022-2023 school year, in accordance with 34 CFR §300.320.

3. The BCPS has not ensured that the IEP team addressed parental concerns about the student's written language needs, failing grades, and need for a more restrictive placement, in accordance with 34 CFR §300.324.
4. The BCPS did not ensure that the parent was provided with accessible copies of each document the IEP team planned to discuss at the May 30, 2023, IEP team meeting at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07 and 34 CFR §300.322.
5. The BCPS has not ensured that the student's IEP was reviewed and revised to address his lack of expected progress toward achieving the IEP goals since the start of the 2022-2023 school year, in accordance with 34 CFR §300.324.
6. The BCPS has not ensured that the student's progress towards achievement of his annual IEP goals was measured as required by the IEP and provided to the student's parents during the 2022-2023 school year, in accordance with 34 CFR §§300.320 and .323.
7. The BCPS did not provide prior written notice of the IEP team's decisions from the IEP team meetings on April 23, 2023, and May 30, 2023, in accordance with 34 CFR §300.503.
8. The BCPS did not obtain parental consent prior to conducting an evaluation of the student since the start of the 2022-2023 school year, in accordance with 34 CFR §300.302.

BACKGROUND:

The student is fourteen years old and is identified as a student with an Other Health Impairment under the IDEA. He attends ██████████ School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. On May 25, 2022, the IEP team met to review and revise, as appropriate, the student's IEP. The Prior Written Notice (PWN) generated after this IEP team meeting reflects that based on "previous psychological assessments, the student displays average to superior range cognitive skills, with less developed skills in areas of executive functioning skills and was diagnosed with SLD in reading, written expression, and math, autism spectrum disorder, level 1 (mild), and ADHD".
2. The student's IEP, developed on May 25, 2022, reflects that social/emotional/behavioral, math problem-solving, reading, and communication are areas affected by the student's disability. The IEP contains Present Levels of Academic Achievement and Functional Performance (PLAAFP) for:
 - a. Social/emotional/behavioral: below grade level. It further reflects that the student does well when there are teacher check-ins and a task to follow. The student struggles with off-task behavior and is distracted by his cell phone and computer.
 - b. Math Problem Solving: on a fifth-grade level without a calculator. It further reflects that on the Brigance (informal assessment), he was on the seventh-grade level with a calculator. On the Woodcock-Johnson IV (formal assessment), he obtained a standard score of 78 on the applied problems subtest, 77 on the calculation subtest, and 75 on math facts fluency subtest.

weekly as-needed strategies to initiate and sustain attention, monthly home-school communication system, and daily monitoring use of an agenda book and/or progress reports.

5. The student's IEP progress reports dated November 7, 2022, indicated that the student was making progress on his IEP goals for math problem solving and reading comprehension, but were not reported in the manner required by the IEP:
 - i. Math Problem Solving: "The student earned a 10 out of 10 on his 1 step equation assignment in Algebra 1. The student earned a 50% on his unit test on one variable equations in algebra 1."
 - ii. Reading Comprehension: "The student earned a 10 out of 10 on his Symbolism & Theme in English 9. The student earned 5 out of 10 on identifying poem theme."
6. There is email documentation dated November 21, 2022, and November 23, 2022, reflecting that the BCPS staff spoke with the student's parent regarding the student's grades, performance in school, and coaching classes. The emails further reflect the student's parent expressing concern that "due to the student's autism, he is hesitant to ask for help or at times does not know what he needs help with," and that he has and is failing classes.
7. There is email documentation dated December 14, 2022, from the student's parent to the BCPS staff reflecting her receipt of the "failing grades correspondence." The email also reflects the student's parent's concerns as:
 - a. "The student does have an IEP for specific disabilities in math, reading, and writing. The reading and writing portion affects all subject areas;
 - b. I am concerned as to what specific strategies are being used in the classroom;
 - c. I spoke with the IEP Chairperson on November 21, 2022, regarding my concerns;
 - d. I requested a copy of the first quarter IEP progress report ... as of December 13, 2022, I still do not have a copy of the first quarter IEP progress report;
 - e. Once I do receive a copy of the first quarter IEP progress report, I would like to know what assessments (formal or informal) were completed to determine whether the student is meeting his IEP goals, if the information is not provided on the document."
8. There is email documentation for the student's parent to the BCPS staff reflecting that she received the first quarter IEP progress reports on December 15, 2022.
9. There is email documentation dated January 4, 2023, that a parent meeting was scheduled for January 12, 2023, to address the student's parent's concerns.
10. There is email documentation dated January 13, 2023, from the BCPS staff to the BCPS staff summarizing the parent meeting that was held on January 12, 2023. The email reflects that they discussed the "student's behavior in class and his progress on his classwork (he is currently failing 5 out of 8 classes. Most teachers found that his cell phone is a major distraction and even without it, he is very distractible. He is not completing work. He is, however, comprehending the subject matter in his classes... the BCPS

staff agreed to begin the evaluation process to determine his current eligibility. This will determine what accommodations might be able to be put in place or removed from the current IEP. The parent and advocate would like to put an FBA in place too.”

11. The student’s IEP progress reports dated January 17, 2023, indicate that the student is making progress on his IEP goals for math problem solving and reading comprehension, but were not reported in the manner required by the IEP:
 - i. Math Problem Solving: “The student earned A’s on both his interpreting graphs and rate of change and domain and range assignments in January 2023.”
 - ii. Reading Comprehension: “The student earned a 7/10 on his Greek Gods/ Goddess Review in English 9, November 21, 2022.”
12. On February 2, 2023, the IEP team met with the purpose of “reevaluation planning.” The Prior Written Notice generated after this IEP team meeting reflects that the IEP team proposed conducting a pragmatic language and psychological assessments. It further reflects that the student’s parent had previously met with the school counselor and many of the student’s teachers to discuss academic concerns and the student’s performance in his classes. In addition, the IEP team discussed the student’s transition to the ninth grade, his failing grades, and the impact of his speech. The IEP team members shared the accommodations that the student was utilizing in class, such as preferential seating, that the student’s speech was low or inaudible, the student attending coaching classes, and the distractibility of the student when he has access to his cell phone.
13. There is email documentation dated February 6, 2023, from the student’s parent to the BCPS staff reflecting that she received the document to sign for assessments but was concerned that it did not clarify her “concerns regarding the student’s writing, especially that expression as a whole”. The student’s parent further states that the student has difficulty expressing himself both verbally and in writing. There is a response to this email from the BCPS to the student’s parent dated February 14, 2023, reflecting that the “team ordered only a pragmatic language and psychological assessment. The team did not order a writing assessment. Another meeting will be held to review the ordered assessments. The team did not require any further assessments of writing or academic areas as academic testing was just completed”.
14. There is documentation dated February 28, 2023, reflecting that the student’s parent gave consent to complete assessments for pragmatic language/ communication, intellectual/cognitive functioning, and emotional/social/behavioral development.
15. The student’s IEP progress reports completed March 24, 2023, for math problem solving and reading comprehension report that the student was making progress on his goals but were not reported in the manner required by the IEP.
 - i. Math Problem Solving: “The student earned a 3/6 on simple interest assignment and 4/6 on Linear vs Exponential functions in March 2023.”
 - ii. Reading Comprehension: “The student earned LS (low score) on both Quiz 3 and 4 in English 9 from February and March 2023.”

16. The student's Psychological Assessment report, completed on April 19, 2023, reflects that the student was referred to the IEP team by his parent due to significant academic concerns (failing grades). His 9th-grade teachers reported concerns regarding his follow-through on work completion and being off-task in the classroom. The report further reflects that the student was administered the WISC-V and was found to have overall cognitive ability in the average range. Results from rating scale data from the student's mother and teachers indicate that the student continues demonstrating significant ADHD inattentive symptoms in the home and classroom setting. His peer relationships and schoolwork were elevated. In addition, the parent ratings on the Autism Spectrum Rating Scale indicate increased Autism symptoms at home. As part of this report, the student completed a self-rating of anxiety. These ratings indicated significant feelings of anxiety at home and in school. The report reflects that the school psychologist recommended a referral for social work services to determine the appropriateness of anxiety-related counseling.
17. On April 23, 2023, the IEP team met with the purpose of reviewing assessments. The PWN generated after this IEP team meeting reflects the IEP team's concerns with the student's slow processing speed and anxiety impacting him academically. The PWN further reflects that the IEP team reviewed the psychological, speech-language, and educational assessments completed in the 2021-2022 school year, the student's current grades, and grades for quarters one, two, and three. In addition, the PWN reflects that the IEP team discussed the student being in outside general education classes for all core subject areas. The IEP team reviewed the assessment scores completed in the spring for the educational assessment. They determined the student did not qualify for "specialized instruction in areas outside of mathematics." The IEP team did, however, agree that the student required twice-monthly social work services focused on addressing his anxiety.
18. There is no documentation that the parent was provided with prior written notice of the IEP team's decisions from the IEP team meeting held on April 23, 2023.
19. On May 30, 2023, the IEP team met with the purpose of conducting an annual review. The PWN generated after this IEP team meeting reflects that IEP goals, supplementary aids, services, and program modifications were updated. The PWN further reflects that the student's grades were reviewed and the Extended School Year (ESY) program that the student would participate in. In addition, the PWN reflects that the student's parent and advocate requested that the student receive outside general education services in the core academic areas. The IEP team discussed that the student did not show indication of need for specialized instruction outside general education in any area other than math, based on formal assessment data which showed the student's math skills in the low/deficit range, but all other assessed areas in the low average or average range. The PWN also reflects that the student's parent and advocate disagreed with the student's placement in the general education setting for English, science and social studies. They expressed that the student should be considered for outside general education instruction for these areas as well based on formal and informal assessment data. The IEP team agreed to document this disagreement in the PWN. The IEP team added a supplementary aid to help address the student's lack of work completion; teachers should prompt the student to turn in his work, whether completed or incomplete, at the end of each class period.
20. The student's IEP, developed on May 30, 2023, reflects the Present Level of Academic Achievement and Functional Performance (PLAAFP) for:
 - a. Social/emotional/behavioral: below grade level. It further reflects that the student does well when there are teacher check-ins and a task to follow. The student struggles with off-task behavior and is distracted by his cell phone and computer.

- b. Math Problem Solving: fourth grade without the use of a calculator. It further reflects that on the Brigance¹ (informal assessment), he was on the fourth-grade level without a calculator on the computation and word problem subtests.
 - c. Reading: on a fifth-grade level. It further reflects that on the Informal Reading Comprehension assessment, the student answered five multiple choice questions based on a 2-3 paragraph story. The student answered 3 out of 5 questions on the fifth-grade story and 2 out of 5 on the sixth-grade story.
 - d. Communication: below grade level. The PLAAFP further reflects that the student demonstrates overall pragmatic and higher level/abstract language skills that are within the average range. Teachers report that the student does not typically demonstrate social interaction or conversational and academic communication skills that are appropriate to the classroom setting. They believe this has some impact on his educational performance.
21. The student's IEP, developed on May 30, 2023, requires that the student be provided with goals in the areas of math problem-solving and reading comprehension.
- a. Math Problem-Solving: "By May 2024, when given real-world word problems, the student will set up and solve with 75% accuracy." This goal is broken down into two objectives.
 - i. When given real world problems, the student will set up equations with 75% accuracy.
 - ii. When given real world problems, the student will solve with 75% accuracy.
 - b. Reading Comprehension: "By May 2024, after reading or listening to a text, the student will identify the main/central idea (e.g., by multiple choice, verbally, or in writing), and explain in 3-5 sentences (e.g., verbally or in writing) how key ideas from the text support the main idea, and two supporting details (75% accuracy)." This goal has two objectives.
 - i. The student will use a graphic organizer to identify the main idea and identify details that will support the main idea and explain in 3-5 sentences (e.g. verbally or in writing how key ideas from the text support the main idea) with 75% accuracy.
 - ii. The student will write a concluding sentence that supports the main idea with 75% accuracy.
22. The student's IEP, developed on May 30, 2023, requires the student to be provided with three weekly one-hour and thirty-minute sessions of special education inside the general education classroom for English, science, and social studies. In addition, the student requires three-hours and forty-five-minutes of special education outside the general education classroom for math each week, and two monthly thirty-minute sessions of social work services outside the general education classroom. The IEP also requires that he be provided with special considerations and accommodations to address his behavioral needs: daily as-needed teacher check-ins, weekly as-needed strategies to initiate and sustain attention, monthly home-school communication system, daily monitoring use of an agenda book and/or progress reports and that teachers should prompt the student to turn in his work, whether completed or incomplete, at the end of each class period.

¹ The complainant alleges that the BCPS should have sought the consent of the parents prior to administering this assessment. There is no documentation that the BCPS sought the consent prior to the administration of it.

23. The BCPS acknowledges that a draft IEP was discussed at the May 30, 2023, IEP team meeting, but that draft was not provided to the parent at least five days prior to the IEP team meeting. The PWN generated after this IEP team meeting reflects that the student's parent and complainant agreed to have the draft IEP projected in order to conduct the review.
24. There is no documentation that the parent was provided with prior written notice of the IEP team's decisions from the IEP team meeting held on May 30, 2023.
25. The student's IEP progress reports completed dated June 7, 2023, for math problem solving and reading comprehension report that progress cannot be reported due to the skills being newly introduced.
26. The BCPS acknowledges that there is no documentation of how the IEP progress reports were provided to the student's parents during quarters two, three, and four of the 2022- 2023 school year.
27. There is email documentation dated August 17, 2023, from the student's parent to the BCPS staff reflecting the parent's concern regarding the student taking English 9 a second time with the same teacher, as he failed all four quarters the year prior. It further reflects the student's parent requesting that the student be "placed in a self-contained ELA class(es). His poor performance in English 9 last year indicates that he is having greater difficulty in the class than what a general education with support can provide."
28. There is email documentation dated August 21, 2023, and August 22, 2023, between the student's parent and the BCPS staff reflecting that the student would have a different teacher as from the previous year for English 9 and could not be placed in an outside general education English class as his IEP did not require one. The emails further reflect that if the student was placed into an outside general education English 9 class, the instructor would be the one that the student had the previous year.

CONCLUSIONS:

Allegation #1: Developed An IEP That Addresses The Student's Identified Behavioral Needs

Based on Findings of Facts #1, #2, #6, #7, #9, #10, #12- #14, #16, #17, #19, #20, and #22, MSDE finds that the BCPS has developed an IEP that addresses the student's identified behavioral needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.324. Therefore, this office does not find a violation occurred with respect to the allegation #1.

Allegation #2: IEP That Contains Appropriate Measurable Goals And A Statement Of The Student's Present Levels Of Academic Achievement And Functional Performance

Based on Findings of Facts #1-#3, and #19-#21, MSDE finds that the BCPS has ensured that the student's IEP contains appropriate measurable goals and a statement of the student's present levels of academic achievement and functional performance since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.320. Therefore, this office does not find a violation occurred with respect to allegation #2.

Allegation #3: Addressing the Parent's Concerns

Based on Findings of Facts #5- #7 #9, #10, #12, #13, #17, #19, #27, and #28, MSDE finds that the BCPS has ensured that the IEP team addressed parental concerns about the student's written language needs, failing

grades, and need for a more restrictive placement, in accordance with 34 CFR §300.324. Therefore, this office does not find a violation occurred with respect to allegation #3.

Allegation #4: PROVISION OF DOCUMENTS PRIOR TO THE MAY 30, 2023, IEP TEAM MEETING

Based on Findings of Facts #19- #22, MSDE finds that the BCPS did not ensure that the parent was provided with accessible copies of each document the IEP team planned to discuss at the May 30, 2023, IEP team meeting at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07 and 34 CFR §300.322. Therefore, this office finds a violation occurred with respect to allegation #4.

Allegation #5: ADDRESSING THE LACK OF EXPECTED PROGRESS

Based on Findings of Facts #5, #11, and #15, MSDE finds that the BCPS was not required to convene an IEP team meeting to address the lack of expected progress towards achievement of IEP goals, since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.324. Therefore, this office does not find a violation occurred with respect to allegation #5. Notwithstanding this finding, the MSDE notes that, as found below in allegation #6, the BCPS did not ensure that progress reports were completed in the manner required by the IEP and were not consistently provided to the parent.

Allegation #6: PROVISION OF PROGRESS REPORTS

Based on Findings of Facts #3, #5, #7, #8, #11, #15, #21, #25 and #26, MSDE finds that the BCPS has not ensured that the student's progress towards achievement of his annual IEP goals were provided to the parents, as required, and measured as required by the IEP, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds a violation occurred with respect to allegation #6.

Allegation #7: PROVISION OF PRIOR WRITTEN NOTICE OF THE IEP TEAM'S DECISIONS ON APRIL 23, 2023, AND MAY 30, 2023

Based on Findings of Facts #18 and #24, MSDE finds that the BCPS did not provide prior written notice of the IEP team's decisions from the IEP team meetings on April 23, 2023, and May 30, 2023, in accordance with 34 CFR §300.503. Therefore, this office finds a violation occurred with respect to allegation #7.

Allegation #8: CONSENT TO CONDUCT AN EVALUATION OF THE STUDENT

The public agency must obtain written parental consent before conducting assessment procedures (13A.05.01.13(A)(1)). A public agency is not required to obtain parental consent before reviewing existing data, before administering a test or other procedure that is administered to all students, unless consent is required of the parents of all students, or for conducting assessment procedures as part of a reevaluation if the public agency can demonstrate that reasonable measures have been taken to obtain consent, and the parent has failed to respond (COMAR 13A.05.01.13A).

Based on Finding of Fact #14, MSDE finds that the BCPS did obtain parental consent prior to conducting an evaluation of the student in February 2023. However, based on Finding of Fact #20, MSDE finds that the BCPS did not obtain consent of the parent in May 2023 prior to the administration of the Brigance assessment to determine the student's educational needs at that time, in accordance with 34 CFR §§300.300 and .302. Therefore, this office finds that a violation occurred with respect to allegation #8.

Notwithstanding this violation, the MSDE further finds that there was no documentation that the administration of the assessment had a negative educational impact on the student or the parent's ability to participate in the IEP team meeting, and that therefore, no student-specific corrective action is necessary.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.² This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.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 November 17, 2023, that the student's parent has been provided with the documents that the IEP team discussed at the May 30, 2023, IEP team meeting, that the student's parent has been provided with the completed IEP progress reports for quarters two, three, and four of the 2022- 2023 school year, and the prior written notices from the IEP team meetings held on April 23, 2023, and May 30, 2023.

In addition, MSDE requires that the IEP team has convened and determined whether the violations related to the lack of the provision of documents planned to discuss at the May 30, 2023, IEP team meeting, lack of the IEP goals being measured as required by the IEP, lack of the provision of the completed IEP progress reports for quarters two, three, and four of the 2022- 2023 school year, and provision of proper written notice of the IEP team's decisions for the April 23, 2023, and May 30, 2023, IEP team meetings had a negative impact on the student's ability to benefit from the education program or the parent's ability to participate in the IEP team meetings convened for the student. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedies 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.

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, the 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.

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.

School Based

MSDE requires the BCPS to provide documentation by December 1, 2023, of the steps taken to ensure that the violations regarding the lack of the provision of documents planned to discuss at the May 30, 2023, IEP team meeting, lack of the IEP goals being measured as required by the IEP, lack of the provision of the completed IEP progress reports for quarters two, three, and four of the 2022- 2023 school year, lack of consent prior to administering an assessment for the student prior to May 30, 2023, and provision of proper written notice of the IEP team’s decisions for the April 23, 2023, and May 30, 2023, IEP team meetings do not recur at [REDACTED] School.

Those steps must include staff development, in ensuring that IEPs contain appropriate measurable goals and a statement of the student’s present levels of academic achievement and functional performance and that IEP goals are being measured as required by the IEP. A monitoring report of 15 randomly selected students receiving quarterly progress reports at [REDACTED] School reflecting the completed quarterly progress report for each IEP goal must be submitted to MSDE by November 15, 2023, January 29, 2024, April 16, 2024, and June 14, 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: sd

- c: Myriam Rogers Alison Barmat
Allison Myers Gerald Loiacono
Conya Bailey Diane Eisenstadt
Charlene Harris Sarah Denney
Jason Miller Paige Bradford
Norma Villanueva Nicol Elliott
[REDACTED]