

May 3, 2024

Revised May 10, 2024



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

RE: [REDACTED]  
Reference: #24-102

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and 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 December 13, 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.

1. The BCPS has not ensured that the student's need for one-to-one support was considered since the beginning of the 2023-2024 school year, in accordance with 34 CFR§300.324.
2. The BCPS did not follow proper procedures when responding to a request to inspect and review the student's educational record since the beginning of the 2023-2024 school year, in accordance with 34 CFR §300.613.
3. The BCPS did not ensure that the IEP team considered the parent information and concerns for the student's safety since the beginning of the 2023-2024 school year, in accordance with 34 CFR §300.324.
4. The BCPS did not ensure that the student was provided with special education instruction and related services as required during the time he was receiving Home and Hospital Teaching (HHT) services since August 2023, in accordance with 34 CFR §§300.101, .323, and COMAR 13A.03.05.03.

5. The BCPS has not ensured that the student was provided with the school-to-home communication supplementary aids and services required by the IEP since August 2023, in accordance with 34 CFR §§300.101 and 323.

## **BACKGROUND**

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

### **ALLEGATIONS #1 and #5**

### **ADDRESS NEED FOR ONE-TO-ONE SUPPORT and the PROVISION OF SCHOOL-to-HOME COMMUNICATION**

## **FINDINGS OF FACT**

### **May 2023 IEP**

1. There is no documentation to support the complainant's allegation that a request was made for the IEP team to address the student's need for a one-to-one since the beginning of the 2023-2024 school year<sup>1</sup>.
2. The IEP in effect in August 2023 was developed on May 2, 2023. The IEP reflects the following areas affected by the student's disability: communication; fine motor; social/emotional/behavioral; reading comprehension; math calculation; and written language expression. The IEP requires special education classroom instruction inside the general education setting for two hours per week and outside the general education setting for four hours and twenty minutes per day. The IEP reflects that progress reports towards achieving annual IEP goals will be issued quarterly.

The IEP requires the following supplementary aids, services, program modifications, and supports daily: altered/modified assignments; use of manipulatives; advance preparation of schedule changes; use of positive/concrete reinforcers; social/skills training; preferential seating; and adult support.

There is no documentation that the IEP requires school-to-home communication as a supplementary aid and service.

The IEP reflects the parent provided written consent for the student to participate in an alternate assessment based on alternate academic achievement standards, on May 20, 2021. The IEP reflects "the IEP team determined that the student will be instructed using alternate standards." The IEP also reflects the student is pursuing a Maryland High School Diploma.

There is no documentation that the student's present levels of academic achievement and functional performance (PLAAFP) includes a statement of how the child's disability affects the child's involvement and progress in the general education curriculum.

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<sup>1</sup> There is documentation of the complainants' interest in securing a private aide to support the student during the school day in a prior school year. However, the request was made outside of the one-year time State complaint timeframe.

3. There is no documentation that progress was reported towards the achievement of the Fine Motor, Communication, Math Calculation, Reading Comprehension, Social and Emotional Behavior, and Adapted Physical Education goals during the first quarter of the 2023-2024 school year.
4. There is no documentation that progress was reported towards the achievement of the Adapted Physical Education goal on January 23, 2024.
5. There is documentation that the progress reported on January 23, 2024, towards the achievement of the Math Calculation and Reading Comprehension goals was not measured as required by the IEP.
6. On February 29, 2024, the IEP team amended the student's IEP. The amended IEP states "[the student] should bring his Augmentative Alternative Communication (AAC) device with him in all settings throughout the school day" and added daily home-school communication as a supplementary aid. The home school communication is to document the following: provision of related services, reading and math center content topic and how the student attended the class, toileting, behavior, lunch, comments of the day, reminders, and which classroom staff shared any key information. The IEP does not reflect the placement options considered by the IEP team and does not identify the student's Least Restrictive Environment (LRE).

#### **DISCUSSIONS AND CONCLUSIONS:**

##### **One to One support**

Based on the Finding of Fact #1, BCPS was not required to ensure that the student's need for one-to-one support was considered, since the beginning of the 2023-2024 school year, in accordance with 34 CFR§300.324. Therefore, this office finds that a violation did not occur concerning the allegation.

##### **Provision of school-to-home communication**

Based on the Findings of Facts #2 and #6, MSDE finds the IEP did not require the school to provide home communication as a supplementary aid and service from August 2023 to February 29, 2024. Therefore, this office finds that a violation did not occur with respect to the allegation.

#### **ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

##### **Present Levels of Academic Achievement and Performance (PLAAFP)**

The public agency, must ensure that the student's IEP includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children) (34 CFR §300.320).

Based on the Finding of Fact #2, MSDE finds that the BCPS has not ensured the student's IEP includes a statement on how the student's disability affects his involvement and progress in the general education curriculum, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred.

### **Participation in Alternate Assessment and Graduation Requirements**

Parents must provide written consent for their child to participate in the Maryland Alternate Assessments and/or instruction aligned with alternate academic achievement standards (AAAS) (Md. Code Ann., Educ. §8-405(f)). The IEP Team must affirm that the parent understands the decision-making process, including that the decision is reviewed annually, and the implications of the decision, namely that if the student continues

with instruction and assessment according to the AAAS, they will be unable to complete the requirements for a Maryland High School Diploma. (MSDE Alternate Education Framework December 2022). In this case, there is no indication that the parent provided the required annual consent on May 2, 2023, when the IEP was developed. The parental consent was dated May 20, 2021.

Based on the Findings of Fact #2, MSDE finds the BCPS did not ensure that the IEP team followed proper procedures when it determined the student will be provided with alternate standards and a Maryland High School Diploma from May 2023, in accordance with Md. Code Ann., Educ. §8-405(g). Therefore, this office finds that a violation occurred.

### **Report of Progress**

Based on the Findings of Fact #2, #3, and #4, MSDE finds the BCPS did not ensure that reports of progress towards achievement of the Fine Motor, Communication, Math Calculations, Reading Comprehension, Social and Emotional Behavior, and Adapted Physical Education IEP goals was developed during the first quarter of the 2023-2024 school year, and Adapted Physical Education IEP goal on January 23, 2024, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred.

### **Accurately Measured Reports of Progress of IEP Goals January 23, 2024**

Based on the Finding of Fact #5, MSDE finds the BCPS did not ensure reports of progress towards achievement of the Reading Comprehension and Math Calculation goals, reported on January 23, 2024, was based on the data collection method required by the IEP in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred.

### **Determination of Least Restrictive Environment (LRE)**

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP Team. The placement decision must be made in conformity with the least restrictive environment (LRE) provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR §300.116 and COMAR 13A.05.01.10(c)(1)).

In determining the LRE, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must include alternative placements listed in the definition of special education under §300.39; and make provision for supplementary services to be provided in conjunction with regular class placement (34 CFR §300.115.)

Based on the Finding of Fact #6, MSDE finds the BCPS did not follow proper procedures when the IEP team considered the placement in which the student would receive special education instruction in since February 29, 2024, in accordance with 34 CFR §§300.114 and .116 and COMAR 13A,05.01.10. Therefore, this office finds that a violation occurred.

**ALLEGATION #2: ACCESS TO STUDENT RECORDS**

**FINDINGS OF FACT**

7. There is documentation that on October 16, 2023, and November 19, 2023, the complainants requested access to a video documenting the student's interaction with staff inside the school building. The verbal request was made on October 16, 2023, and a written request was made on November 19, 2023.
8. There is documentation that on November 20, 2023, BCPS requested access from the Safety and Security Manager for the parents to view video footage.
9. There is no documentation that the complainants have been provided with a response to their request for access to the requested video footage.

**CONCLUSION**

An educational record is a record that is directly related to a student; and maintained by an educational agency or institution or by a party acting for the agency or institution (34 CFR §99.3).

In this case the video footage being requested does not constitute an educational record. The video footage is not maintained by the agency and is not directly related to the student. Therefore, the statutory requirements do not apply; however, best practice and BCPS' procedure requires a response to the parent to inform them that the video they were requesting was no longer available and that the requested video is not an educational record for their child.

Based on the Findings of Fact #7 through #9, MSDE finds that the BCPS did follow proper procedures when responding to a request to inspect and review the student's educational record since the beginning of the 2023-2024 school year, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation did not occur concerning this allegation.

**ALLEGATION #3: ADDRESSING PARENT CONCERNS**

**FINDINGS OF FACT**

10. On October 3, 2023, the IEP team convened to review and revise the IEP. The Prior Written Notice (PWN), generated following the meeting reflects the complainants' raised concerns regarding the implementation of the daily communication to include additional details regarding meals (did student finish, what did he eat), failure to respond to parent emails, the potty-training schedule, inconsistent reporting and documentation of behaviors during drop off, and the student's inclusion schedule in the general education setting. The BCPS team addressed the complainant's concerns

regarding the potty-training schedule, the student's meals and his lunch selections, and the status of the student's inclusion schedule. The BCPS team agreed to increase communication with staff to ensure "they can be on the same page on the notes".

11. On October 19, 2023, BCPS staff emailed the complainants in response to the complainants' October 18, 2023, email. The BCPS staff shared that "instead of walking, the student abruptly took off, and ran down the hallway, past the bathroom. She was able to catch up to him and walk him to the bathroom."
12. On October 25, 2023, the complainants emailed the BCPS to request "an IEP team meeting be scheduled and have the AA's<sup>2</sup> in attendance along with [special educator]. Agenda: progress notes, educational assignments, AA- paraprofessional support, and safety concerns."
13. On October 31, 2023, the complainant emailed the BCPS staff concerns regarding the implementation of the communication log, adding a bathroom break to the IEP, adding staff signatures and "5ws" to the communication log, adding to the IEP that the student should carry his AAC everywhere he goes, and requested the participation of the paraprofessional and the general education teacher at the IEP team meeting.
14. On November 17, 2023, the IEP team convened to review and revise the student's IEP. The PWN generated following the IEP team meeting reflects that the IEP team proposed and agreed to revise the student's supplementary aids to include the home communication system, and "the AAC device to be with [the student] at all parts of the day."
15. There is no documentation that the student's IEP was amended on November 17, 2023, to include the home communication system and the use of the AAC device throughout the school day.

### **DISCUSSION AND CONCLUSIONS:**

Based upon the Findings of Fact #10 through #14, MSDE finds the BCPS has ensured that the IEP team considered the parent information and concerns for the student's safety since the beginning of the 2023-2024 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation.

### **ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

#### **IEP Reflects IEP Team Decisions**

Based on Findings of Fact #13 and #15 MSDE finds that the BCPS did not ensure that the IEP accurately reflects the IEP team's November 17, 2023, decision to include the home communication system and the use of the AAC device throughout the school day as a supplementary aid to the IEP, on November 17, 2023, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds a violation occurred.

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<sup>2</sup> The complainants refer to classroom assistants as AA.

**ALLEGATION #4:**

**PROVISION OF HOME HOSPITAL TEACHING SINCE AUGUST 2023**

**FINDINGS OF FACT**

16. There is no documentation that the student required Home and Hospital Teaching (HHT) services since August 2023, however the IEP team determined whether compensatory services were warranted during an IEP team meeting convened on February 29, 2024, based on HHT services received during the 2022 school year.
17. The PWN generated following the February 29, 2024, IEP team meeting reflects the IEP team proposed and agreed to the assessment request in preparation for the triennial evaluation, provide an electronic and hard copy of the communication log to the complainants and determined "no compensatory services were needed to address Home and Hospital services based on the [Office for Civil Rights] complaint and data." There was no data documented that provided a basis for the decision regarding compensatory services.

**DISCUSSION AND CONCLUSIONS:**

Based upon the Finding of Fact #16, MSDE finds the student did not require Home and Hospital Teaching services since August 2023, in accordance with §§300.101, .323, and COMAR 13A.03.05.03. Therefore, this office finds that a violation did not occur concerning the allegation.

**ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

**PROVISION OF PRIOR WRITTEN NOTICE OF THE IEP TEAM DECISIONS REGARDING COMPENSATORY SERVICES**

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision, a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, 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 (34 CFR §300.503).

Based on the Findings of Fact #17, MSDE finds the BCPS did not provide prior written notice of the IEP team's decision to reject awarding compensatory services on February 29, 2024, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred.

**CORRECTIVE ACTIONS/TIMELINES:**

The IDEA requires that State complaint procedures include 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.<sup>[3]</sup> 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 Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>[4]</sup> Ms. Barmat can be reached at (410) 767-7770 or by email at [alison.barmat@maryland.gov](mailto:alison.barmat@maryland.gov).

MSDE requires the BCPS to provide documentation by July 1, 2024, that the school system has:

- a. Provided the student with instruction in the general education setting, and reports of progress towards the achievement of all IEP goals measured using the data as required by the IEP;
- b. Convened an IEP team meeting to revise the PLAAFP to include a statement of how the child's disability affects the child's involvement and progress in the general education curriculum; review and revise the LRE to reflect the IEP team's placement considerations and identify the student's LRE; discuss the need for compensatory services for HHT and document data used to make the IEP team decisions; and add home communication as a supplementary aid to the student's IEP;
- c. Determined if the student is eligible to participate in alternate state assessments and alternate academic achievement standards, and if so, obtain appropriate parental consent; and
- d. Determined the amount and nature of compensatory services, or other remedy, to address the lack of provision of specialized instruction in the general education setting; lack of provision of appropriate reports of progress, the development of an appropriate PLAAFP, provision of a proper PWN, and the LRE determination. The IEP team must develop a plan for the provision of those services within one year of the date of this Letter of Findings.

BCPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain 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 2, 2024, that it has completed the following:

- a. Provided professional development to all staff members on developing PLAAFP statements; determination of compensatory services, determination of LRE, participation in state assessments

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<sup>3</sup>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.

<sup>4</sup>MSDE will notify the public Agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.



and alternate academic achievement standards, developing proper PWNs, timely and accurate reporting of progress.

- b. Provided MSDE with a randomly selected monitoring sample of 10 students ensuring compliance with the following requirements: completion of an accurate impact statement, quarterly progress reporting aligned with the requirements of the goal, documentation that progress reports have been sent to families within 5 days following an IEP team meeting, consent for participation in alternate state assessments and/or alternate academic achievement standards, as appropriate. Full compliance is required. If the monitoring sample does not meet 100% compliance, BCPS will submit a second randomly selected sample from [REDACTED] on or before November 15, 2024, with the same requirements. If 100% compliance is not demonstrated on the second sample, BCPS will confer with MSDE for further guidance.

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,

Antoine Hickman Ed.D.  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services

ALH/ra

- c. Dr. Myriam Rogers, Superintendent, BCPS  
Conya Bailey, Director of Special Education, BCPS  
Dr. Jason Miller, Compliance Coordinator, BCPS  
Charlene Harris, Supervisor of Compliance, BCPS  
Norma Villanueva, Compliance Specialist, BCPS  
[REDACTED], Principal, BCPS  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Dr. Paige Bradford, Chief, Specialized Instruction, MSDE  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Tracy Givens, Section Chief Dispute Resolution, MSDE  
Rabiatu Akinlolu, Complaint Investigator, MSDE