

March 5, 2024

[REDACTED]

Ms. Denise Mabry, Director  
Special Education Compliance and Due Process  
Baltimore City Public Schools  
200 E. North Avenue, Room 204 B  
Baltimore, Maryland 21202

RE: [REDACTED]  
Reference: #24-121

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 January 5, 2024, MSDE received a complaint from [REDACTED], “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City Public School (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 the student’s placement determination for the 2023- 2024 school year was based on the student’s Individualized Education Program (IEP) and was made by the IEP team, in accordance with 34 CFR §300.116.
2. The BCPS did not ensure that the IEP team considered the parent information and behavior concerns of the student at the IEP meeting held in October 2023, in accordance with 34 CFR §300.324.
3. The BCPS did not follow proper procedures when responding to a request to amend the student’s education record since October 2023, in accordance with 34 CFR §§300.618 - .621.
4. The BCPS has not ensured that the student has been provided with the special education instruction and related services required by the IEP since the start of the 2023- 2024 school year, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleges the student has not been provided with a therapeutic behavioral aide.

5. The BCPS did not follow proper procedures when disciplinarily removing the student from school on August 30, 2023, and October 7, 2023, in accordance with COMAR 13A.08.03, and COMAR 13A.05.01.10.
6. The BCPS did not provide the student with quarterly reports on his progress toward achieving the annual IEP goals since January 2023, in accordance with 34 CFR §300.320.

**BACKGROUND:**

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

**FINDINGS OF FACTS:**

1. During the 2022- 2023 school year, the student stopped attending school on November 18, 2022, citing anxiety issues according to the complainant. Throughout the year, the school team conducted home visits, issued attendance letters, and made phone calls regarding the student's attendance and lack of progress. Additionally, the IEP team amended the student's IEP adding additional support and created a plan to aid the student to return to school.
2. The student's IEP, in effect at the start of the 2023- 2024 school year, was developed on February 9, 2023. The IEP requires that the student be provided with support in the areas of math calculation, math problem solving, reading comprehension, reading vocabulary, speech and language pragmatics, written language mechanics, self-management, social emotional/behavioral. The IEP includes goals addressing the same areas of concern. The IEP requires that the student receive four hours and forty minutes daily of specialized instruction outside of the general education classroom in a self-contained classroom, 30 minutes a week of social work services provided by a social worker outside of the general education classroom, and 30 minutes a month of speech and language therapy as a related service outside of the general education classroom provided by a speech pathologist and a special education classroom teacher.
3. The February 9, 2023, IEP requires the student to be provided with instructional support, program modifications, social/behavioral supports, physical/environmental supports, and support to access a modified general education curriculum. The IEP further reflects that the student requires daily social/behavioral support from a trained behavioral assistant (TBA) to assist the student with transition and supervised breaks, and to assist the student decrease his anxiety in the classroom setting.
4. On August 23, 2023, the IEP team met per at request of the complainant due to the student returning to school, and to review and revise the IEP as appropriate. The written summary of the IEP meeting reflects, during the 2022- 2023 school year, the student had poor attendance. The student was out of school from November 2022 to June 2023. During the 2022- 2023 school year, the IEP team recommended Home and Hospital for the student but there is no documentation to support the student receiving it.

5. The written summary of the meeting reflects that in June of 2023, the complainant had a conversation with an IEP team member, and it states the student was “cleared to come back to school and was excited to return.” However, the complainant requested a change in placement, a change to the student’s IEP, and a request to place the student on a certificate track. The complainant was informed by the IEP team member that, “documentation is needed in order to drive any changes in the IEP process” and due to the student’s limited attendance, no new decisions could be made.
6. During the August 23, 2023, IEP meeting, the complainant “read from a piece of paper” which stated the student needed another placement, more services, and to be placed on certificate track. The student’s private therapist was also present at the meeting and was informed that the IEP team required documentation in order to help make a decision. The private therapist inquired about the student receiving assessments outside of the school to help assist in making decisions regarding the recommendations. The complainant and therapist were informed the student could receive assessments for the IEP team to review. A member of the IEP team recommended having the student attend school and taking detailed notes regarding the student’s anxiety, progress, and attendance for three to six weeks so that they would have data to make informed decisions regarding the student's Present Levels of Academic Achievement and Functional Performance (PLAAPF). The complainant expressed disagreement. The school team expressed they were prepared to meet the student on the first day of school and the complainant expressed the need for the aide. The written summary of the meeting reflects the complainant was in agreement with the team’s decision at the end of the meeting.
7. On August 29, 2023<sup>1</sup>, the second day of school, the student arrived but refused to attend class. School staff, including the TBA, attempted to encourage the student to participate in classes. However, the complainant, who called the school, requested the school team to contact "911 and the crisis team," citing concerns about the student being in crisis. The school team, including the school social worker and psychologist, assessed the student and confirmed the student wasn't in crisis. However, paramedics who were already present in the school for another matter, were notified about the situation. Upon evaluation, the paramedics determined that the student did not require medical assistance. Upon the arrival of the complainant, she insisted that the student was experiencing an anxiety-related crisis. Following further discussion, during which the student confirmed feeling in crisis due to anxiety, the paramedics checked the student's vitals, finding them to be normal, and indicated the student could choose to stay or leave school. The complainant took the student home. It is documented that the complainant informed a school-based member that the student would not return until further actions were taken and another meeting was scheduled for the student's case. There is no documentation indicating that the student was removed from school due to disciplinary reasons.
8. There is documentation that the BCPS Parent Response team received a letter from the student’s therapist dated August 30, 2023. The note recommended the student be excused from school starting August 30, 2023, until the time it is determined that the student can safely return to an academic setting. The letter cited the student's "mentally and emotionally unsafe" condition due to multiple health challenges. However, there were no additional documents presented to the IEP team to provide evidence or data regarding the therapist's diagnosis.

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<sup>1</sup> The complainant alleges the incident occurred on August 30, 2023, however, written documentation from the school reflects August 29, 2023.

9. On October 3, 2023, the IEP team met at the request of the complainant due to concerns surrounding the student and to review and revise the IEP as appropriate. The prior written notice (PWN) reflects that the IEP team reviewed components of the IEP and the letter from the outside therapist but did not make any changes. The student's attendance remained irregular, with only two days of attendance since the start of the 2023-2024 school year, and infrequent attendance since November 2022. During the meeting, the team acknowledged the student's difficulty attending classes, particularly on the second day of school. Recognizing challenges faced by the family, the IEP team recommended involving the CARE team<sup>2</sup> to provide additional resources. However, due to insufficient documentation to support any changes, the team declined to make amendments to the IEP at that time.
10. On October 3, 2023, the IEP team convened at the request of the complainant to address concerns regarding the student's situation and to review the IEP. Despite reviewing components of the IEP and a letter from an outside therapist, no changes were made as reflected in the PWN. The student's attendance remained irregular, with only two days of attendance since the start of the 2023-2024 school year and infrequent attendance since November 2022.
11. At the October 3, 2023, meeting, the IEP team created a new plan for when the student returned to school and determined to collect data on the student for a specific length of time before they met again. The written summary of the meeting reflects that the complainant was not in agreement with the original recommendations from the CARE team, however, once additional information was presented to her, she was in agreement.
12. The written summary of the October 3, 2023, IEP meeting reflects, the complainant proposed a change in placement to a non-public school that would provide the student with a smaller class size because the current school is not "fully equipped to handle [the student]". The private therapist, in attendance, offered to provide assistance to the team.
13. On October 4, 2023, the student attempted to come to school with the complainant in a taxicab. There is documentation that states, the "TBA waited for the arrival of the student and once the student arrived, he refused to get out." The TBA and additional staff used "Prevention and Teaching" strategies to help the student into the school building. After constant refusal, the student went home with the complainant.
14. On October 5, 2023, the student came to school. There is documentation that reflects the TBA waited for the arrival of the student. Once the student arrived, he refused to enter the school building. The TBA used "Prevention and Teaching" strategies to help the student into the school building, however, the student stated he did not want to go in because "there were too many people and his anxiety made him afraid." After several attempts and refusals, the "transportation driver" independently took the student home. The documentation reflects the school district "did not" direct the transportation driver to take him home.

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<sup>2</sup> The CARE team is a multiagency community team that provides support for family concerns.

15. On October 9, 2023, the student came to school. There is documentation that reflects the TBA and additional support staff waited for the arrival of the student. Once the student arrived, he refused to enter the school building. After several attempts and refusals, the “transportation driver” independently took the student home. The documentation reflects the school district “did not” direct the transportation driver to take him home.
16. On October 10<sup>3</sup>, the student came to school. There is documentation that reflects, the TBA waited for the arrival of the student. Upon arrival, the transportation driver opened the door for the student, who was greeted by the TBA. However, upon exiting the car, the student ran across the street. The TBA pursued the student, who then sat on a stoop and began harming himself. The student required Crisis Support from the school Social Worker, who was called upon arrival. Despite efforts to support and redirect the student, he continued harming himself and made threatening remarks. The school team placed the student on Petition for Emergency Evaluation, though he did not go to the hospital. During the incident, the complainant and the police arrived to assist the student. The complainant took the student home. There is no documentation indicating that the student was removed from school as a disciplinary measure.
17. On October 10, 2023, a member of the school team proposed sending the student work packets from each class home on the days he was non-compliant and refused to come to school. It was noted that this could also assist the team in determining his PLAAFP if he completed the assignments. The school team provided the student with class assignments via Google Classroom.
18. On October 12, 2023, the complainant corresponded with a member of the IEP team via email expressing her concerns that she did not agree with the PWN created after the October 3, 2023, and requested her objections to be reflected in the PWN and for the updated PWN to be emailed or mailed to the complainant. There is no documentation that the PWN was updated and/or provided to the complainant after her request.
19. On October 20, 2023, the complainant received a letter concerning the student's attendance. The student had been absent from school for a total of 32 days since the beginning of the 2023-2024 school year. The complainant was encouraged to arrange a meeting to address the student's attendance issues.
20. On November 17, 2023, the complainant received a letter concerning the student's attendance. The student had been absent from school for a total of 49.5 days since the beginning of the 2023-2024 school year.
21. On January 17, 2024, the student was transferred to Digital Harbor High School per the complainant’s request. He enrolled on January 30, 2024. There is documentation that the student has not attended Digital Harbor High School since his date of enrollment.
22. On February 8, 2024, and February 23, 2024, the IEP team met to discuss reevaluation planning, update the annual IEP, address the complainant’s concerns, and to create strategies to assist the student transition to a new school. The IEP team agreed that assessments were required in order

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<sup>3</sup> The initiation letter reflects an incorrect date of October 7, 2023.

to determine the student's current level of performance. The IEP team recommended educational, cognitive, social emotional, speech and language, pragmatic assessments, a functional behavioral assessment and a behavior intervention plan. The complainant states the student does not want to attend school due to anxiety.

23. During the meeting concluded on February 23, 2024, the IEP team determined that the student remains eligible for special education services due to his educational disability of autism. There is no documentation from any member of the clinician team that the student has displayed symptoms of anxiety. The IEP team reviewed his PLAAFPs, deciding not to make changes as there was no recent documentation supporting the need for adjustments due to lack of data. During the meeting, the IEP team reviewed the draft goals. The team determined not to make changes, deeming the existing goals appropriate for addressing the student's current needs. Despite concerns from the parent about the goals being too ambitious, the team explained that they believe the student can achieve them based on a comprehensive review of historical data. The team emphasized that the supports and services outlined in the IEP are designed to assist the student in reaching these goals and accessing the general education curriculum at his grade level.
24. At the IEP meeting concluding on February 23, 2024, the IEP team proposed adding additional supplementary aids and services, along with assistive technology services throughout the school day. Additionally, the School Social Worker adjusted the student's social emotional goals. The IEP team also agreed to develop a reentry plan at the request of the complainant and parent counsel.
25. There is documentation that specialized instruction was available to the student, however, the student has been unable to receive his academic instruction due to his lack of attendance.
26. There is documentation that the student received counseling and speech and language services as prescribed by his IEP on the days he was present at school during the 2022- 2023 and 2023- 2024 school year.
27. The report of the student's progress dated March 2023 and June 2023, reflects that the annual goals were not addressed due to lack of attendance. There is documentation that on March 28, 2023, BCPS "sent the 3rd quarter IEP report card to parents," and the 4th quarter IEP report card was sent on June 12, 2023. However, there is no documentation that the IEP team met with the complainant to discuss the student's lack of progress towards his IEP goals.
28. The report of the student's progress dated October 2023 and January 2024, reflects that the student did not make sufficient progress to meet his goals due to lack of attendance. There is documentation that on November 20, 2023, BCPS "mailed" the IEP report card and emailed the IEP report card on February 27, 2024. However, there is no documentation that the IEP team met with the complainant to discuss the student's lack of progress towards his IEP goals after the first progress reporting period.
29. During the 2022- 2023 and 2023- 2024 school year while the student was enrolled in [REDACTED], the student received failing grades in all classes due to lack of attendance.

**CONCLUSIONS:**

**ALLEGATION #1: PLACEMENT DETERMINATION**

Based on the Finding of Fact #1 to #6, #8 to #12, and #22 to #24, MSDE finds that the BCPS did ensure that the student's placement determination for the 2023- 2024 school year was based on the student's IEP and was made by the IEP team, in accordance with 34 CFR §300.116. Therefore, this office finds that a violation did not occur with respect to the allegation.

**ALLEGATION #2: ADDRESSING PARENT CONCERN**

Based on the Finding of Fact #9 to #12, MSDE finds that the BCPS did ensure that the IEP team considered the parent information and behavior concerns of the student at the IEP meeting held in October 2023, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to the allegation.

**ALLEGATION #3: REQUEST TO AMEND STUDENT RECORDS**

Based on the Finding of Fact #18, MSDE finds that the BCPS did not follow proper procedures when responding to a request to amend the student's education record since October 2023, in accordance with 34 CFR §§300.618 - .621. Therefore, this office finds that a violation did occur with respect to the allegation.

**ALLEGATION #4: PROVISION OF SPECIAL EDUCATION INSTRUCTION, RELATED SERVICES AND SUPPORT OF A TBA**

Based on the Finding of Fact #3, #7, #13 to #17, and #25 to #28, MSDE finds that the BCPS did ensure that the student was provided with the special education instruction and related services required by the IEP since the start of the 2023- 2024 school year, in accordance with 34 CFR §§300.101 and .323. Specifically, the student has been provided with a TBA. Therefore, this office finds that a violation did not occur with respect to the allegation.

**ALLEGATION #5: DISCIPLINARY REMOVAL**

Based on the Finding of Fact #7 and #16, MSDE finds that the BCPS did not disciplinarily remove the student from school on August 30, 2023, and October 7, 2023, in accordance with COMAR 13A.08.03, and COMAR 13A.05.01.10. Therefore, this office finds that a violation did not occur with respect to the allegation.

**ALLEGATION #6: PROVISION OF PROGRESS REPORTS**

Based on the Finding of Fact #27 and #28, MSDE finds that the BCPS did provide the student with quarterly reports on his progress toward achieving the annual IEP goals since January 2023, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation did not occur with respect to the allegation.

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

Progress reports are part of a public agency's responsibility to implement the student's IEP and ensure adjustments are made to the student's IEP when the student is not making adequate progress. Although the school made attempts to get the student to attend school via phone call and conferences with the parent, based on the Finding of Fact #27 and #28, MSDE finds that the BCPS did not meet to ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achieving the IEP goals since January 2023, in accordance with 34 CFR §300.320 and .324.

### **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>4</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, MSDE, to ensure the effective implementation of the action.<sup>5</sup> Ms. Alison Barmat can be reached at (410) 767-7770 or by email at [alison.barmat@maryland.gov](mailto:alison.barmat@maryland.gov).

### **School-Based**

MSDE requires that BCPS provide professional development to the staff at [REDACTED] on the proper procedures of responding to a request to amend the student's education record and for conducting IEP meetings for students who are not making progress towards their IEP goals after a quarter with no demonstrated progress. This must be completed before May 31, 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.

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<sup>4</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>5</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.



Ms. Denise Mabry

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

ALH/sj

c: Sonja Santelises, Superintendent, BCPS  
Christa McGonigal, Educational Specialist, BCPS  
[REDACTED], [REDACTED], BCPS  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
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Stephanie James, Complaint Investigator, MSDE