

March 22, 2024

**REVISED COPY APRIL 26, 2024**

REDACTED

Ms. Denise T. Mabry  
Baltimore City Public Schools  
200 E. North Avenue, Room 204 B  
Baltimore, Maryland 21202

RE: [REDACTED]  
Reference: #24-133

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 21, 2024, the MSDE received a complaint from REDACTED, hereafter, “the complainant,” on behalf of the above referenced student. In that correspondence, the complainant alleges that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related requirements concerning the above-referenced student.

MSDE investigated the following allegations:

1. The BCPS has not ensured that the student has been provided with the special education instruction, related services, and accommodations as required by the Individualized Education Program (IEP) since January 2023, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS has not convened IEP team meetings when the student failed to make progress on their quarterly reports since January 2023, in accordance with 34 CFR §300.324.
3. The BCPS has not provided the student’s parents with quarterly progress reports since January 2023, in accordance with 34 CFR §300.320.

**BACKGROUND:**

The student is 14 years old and is identified as a student with Other Health Impairment (OHI) under the IDEA. The student attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. **The student's IEP in effect at the start of the 2023-2024 school year is dated March 30, 2023, and requires four hours of specially designed instruction outside of the general education setting, two hours Math, hours in English Language Art per week. The specially designed instruction inside of the general education classroom would be provided solely by the special education teacher.**
2. The student's present levels of academic achievement and functional performance (PLAAFP) on his March 30, 2023, IEP reflect that he is performing at the early 5th grade level in reading comprehension, late 4th grade level in math calculation, and early 5th grade level in written expression.
3. The student's March 30, 2023, IEP requires that the student be provided with the following accommodations: blank scratch paper; general administration directions clarified; general administration direction read aloud and repeated as needed; highlight tool; graphic organizer; small group; frequent breaks; reduce distractions to self; reduce distractions to others; calculation device and mathematics tools; and extended time.
4. The student's March 30, 2023, IEP requires that the student be provided with the following supplementary aids and services on a daily basis: check for understanding; frequent and/or immediate feedback; break down assignments into smaller units; use of positive/concrete reinforcers; provide frequent changes in activities or opportunities for movement; strategies to initiate and sustain attention; and preferential seating.
5. The student's March 30, 2023, IEP has annual goals in reading comprehension, written language expression and math calculation. There are progress reports dated June 13, 2023. The student's goals are not measurable, and the student's progress reports do not provide any data to support statements of progress. There are no progress reports generated for quarters 2 and 3.
6. The student's previous IEP developed on April 7, 2022, included the requirement to complete a functional behavior assessment (FBA). There is no documentation that the FBA was ever completed.
7. The student's current IEP is dated January 24, 2024. The team conducted a reevaluation on that date and determined that no additional information was necessary to reconfirm the student's eligibility for special education services as a student with another health impairment, or to develop the student's IEP.
8. On January 24, 2024, the IEP team met to revise the student's IEP. The student's PLAAFPs were not updated with any new data; however, the grade level performance reflects that he is performing at the 4th grade level in reading comprehension, 4th grade level in math calculation, and 5th grade level in written expression. The student's impact statement was again copied and continues to discuss impulsivity, elopement, interruption of others, distraction, inability to block out peers, over activity, and minimal focus.
9. The student's January 24, 2024, IEP requires that he receive the following accommodations: blank scratch paper; general administration directions clarified; general administration directions read aloud and repeated as needed; highlight tool; graphic organizer; small group; frequent breaks;

reduce distractions to self; reduce distractions to others; calculation device and mathematics tools; and extended time.

10. The student's January 24, 2024, IEP requires that he receive the following supplementary aids and services: check for understanding; frequent and/or immediate feedback; break down assignments into smaller units; use of positive/concrete reinforcers; provide frequent changes in activities or opportunities for movement; strategies to initiate and sustain attention; and preferential seating.
11. The student's January 24, 2024, IEP has goals in the following areas: math calculation, reading comprehension, and written expression. There are no progress reports for the third quarter at the time of this investigation.
12. The student's January 24, 2024, IEP requires that he receive 20 minutes weekly of specialized instruction in the general education setting to be provided solely by the general education teacher.
13. The Prior Written Notice (PWN) drafted after the January 24, 2024, IEP team meeting reflects that the student has not been making progress. There is no explanation, data relied on, or basis to provide an indication of why the student's specialized instruction has been reduced, why his LRE has changed, or how a special education teacher will be involved in the student's instructional program.
14. There is no documentation that the parent has been provided with reports of the student's progress.
15. There is no documentation that the student has consistently been provided with the accommodations or special education services required by his March 2023, or his January 2024, IEP at [REDACTED].
16. There is no documentation that the student has been consistently provided with the supplementary aids and services required by his March 2023, or his January 2024, IEPs at [REDACTED].

**CONCLUSIONS:**

**ALLEGATION #1: IMPLEMENTATION OF THE STUDENT'S IEP**

Based on the Finding of Fact#1 through#5, and #7 through #16, MSDE finds that the BCPS has not ensured that the student has been provided with special education instruction, related services and accommodations as required by the IEP since January 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did occur concerning the allegation.

**ALLEGATIONS #2 and #3: PROGRESS REPORTS**

**Based on the Finding of Fact# 5, the MSDE finds that the BCPS has not convened IEP team meeting when The student failed to make progress on their quarterly reports since January 2023, in accordance with 34 CFR §§300.324.**

Based on the Finding of Fact #5, MSDE finds that the BCPS has not provided the student's parents with quarterly progress reports since January 2023, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation did occur concerning with respect to the allegation.

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

#### **LACK OF PROGRESS REPORTING**

The investigation uncovered an additional, and very concerning violation in that only one progress report was generated in over a year of implementation. The IEP team documents concern that the student is not making progress; however, it is not clear what they are basing that concern on as there is no progress reported.

Based on Finding of Fact #6 and #12, MSDE finds a violation in accordance with 34 CFR §300.324.

#### **LACK OF FAPE, BEHAVIOR SUPPORTS, PRIOR WRITTEN NOTICE OR DATA FOR IEP DECISION-MAKING**

This investigation reflected that much of this student's IEP, including the present levels of academic achievement and functional performance, accommodations, and supplementary aids and services, were copied and pasted over the course of at least three IEPs. The student continues to be well below grade level and his behavior is consistently documented as impacting his ability to access the curriculum. There are no present levels documenting his behavioral difficulties. There was supposed to be a functional behavior assessment conducted in 2022, however, it is not clear that one was completed. There is documentation of elopement, classroom disruption, lack of focus, consistent interruption, while at [REDACTED], and no supports or interventions provided to address these concerns. In addition, while there was no progress reported on the student's goals and the IEP team expressed concerns over his progress, they reduced his hours of specially designed instruction from 4 hours each week outside of the general education setting provided by a special education teacher, to 20 minutes each week inside of the general education provided by a general education teacher, with no basis, data, or explanation of why that decision was made. There is also no indication of any consultation with a special educator on the 2024 IEP, or any indication of how specially designed instruction will be provided, even for 20 minutes each week. The student's present levels of performance do not support that the student requires a decrease in services, rather his gap is growing. There are no supports to address his behavioral concerns, which, according to the impact statement, are what is impacting the student's success. Based on Findings of Fact #1 through #16, this office finds a violation of 34 §CFR 300.101 and 34 CFR §300.503. Based on Findings of Fact #1 through #17, BCPS failed to provide the student with FAPE by not addressing the impact of his disability by providing behavior supports, by not reporting on his progress for multiple quarters in order for the team to determine whether his IEP was appropriate, by not including measurable goals, and by not consistently implementing the services, accommodations, and supplementary aids and services on his IEP. Further, by reducing the student's services when he was reported not to be making progress and not providing prior written notice for the basis of the decision, this office finds a violation of 34 §CFR 300.101 and 34 CFR §300.503.

#### **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>1</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>2</sup> Ms. Alison Barmat can be reached at (410) 767-7770 or by email at [alison.barmat@maryland.gov](mailto:alison.barmat@maryland.gov).

### **Student Specific**

By May 30, 2024, the BCPS must convene an IEP team meeting at [REDACTED] and review the student's IEP to determine appropriate support to address the student's behavioral concerns that are impacting his access to grade level curriculum and revise his IEP to include those supports. In addition, the IEP team must determine compensatory services or other remedy to address the lack of implementation of the student's accommodations and supplementary aids and services, the lack of progress reporting, and the lack of provision of a free appropriate public education since the student has attended [REDACTED]. A plan to address these violations must be completed within a year.

The BCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

### **School-Based and Similarly Situated**

By **September 2, 2024**, MSDE requires that the BCPS conduct professional development for the IEP team at [REDACTED] on requirements surrounding quarterly progress (including data collection and reporting to parents); the provision of FAPE; drafting instructionally compliant IEPs; implementing IEPs (including accommodations and supplementary aids and services); providing proper PWN; determining appropriate services; when and how to support student behavior. MSDE is offering to provide technical assistance and support for this training.

MSDE also requires that the BCPS conduct an internal monitoring to locate other similarly situated students at [REDACTED]. By **September 2, 2024**, BCPS must review 25 randomly selected student records to determine the following:

- Was progress reported quarterly, as required by their IEP?;

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<sup>1</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>2</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.

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- Was progress reported quarterly, as required by their IEP?;
- Were sections of the IEPs copied for multiple years?;
- Did students with documented behavioral concerns have appropriate supports included in their IEPs?;
- Is there documentation of implementation of accommodations and supplementary aids and services?;
- Were services drastically reduced for students who were not making progress without explanation or data?

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

ALH/ab

c: Dr. Sonja Santelises, Superintendent, BCPS  
Denise Mabry, Director, Special Education Compliance & Due Process, BCPS  
Christa McGonigal, Educational Specialist II, BCPS  
[REDACTED], Principal, [REDACTED], BCPS  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE