

March 25, 2024

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #24-137

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 31, 2023, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City 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 has addressed the student’s identified behavioral needs since August 28, 2023, in accordance with 34 CFR §§300.101 and .324.
2. The BCPS did not follow proper procedures when using physical restraint with the student from August 28, 2023, to October 30, 2023, in accordance with COMAR 13A.08.04.05.
3. The BCPS did not follow proper procedures when disciplinarily removing the student from school from August 28, 2023, to October 30, 2023, in accordance with 34 CFR §§300.530, COMAR 13A.08.02, COMAR 13A.08.03, COMAR 13A.08.01.11.

BACKGROUND:

The student is seven years old and is identified as a student with a developmental delay under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services. The student attended [REDACTED] from August 28, 2023, to October 30, 2023.

FINDINGS OF FACTS:

1. The student's private Neuropsychological Evaluation Report, dated September 23, 2022, recommends that the student's IEP team consider changing his IEP disability classification to Other Health Impairment (OHI) to reflect his diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) combined type. The report recommends attention and behavior support based on the student's inattention. These supports are:
 - preferential seating;
 - when giving instruction: minimizing distractions, saying the student's name, making eye contact, giving a physical prompt, simplifying instructions, rephrased instructions, modeling instruction, and checking for understanding;
 - breaking down instruction: giving step-by-step instructions, visual aid;
 - additional prompting;
 - thinking before responding; and
 - structure: use of schedules, use of seating charts, and clearly defined classroom/school expectations, rules, and consequences; and behavioral management: reward system.
2. The Prior Written Notice (PWN) generated after the May 2, 2023, IEP team meeting reflects that the IEP team reviewed the September 23, 2022, private Neuropsychological Evaluation Report. The PWN further reflects that the IEP team determined that the student continues to meet the eligibility criteria for developmental delay and requires specialized instruction, occupational therapy services, and indirect speech consultation services.
3. The student's IEP, developed on May 2, 2023, reflects that his disability impacts the areas of pre-writing and visual motor skills. The IEP requires the student to be provided with three weekly, ten-minute sessions of special education services inside the general education classroom and 30 minutes per week of special education services outside the general education classroom. The IEP further requires the provision of occupational therapy services outside of the general education classroom for 30 minutes per week.

The IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) section includes the input of the school staff and notes from the meeting in the parental input section.

The IEP requires the provision of instructional supports to assist with the student's behavior. These include daily repetition of directions, daily encouragement for the student to ask for assistance when needed, and monthly classroom consultations between the special education teacher and the general education teacher. The IEP further requires goals in the areas of fine motor skills and pre-writing.

While the IEP further reflects the student's Least Restrictive Environment (LRE) is LRE-A (80% or more in LRE-A) with outside occupational therapy-related service, it does not reflect the consideration of the continuum of alternative placements. The PWN generated after this IEP team meeting does not reflect the discussion of the LRE or the consideration of the continuum of placements.

4. On August 31, 2023, the BCPS staff emailed the complainant reflecting concern for the student's behaviors at school and discussing informal interventions that were implemented, including preferential seating, one-on-one guidance, assistance in managing behaviors when in group settings, and a positive behavior incentive. The email further reflects that the negative behaviors are continuing despite the interventions.

5. On September 7, 2023, the BCPS staff left the complainant a voicemail indicating that the Behavior Intervention Support staff removed the student from class due to his behaviors. The voicemail further reflects that the staff member requested a parent conference the same day upon the student's pick up from aftercare.
6. On September 12, 2023, the complainant's advocate emailed the BCPS staff requesting that an IEP team meeting be scheduled to discuss the student's primary disability of developmental delay, current behavior challenges, prescribed medications and requested that a Functional Behavior Assessment (FBA) be conducted.
7. On September 13, 2023, and September 14, 2023, the school psychologist and the school social workers' logs documented a behavior incident that occurred. As a result, the student was removed from the classroom.
8. On September 27, 2023, the BCPS staff left the complainant a voicemail indicating that the student was removed from class due to his behavior. The voicemail further recounts an additional removal from the classroom due to the student's behavior.
9. On October 4, 2023, the IEP team met to address the complainant's concerns and review and revise the IEP as necessary. The PWN drafted after the IEP team meeting reflects that the IEP team agreed to conduct a FBA, academic, and occupational therapy (sensory) assessments.
10. The October 4, 2023, the IEP team meeting audio recording reflects that the IEP team considered and rejected adding the use of physical restraint to the student's IEP.
11. The IEP developed at the October 4, 2023, IEP team meeting, reflects that the student has a developmental delay. The IEP further reflects that his disability impacts the areas of pre-writing, social-emotional/ behavioral, and visual motor skills. The IEP requires the provision of three weekly, ten-minute sessions of special education services in the general education classroom and one weekly, 30-minute session of special education services outside the general education classroom. The IEP further requires the provision of one weekly, 30-minute session of psychological services outside the general education classroom. There is documentation that the student has been provided with the psychological services as required by the IEP.

The IEP's PLAAFP section includes the input of the school staff in the parental input section. The parental input section also includes a transcript from the October 4, 2023, IEP team meeting. It reflects that the student's mother shared that the student's official diagnosis from the [REDACTED] ([REDACTED]) is ADHD. It is further reflected that she requested that the student's IEP be revised to reflect this diagnosis, an FBA be completed with a consult from the school psychologist, a one-on-one be added as an accommodation, and an Emergency Plan be developed. The complainant is also documented as saying that "in conversation with [REDACTED], she and her husband were told to find a new school for [the student]. That she and her husband are liable if anything happens to [the student] or others and that the school does not have the resources to deal with [the student] and needs to go to a different school."

While the IEP's PLAAFP for the social emotional/behavior reflects that based on observation and teacher reporting, "the student is more impulsive, hyperactive, and demonstrates more aggressive behaviors than same-aged peers," it does not report the IEP required summary of assessment findings or the dates the assessments were administered; instead, it reflects the student's social emotional/behavior goal.

The student's October 4, 2023, IEP requires the student to be provided with special considerations and accommodations, including testing and instructional support to assist with the student's behavior. These include frequent breaks, reduced distractions to self and others, extended time (1.5), daily home-school communication, daily repetition of directions, daily social skills training, weekly safety plan, daily reinforcement of positive behavior through non-verbal/verbal communication, daily encouragement/reinforcement of appropriate behavior in academic and non-academic settings, daily encouragement for the student to ask for assistance when needed, weekly nursing care plan, and monthly classroom instruction consult.

The IEP reflects goals in the areas of visual motor, social/emotional behavioral, and pre-writing. The social/emotional behavioral and visual motor goals state:

- a. Social/emotional behavior: By May 2024, given positive reinforcement, instruction, and practice, [the student] will increase his ability to use positive strategies/coping skills regarding frustration and social interaction by 50%, as measured by teacher reports, charting, and observation.
- b. Visual motor: By May 2024, [the student] will demonstrate visual motor skills with 80% accuracy for the educational environment.

The IEP further reflects the student's LRE as LRE-A, there is no documentation of the consideration of the continuum of placements.

12. On October 5, 2023, BCPS obtained parental consent for the agreed-upon assessments, including a FBA, academic, and occupational therapy, from the October 4, 2023, IEP team meeting.
13. In its written response, the BCPS acknowledges that proper procedures were not followed in evaluating the student since October 5, 2023. Specifically, the BCPS acknowledges that the BIP, academic, and occupation therapy evaluations were not completed within the required timeline.
14. On October 9, 2023, there was email documentation between the BCPS staff and the complainant reflecting a behavior incident that occurred.
15. On October 10, 2023, the BCPS staff conducted an observation screening to obtain the student's educational performance and progress, particularly with respect to his behavior. The purpose of the screening was to collect additional data to assist with the development of instructional strategies and to evaluate the need for additional adult support for the student requested by the BCPS school staff.
16. On October 17, 2023, the BCPS staff emailed the complainant. The email reflects that a behavior incident occurred, causing the student's class to be dismissed from the classroom as a result of the student's behavior. The email reflects that the student remained in the classroom during this incident.
17. On October 19, 2023, the Behavior Detail Report reflects a behavior incident that occurred. The behavior intervention teacher, special education teacher, and assistant principal responded. The documentation reflects that "de-escalation strategies happened to redirect the behavior." There is no documentation demonstrating that the student had to be removed from the classroom as a result.
18. On October 24, 2023, the Behavior Detail Report reflects a behavior incident that occurred. The behavior intervention teacher and assistant principal responded and removed the student from the classroom. Once the student de-escalated, he was returned to the classroom.

19. On October 27, 2023, the Behavior Detail Report reflects a behavior incident that occurred during the school day while the student was on a field trip. The teacher's aide, parent chaperone, and "farm staff" intervened.
20. There is no documentation to support the complainant's allegation that the student was physically restrained or disciplinarily removed from school from August 23, 2023, to October 30, 2023.
21. On October 30, 2023, the BCPS staff completed the FBA.
22. On October 30, 2023, the complainant was granted a parental transfer to [REDACTED] [REDACTED] / [REDACTED].
23. On January 10, 2024, the Behavior Detail Report reflects a behavior incident that occurred.
24. On January 11, 2024, the Student Information Reporting document reflects a behavior incident. Specifically, the student left the school building in an attempt to locate a toy. It is documented that he was under adult supervision during this time. There is further documentation that the BCPS staff requested an Emergency Petition for the student to receive a psychiatric evaluation. The documentation reflects that a suspension was considered but not assigned.
25. On January 16, 2024, the complainant's advocate emailed the BCPS staff requesting an emergency IEP team meeting to discuss the student's behavior. There is documentation that the complainant did not agree to a proposed date of January 25, 2024. There is documentation that an IEP team meeting was scheduled for February 7, 2024. On January 31, 2024, the BCPS staff emailed the complainant, stating that the general educator would not be able to participate in the meeting. The email further reflects that the BCPS staff offered to reschedule the meeting or to proceed with the complainant excusing the specified general educator. The parties agreed to reschedule the meeting for March 13, 2024.
26. On January 24, 2024, the Behavior Detail Report reflects two behavior incidents that occurred. The documentation reflects that the student was "conferenced" for the first incident and removed from the classroom for the second incident.
27. On January 25, 2024, the Behavior Detail Report reflects two behavior incidents that occurred. The documentation further reflects that the student was removed from the classroom for a "conversation" about his behavior.
28. On February 5, 2024, the Behavior Detail Report reflects two behavior incidents occurred. For the first incident, the student had to be removed from the classroom into the hallway. There is no documentation demonstrating that the student was removed from the classroom as a result of the second incident.
29. There is documentation that on February 6, 2024, the student was provided with a dedicated Therapeutic Behavioral Aide (TBA).
30. On March 13, 2024, the IEP team met to review the student's IEP. The PWN generated after this IEP team meeting reflects that the IEP team reviewed the student's IEP, the occupational therapy evaluation, academic assessment, assistive technology trial, progress with counseling services, and discussed academic instruction and notes related to IEP goals, the FBA, and the BIP. The IEP team agreed to:
 - Update the student's safety plan;
 - Add supplementary supports, including OT consult and TBA;
 - Add Assistive Technology (AT) consult;

- Add a Behavior Intervention Plan (BIP) to the student's IEP;
- Add Assistive Technology device and services;
- Continue counseling services at thirty minutes per week;
- Continue pull-out specially designed instruction for thirty minutes per week with the special educator to address the student's revised goal in written language; and
- Change the student's disability from Developmental Delay to Other Health Impairment (OHI).

31. On March 13, 2024, the Student Safety/Crisis Plan was implemented. This plan includes staff instructions on how to prevent the student's behaviors from escalating, the next steps if the student exhibits the described behaviors, whether physical restraint as a last resort can be implemented, successful and unsuccessful strategies used when the student is exhibiting negative behaviors, who is responsible for debriefing with the student/parent after a crisis, the staff members to be involved in de-escalating the student, their roles within the plan, how the plan will be monitored, and behavior supports. The plan further includes strategies for the student if he feels his behavior escalating.

32. On March 13, 2024, the IEP team plan implemented the BIP. The BIP reflects the reasons for the FBA and provides context for the behaviors to be evaluated by the school team. The BIP includes student background information, target behaviors and definitions, prevention strategies, teaching strategies, response strategies, data collection and implementation, progress monitoring, and a crisis plan.

Specifically, the BIP reflects that the student's behavior significantly impacts the student's safety, student learning, peer learning, and social relationships. The targeted behaviors are "physical aggression and grabbing others belongings and food and trying to keep eat/keep it." The BIP includes prevention strategies such as practice and role-playing, frequent and constant reminders of his behavior sheet and possible incentives, encouragement to ask for a break, reminders to use words to ask for wants, modeling empathy statements, and providing a safe place to calm down. The BIP requires the following response strategies to possible physical aggression. The first response is for the teacher and TBA to acknowledge the student's emotions and possible actions with calm, reassuring, and non-threatening language. The second response is for the TBA to state to the student, "I can see you need a reset," and take a possible walk to a calm, quiet space. The BIP also reflects response strategies to possible taking of student's belongings and food. The response strategy is to verbalize to the student that he is taking someone else's items and to assist him in repairing the relationship.

CONCLUSIONS:

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

Based upon the Findings of Fact #1, #3, #9- #13, #15, #21, and #29- #32 the BCPS has developed an IEP that addresses the student's identified behavioral needs since August 28, 2023, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find a violation occurred concerning allegation #1.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

Reevaluation Timeline

Based upon the Findings of Fact #9, #12- #13, #25, #30, and #32, the MSDE finds that BPCS has not followed proper procedures when reviewing reevaluation assessments, including the FBA and BIP, educational and

occupational therapy assessments since October 4, 2023, in accordance with 34 CFR §§300.303- .306. This office appreciates the BCPS acknowledgment and concurs that a violation occurred.

IEP Written Clearly

The public agency must ensure that the IEP contains clear and accurate statements of the parental input, the PLAAFP, and the discussion for the LRE, including the consideration of the continuum of alternative placements. (34 CFR §§300.115 and .320)

Based upon the Findings of Fact #3 and #11, the MSDE finds that the BCPS did not ensure that the IEP contains an accurate and complete parental input statement, PLAAFP statements, and the LRE considerations of the continuum of alternative placements. Therefore, this office finds that a violation occurred.

Annual IEP Goals

The public agency must ensure that the IEP contains measurable annual goals, including academic and functional goals designed to meet the child's needs resulting from the child's disability. These goals should enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs resulting from the child's disability. In addition, the goal should include a description of how the child's progress toward meeting the annual goal described would be measured (34 CFR §300.320).

Based upon the Findings of Fact #11, the MSDE finds that the BCPS has not ensured that the Individualized Education Program (IEP) contains appropriate measurable goals in the area of visual motor skills since October 4, 2023, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred.

Allegation #2: Proper Procedures When Using Physical Restraint

Based upon the Findings of Fact #20, the MSDE finds that the BPCS did not use physical restraint with the student from August 28, 2023, to October 30, 2023, in accordance with COMAR 13A.08.04.05. Therefore, this office finds that a violation did not occur concerning this allegation.

Allegation #3: Proper Procedures When Disciplinarily Removing the Student from School

Based upon the Finding of Fact #20, the MSDE finds that the BCPS did not disciplinarily remove the student from school from August 28, 2023, to October 30, 2023, in accordance with 34 CFR §§300.530, COMAR 13A.08.02, COMAR 13A.08.03, COMAR 13A.08.01.11. Therefore, this office finds that a violation did not occur concerning this allegation.

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.¹ 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.² Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student Specific

MSDE requires the BCPS to provide documentation by June 15, 2024, that the student's parent has been provided with the IEP documents generated at and after the March 13, 2024, IEP team meeting. MSDE requires the BCPS to ensure that the March 13, 2024, IEP accurately reflects the parental input statement, accurately reflects the PLAAFP section specifically for the social emotional/behavioral, reflects the discussion of the LRE considerations of the continuum of alternative placements, and contains an appropriate measurable annual visual motor skills goal. MSDE further requires documentation that the student's BIP has been implemented.

In addition, MSDE requires that the IEP team has convened and determined whether the violations related to the lack of an accurate parental input statement, PLAAFP section, specifically for the social emotional/behavioral, discussion of the LRE considerations of the continuum of alternative placements, appropriate measurable annual visual motor skills goal, and timely implementation of the student's BIP, timely completion of educational and OT assessments 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.

The BCPS must ensure that the parent is provided with prior 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

[REDACTED]:

MSDE requires the BCPS to provide documentation by June 14, 2024, of the steps taken to ensure that the violations regarding the lack of an accurate parental input statement, PLAAFP section, specifically for the

¹ 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.

² MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

social emotional/behavioral, discussion of the LRE considerations of the continuum of alternative placements and contains an appropriate measurable annual fine motor skills goal do not recur at [REDACTED].

Those steps must include staff development at the [REDACTED] in ensuring that IEPs contain appropriate parental statements, a statement of the student's present levels of academic achievement and functional performance, and appropriate measurable goals. A monitoring report of 8 randomly selected students with IEPs must be submitted to the MSDE by June 14, 2024.

[REDACTED]:

MSDE further requires the BCPS to provide documentation by June 14, 2024, of the steps taken to ensure that the violation regarding the lack of timely implementation of a BIP and completion of academic and OT assessments does not recur at [REDACTED] School. A monitoring report of 8 randomly selected students who have had assessments completed must be submitted to the MSDE by 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,

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

ALH/sd

c: Dr. Sonja Santelises, Superintendent, BCPS
Christa McGonigal, Special Education Compliance, BCPS
[REDACTED], Principal, [REDACTED], BCPS
[REDACTED], Principal, [REDACTED], BCPS
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Specialized Instruction, MSDE
Sarah Denney, Complaint Investigator, Dispute Resolution, MSDE