

May 24, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Allison Myers
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #24-179

Dear Parties:

The Division of Early Intervention and Special Education Services (MSDE), Maryland State Department of Education, 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 March 13, 2024, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County 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 follow proper procedures in the identification and evaluation of the student since March 2023, in accordance with 34 CFR §§300.111 and .301-.311 and COMAR 13A.05.01.06.
2. The BCPS did not develop and implement an Individualized Education Program (IEP) that addressed the student’s emotional needs since March 2023, in accordance with 34 CFR §300.324.
3. The BCPS has not ensured that the student has been consistently provided with behavior supports and supplementary aids as required by IEP since March 2023, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is seven years old and is identified as a student with Developmental Delay (DD) under the IDEA. He attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: PROPER PROCEDURES FOR CONDUCTING A RE-EVALUATION OF THE STUDENT

FINDINGS OF FACT:

1. On March 28, 2023, the IEP team convened for an annual review. The Prior Written Notice (PWN) generated after the meeting reflects that the IEP team updated academic goals, service hours, and accommodations. The IEP team reviewed the existing data, teacher reports, current goals, and services. The IEP team proposed changing the “interaction” IEP goal to “self-advocacy”, as the interaction goal had been met in 4 out of 5 trials; however, the complainants disagreed with the data. The IEP team also proposed to review existing data and a private formal psychological assessment conducted on March 2, 2022, by the [REDACTED] ([REDACTED]). A BCPS staff shared the results of informal assessments and stated there were “no real academic concerns and the student is performing on grade level.” The complainant expressed concerns about the student’s DIBELS data. The complainant also expressed concerns regarding the student's pencil grasp and stated he writes things backward. The BCPS occupational therapist shared that there are “no deficits in fine motor skills that affect his performance[,]” and the classroom teacher shared that the student does not have trouble writing his name in class.
2. On February 27, 2024, the IEP team convened for a re-evaluation planning meeting. The IEP team proposed evaluations in the areas of occupational therapy (OT) for fine motor and sensory, speech-language for speech production/articulation, behavior using a Behavior Assessment System for Children (BASC) rating scale, autism using an autism rating scale, and a Woodcock-Johnson academic assessment. The student’s disability impacts his ability to communicate for social, learning, and functional purposes. During the IEP meeting, the complainant expressed concerns with OT as the student still struggles with handwriting and other sensory concerns. The complainant provided consent.
3. On February 28, 2024, the complainant emailed members of the BCPS IEP team, stating that the student received a private psychological assessment on March 2, 2022, at [REDACTED]. She wanted to inform the team that “the assessments are not outdated,” as she was previously informed by the IEP team, and that she could provide the report again if needed.
4. On February 29, 2024, the complainant emailed members of the BCPS IEP team inquiring about a health/physical assessment for the student due to his health issues, including fear of using the toilet and dehydration. The complainant asked if the student would benefit from such an assessment. Additionally, the complainant inquired why the school had not addressed the student’s pencil grip, which is causing him physical and emotional distress in the school environment. Lastly, the complainant inquired at what point the student’s functional, social, and emotional needs would be acknowledged in light of his official diagnosis of Autism Spectrum Disorder (ASD) from [REDACTED].
5. On March 3, 2024, the complainant emailed members of the BCPS IEP team. The email reflects the complainant inquiring if the student could be assessed for dysgraphia due to the student exhibiting many of the symptoms and stating that “statistically, kids with ASD are at high risk for having it.”
6. On March 3, 2024, a member of the BCPS IEP team responded to the complainant via email, stating that several assessments were being conducted to determine the student's current levels of performance, including an OT assessment. The team is expediting the assessments to develop an IEP, and the IEP team meetings to review the assessments were scheduled for March 20, 2024, and March 22, 2024. The complainant was informed that the IEP team will use the assessments agreed

upon in the February 27, 2024, re-evaluation planning meeting, and the student's classroom performance, to develop the IEP. The complainants were further informed that if they did not feel the student's needs were addressed through the IEP, they could document their disagreement, review and revise the IEP, or request additional testing.

7. On March 5, 2024, the complainant responded, stating that this is the student's triennial review and he should not have to wait for other assessments to be completed before requesting more. The complainant informed the team that she was denied assessments for dyslexia due to concerns about reading and writing, dysgraphia due to issues not checked by the OT, and health/physical issues due to concerns with dehydration, constipation, and poor eating habits related to his ASD and sensory issues. She also requested an assessment for emotional/social/behavior development due to anxiety observed at school, including not asking for help when needed, not informing others when hurt or sick, not drinking enough to stay hydrated, and anxiety about using the school bathroom for bowel movements, causing severe constipation. The complainant again expressed concern about when the school will consider the diagnosis of ASD Level 1 from [REDACTED]. She inquired if the BASC-3 was the best assessment for a student with Generalized Anxiety Disorder and expressed concern that she felt the wrong test was being conducted on the student. The complainant requested that the denials of the assessments for dysgraphia, dyslexia, emotional/social/behavior development, and health/physical issues be provided in a PWN with explanations as to why.
8. On March 6, 2024, BCPS completed a speech and language assessment for the student.
9. On March 7, 2024, BCPS completed a classroom observation of student performance for the student.
10. On March 11, 2024, BCPS completed an educational assessment for the student.
11. On March 12, 2024, BCPS completed an OT assessment for the student.
12. On March 13, 2024, BCPS completed a psychological assessment for the student.
13. On March 20, 2024, the IEP team convened to review assessments completed by BCPS to determine eligibility. The PWN reflects that the IEP team reviewed the classroom observation and the OT assessment. During the meeting, due to time constraints, some members of the IEP team were dismissed to attend another IEP team meeting. The complainant requested that the student speak with someone so he could "share his feelings." Since members of the IEP team were unavailable, the student spoke with a BCPS administrator. The PWN reflects that the complainant prompted the student to share about the school with some "guiding questions." The PWN further reflects that the student "did not appear to want to answer the questions."
14. On March 22, 2024, the IEP team reconvened to review assessments completed by BCPS to determine eligibility and develop an IEP. The IEP team reviewed the speech-language and educational assessments. During the meeting, the complainant informed the team that the student was in the hospital the previous night due to making "suicidal threats" and stated that his mental health issues needed to be discussed. The student had shared with the complainant that he is "very stressed about the things happening at school, at home, everywhere." A member of the IEP team informed the complainant that the student had received social work services weekly and showed no

concern as the student was very happy to be in school. The complainant requested the following additional assessments: health assessment, physical assessment, formal muscular assessment, gross motor assessment, dyslexia, dysgraphia, and emotional/social/behavioral assessments. They also requested that the team share their reasons for not requesting these assessments. The PWN reflects that the IEP team does not feel additional assessments were warranted to determine the student's current level of performance. Due to time constraints, the IEP team agreed to schedule an additional meeting to review the psychological assessment, discuss eligibility, and determine if additional assessments are needed. The complainant disagreed with the OT assessments and requested an Independent Educational Evaluation (IEE). A member of the IEP team informed the complainants of their parental rights.

15. On March 22, 2024, after the IEP meeting, the complainant provided the BCPS school staff with a letter requesting the "IEP to stay in place as is until the IEP triennial is completed and agreements are made."
16. On March 23, 2023, via email, the parent expressed concerns regarding the PWN provided to her from the meeting held on March 23, 2023, and provided corrections she wanted to be made as she felt it left out information.
17. There is no documentation that the BCPS provided the complainant with a response to the request to amend the student's record.
18. There is no documentation the IEP team convened to review the student's IEP before March 28, 2024, in order to ensure that the IEP was reviewed at least annually.
19. On April 12, 2024, the IEP team reconvened to review assessments completed by BCPS and determine eligibility for the student's disability for special education services under IDEA. The PWN reflects that the IEP team reviewed the psychological assessment and determined eligibility as a student with a speech language impairment. Due to the complainants' request for the IEP team to consider ASD as a disability coding, the team reviewed the BCPS Eligibility Criteria Tool for ASD. The BCPS Eligibility Criteria Tool for ASD reflects that the IEP team used data provided from the private psychological evaluation and assessments conducted by BCPS to determine if "there is a discrepancy between behaviors observed in the home and at school. There were minor concerns reported within the social skills and sensory sensitivities in school." It was determined that although the student was previously diagnosed with ASD, based on the current data, the use of the BCPS Eligibility Criteria Tool for ASD indicates that "Autism does not adversely impact the student's ability to access and function in the educational program." The complainant disagreed with the IEP team's decision.
20. During the IEP team meeting held on April 12, 2024, the IEP team agreed to continue the re-evaluation process and not change the current disability coding, although they determined the student meets the criteria for Speech Language Impairment. This decision was made due to the parent's disagreement with the eligibility coding and their request for the IEP team to "freeze" and not make changes to the IEP pending the completion of the re-evaluation process. The IEP team decided that the student's IEP would continue to be implemented "as is" with the current disability coding of DD and would reconsider eligibility when it reconvened to review additional data. Additionally, the IEP team proposed conducting additional assessments to consider the possibility of an emotional or specific learning disability, including an assessment of pragmatic language skills, an

assessment to determine cognitive/intellectual functioning, and an assessment of the student's social/emotional/behavioral development. The IEP team also proposed reconsidering ASD as an ongoing suspected disability by the family. The PWN reflects that since the complainant signed the consent to evaluate on February 27, 2024, the student had been absent from school for an "excessive amount of time." The complainants expressed concern that due to the student's diagnosis of ASD, he was not communicating his needs at school and was frustrated about his needs not being met, posing "a risk of self-harm or posing a threat to others." The IEP team agreed to reconvene on May 27, 2024, to review further assessments.

21. On April 27, 2024, the complainant provided consent for the recommended assessments during the IEP meeting held on April 12, 2024.
22. On May 5, 2024, the complainant received a Parent Notification for an IEP Team Meeting scheduled for May 21, 2024, to discuss the results of assessment reports, conduct the annual review of the IEP, discuss the need for extended school year services, and review and revise the IEP.
23. On May 6, 2024, the BCPS agreed, via email, to fund an OT IEE for the student, in response to the complainant's request at the March 20, 2024, IEP team meeting.
24. On May 7, 2024, and May 10, 2024, the student came to the school building to complete the additional recommended psychological assessment. On May 16, 2024, the student returned to complete the additional recommended speech and language assessment.

DISCUSSIONS AND CONCLUSIONS:

In this complaint, it is alleged that the BCPS IEP team did not consider the autism diagnosis from the private psychological assessment and other information provided by the parent to the IEP team since March 2023 to help in the determination of the student's disability during the re-evaluation.

The IDEA requires that the IEP address the needs that arise from the student's disability regardless of the category of disability determined by the IEP team. When conducting a re-evaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability and that the re-evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team in determining whether the student is a student with a disability and in determining the content of the student's IEP (34 CFR §300.304).

As part of the re-evaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

Based on Findings of Fact #2 through #7, #9 through #15, #18 through #21, and #23, MSDE finds that the BCPS did follow proper procedures in the identification and evaluation of the student since March 2023, in accordance with 34 CFR §§300.111 and .301-.311 and COMAR 13A.05.01.06. Therefore, this office finds that a violation did not occur concerning the allegation.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

REQUEST TO AMEND THE STUDENT'S EDUCATION RECORD

A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information (34 CFR § 300.618).

The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 300.619.

Based on Finding of Facts #7, #8, #17, and #18, MSDE finds that the BCPS did not follow proper procedures when responding to a request to amend the student's education record on March 23, 2024, in accordance with 34 CFR §300.618. Therefore, this office finds that a violation occurred.

PROPER PROCEDURE WHEN RESPONDING TO AN IEE

A parent of a student with a disability may obtain an independent educational evaluation at public expense in accordance with regulations adopted by the Department (34 CFR §300.502). The local school system shall provide a written response approving or denying a request within 30 days of the date the request was made. If the local school system approves a request, the written response shall advise the parent of the process for arranging the evaluation at public expense. If the local school system denies a request, the local school system shall file a due process complaint within 30 days of the date of the denial (Annotated Code of Maryland, Education Article §8-405).

In this case, the complainant requested an IEE at the March 20, 2024, IEP team meeting. The BCPS did not respond to the request until May 6, 2024.

Based on Findings of Fact #14 and #23, MSDE finds that the BCPS did not ensure that proper procedures were followed when responding to a request for an IEE obtained at the public expense on March 20, 2024, in accordance with 34 CFR §300.502 and Maryland Education Article §8-405. Therefore, this office finds that a violation occurred.

ANNUAL REVIEW OF THE STUDENT'S IEP

Based on the Findings of Fact #1 and #18, MSDE finds that the BCPS did not ensure that the IEP team convened to review the student's IEP before March 28, 2024, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred.

ALLEGATION #2 IEP THAT ADDRESSES THE STUDENT’S EMOTIONAL NEEDS

FINDINGS OF FACT:

25. The student’s March 28, 2023, IEP requires support in the areas of communication, social interaction skills, and social/emotional/behavior. The IEP includes a goal in the same areas. The IEP requires that the student receive five 10-minute sessions weekly of specialized instruction inside of the general education classroom to work on social skills/self-advocacy instruction in order to maintain and continue the progression of his skills, one hour a week of speech-language as a related service, and one hour a month of social work services.
26. The IEP’s Present Levels of Academic Achievement and Functional Performance (PLAAFP) reflects that the student’s disability makes it difficult for him to communicate for social, learning, and functional purposes.
27. The IEP required the student to be provided with instructional support, program modifications, social/behavioral supports, physical/environmental support, and support from both school personnel and parents daily to access a modified general education curriculum and to be provided by his general education teacher, special education teacher or instructional assistant.
28. The IEP reflects the student’s social-emotional goal in the area of Self-Management. The goal states: “[the student] will be able to communicate thoughts/feelings and implement a strategy and/ or skill (problem-solving skill, self-advocacy skill, and or positive interaction skill) to support self-regulation when he is experiencing a negative/ overwhelming thought/feeling, with or without adult support or prompts in 3 out of 4 targeted trials.”
29. The student’s Report Card dated December 11, 2023, in the area of social/emotional does not reflect an area of concern. The report states the student is able to “interact appropriately with peers, self-advocates when support is needed, perseveres through difficult tasks, and demonstrates self-reflection skills.”
30. On April 19, 2024, the student received a note from a pediatrician stating he is being treated for “chronic constipation, behavior problems, learning disability, and ASD.” The note requests that the student be “excused from April 8, 2024, to present” and that the student be “excused from school until further notice by child psychiatry/psychology.”
31. On May 2, 2024, via email, the complainant requested an emergency IEP meeting to address the student’s refusal to attend school. The meeting was scheduled for May 21, 2024.
32. While there is documentation that the complainant notified the IEP and BCPS school teams via email of the student’s social/emotional status in the community from March 2024 to May 2024; there is no documentation to support the student having social/emotional concerns in the school setting since April 2024.
33. The report of the student’s progress dated June 7, 2023, and November 3, 2023, January 23, 2024, for the student’s annual self-management goal reflects that the student was “Making sufficient progress to meet goal” and the goal was “achieved” on April 5, 2024.

34. There is documentation that the student has received his counseling and speech-language services as required by the IEP during the time present in school since March 2023.
35. The student's attendance record reflects that the student was absent from school for a total of 48 days during the 2023-2024 school year. The records indicate that the student's last day attending school was April 8, 2024.

DISCUSSION AND CONCLUSION:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §§300.101, .320, and .324).

Based on Findings of Fact #1, #14, #25 through #35, MSDE finds that the BCPS did develop and implement an IEP that addressed the student's emotional needs since March 2023, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur concerning this allegation.

ALLEGATION #3

PROVISION OF BEHAVIOR SUPPORTS

FINDINGS OF FACT:

36. On April 25, 2024, a parent conference was held with the complainant, BCPS administration, a Pupil Personnel Worker (PPW), and the student. The meeting was held to discuss the student's needs to assist him with returning to school after excessive absences. During the meeting, the team identified three additional safe spaces for the student within the building, established daily check-ins, and created a hand signal for the student to use when he feels he needs social work services or to go to the school nurse. The student was given access to the nurse due to toileting issues and access to water due to the parent's report of the student being dehydrated. The team also discussed transportation concerns, adjustments to the "HERO chart¹", training for staff members the student is "comfortable with" on how to identify if he needs support, and the implementation of a hand break to assist when his hands hurt from working. It was noted that the student needs to be in school for the school to provide support and for the additional assessments to be completed. A BCPS administrator shared that the student has been absent since March 22, 2024, only attending portions of the day from April 2, 2024, to April 5, 2024. The complainant expressed several concerns due to the student's diagnosis of ASD and the information provided to her by the student:

- Student does not feel comfortable in the safe space in the classroom;
- Student needs "cold water" when in school;
- Cannot sit three to a seat on the school bus (due to sensory needs);
- Would like the HERO chart¹ amended for him;

¹ The HERO Chart is a school wide Positive Behavioral Interventions and Supports.

- The student does not express himself because he does not want to get in trouble in school;
- Student feels “no one is fixing anything”;
- The student’s feelings do not matter;
- Hand hurts;
- Noisy classroom;
- Headphones are uncomfortable; and
- Struggling with reading and writing

37. The complainant expressed the school needs to recognize the student as a child with ASD. The complainant also requested additional support with the social worker on the IEP.
38. There is documentation that the student received his supplementary aids, services, and program modifications as required by the IEP for the dates he was present in school since March 2023.

CONCLUSION:

Based on Findings of Fact #36 through #38, MSDE finds that the BCPS has ensured that the student has been consistently provided with behavior supports and supplementary aids as required by IEP since March 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur concerning this allegation.

CORRECTIVE ACTIONS and TIMELINES:

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

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.² This office will follow up with the public agency to ensure that it completes the required actions consistent with 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, Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ 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 14, 2024, that the IEP team has concluded the eligibility process and reviewed and revised the IEP consistent with the data. The IEP team must also determine whether the violation related to the delay in completing the IEP annually and the delay in responding to an IEE had a negative impact on the student’s ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy 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 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 August 1, 2024, of the steps it has taken to ensure that the ██████████ School staff properly implements the requirements for the provision of a PWN, proper procedure of responding to an IEE, and conducting annual reviews in a timely manner. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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/sj

c: Dr. Myriam Rogers, Superintendent, BCPS
Charlene Harris, Supervisor of Compliance in the Department of Special Education, BCPS
Dr. Jason Miller, Coordinator, Special Education Compliance, BCPS
██████████, ██████████ School, Principal, BCPS
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
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Tracy Givens, Section Chief, Dispute Resolution, MSDE
Stephanie James, Complaint Investigator, MSDE