

June 7, 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: #24-196

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services (DEI/SES), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On March 18, 2024, MSDE received a complaint from Mr. [REDACTED], hereafter, “the complainant,” on behalf of his son, 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. On May 16, 2024, MSDE granted an extension due to exceptional circumstances to ensure a thorough investigation into all significant matters.

MSDE investigated the allegation that the BCPS has not ensured that the student has been provided with the special education instruction, accommodations, and related services required by the Individualized Education Program (IEP) since August 2023, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is 13 years old and is identified as a student with Other Health Impairment (OHI) under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDING OF FACTS:

1. On August 23, 2023, the IEP team convened to develop the initial IEP; however, initial services did not start until September 8, 2023. The IEP reflects that the student’s disability impacts the area of self-management (e.g., executive functioning, organization, attention, etc.). The IEP requires that the student receive two 15-minute sessions a month of special education services inside the general

education classroom provided by the psychologist to support transferring the student's executive functioning skills to the classroom setting. Additionally, the student is to receive two 45-minute sessions per month of psychological services outside¹ the general education setting to address the student's executive functioning goal as a related service.

2. The IEP's Present Levels of Academic Achievement and Functional Performance statement (PLAAFP) reflects that the student's inability to remain focused for an extended amount of time causes him not to complete assignments in a timely fashion and to misunderstand the requirements and directions for assignments. His disability makes it difficult for him to acquire and demonstrate progress with grade-level skills and objectives without appropriate intervention and modifications.
3. The IEP required the student to be provided with instructional support, program modifications, social/behavioral support, and physical/environmental support. Additionally, the student was to receive support from both school personnel and parents "as needed" to access a modified general education curriculum. These supports were to be provided by his general education teacher or the school psychologist.
4. The IEP reflects the student's behavioral goal in the area of Self-Management. The goal states: "By August of 2024, with the support of the classroom teacher and given direct instruction in executive functioning and organization strategies, [the student] will initiate, sustain, and complete classroom tasks in 4 out of 5 observed trials with 80% accuracy."
5. On March 1, 2024, the IEP team convened to review the results of a private neuropsychological evaluation. The Prior Written Notice (PWN) reflects that the IEP team proposed conducting a classroom observation, a Feifer Assessment of Written Language (FAWL), and an Assistive Technology (AT) assessment due to the private assessment indicating a relative weakness in written expression. The complainant noted similar weaknesses in essay composition when typing, and requested an AT assessment to help determine if additional supports were needed. A BCPS IEP team member shared the strategies used in the classroom, such as movement breaks, and noted that self-awareness is a strength for the student. The complainant inquired about incorporating a timer into the student's day, and it was noted that this strategy had been introduced in October 2023. It was also noted that the student does not like to be pulled out of the classroom. The complainant expressed concern regarding the lack of communication about this issue.
6. On April 24, 2024, the IEP team reconvened to review the assessments recommended on March 1, 2024. The PWN generated after the meeting reflects the complainant and his lawyer raised concerns regarding the language of "as needed" associated with the weekly communication log on supplementary aids due to a "lack of weekly" communication and services. The IEP team proposed removing the term "as needed" from the IEP. Additionally, the complainant requested a new case manager and the removal of the psychological related service. After reviewing the assessment results, the IEP team determined it was appropriate to add Speech-to-Text to the IEP to address the weakness in motor planning and copying speed.

¹ The IEP reflects the services to be provided inside of the general education classroom; however, that is a clerical error.

7. On April 24, 2024, the IEP team amended the student's IEP to require provision of instructional support, program modifications, social/behavioral supports, and physical/environmental supports. Additionally, the student is to receive support from school personnel "daily as needed" to access a modified general education curriculum; however, these supports are to be provided by his general education teacher or special education teacher. The IEP also requires home-to-school communication to be provided "weekly" by the general education teacher or special education teacher and five 15-minute sessions a month of special education services inside the general education classroom provided by the general education teacher and the special education teacher.
8. The report of the student's progress towards the achievement of the annual behavior goal dated November 1, 2023, January 8, 2024, and April 3, 2024, reflects that the student "Making sufficient progress to meet goal" the goal; however, the goal was not measured in the manner required by the IEP.
9. There is documentation that the student received psychological services as required by the IEP until April 24, 2024.
10. During the 2023- 2024 school year, various staff members provided the complainant with home-to-school communication through email, phone calls, or in-person meetings when they needed to communicate with the parents as required by the IEP. This communication addressed growth, performance concerns, and opportunities for improvement. Since the April 24, 2024, IEP meeting, it is documented that the complainant now receives weekly home-to-school communication via email, as specified by the updated IEP.
11. There is documentation the student was provided with accommodations as required by his IEP throughout the 2023- 2024 school year.

DISCUSSIONS AND CONCLUSIONS:

Based on Finding of Facts # 1 through #11, MSDE finds that the BCPS has ensured that the student has been provided with the special education instruction, accommodations, and related services required by the IEP since August 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur concerning this allegation.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

IEP DEVELOPMENT TO BE CONSISTENT WITH THE STATUTE

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, p.12479, March 1999*).²

² In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

When developing or revising an IEP, a more accurate description of the frequency of the provision of supplementary aids and services should be utilized to provide families and teaching staff a clear understanding of how often and under what circumstances support is to be provided. The use of “as needed” or “daily as needed” as a frequency description does not provide a clear understanding of the frequency at which the supplementary aids and services will be implemented. The manner in which the supplementary aids and services for the student will be implemented is not clarified. COMAR 13A.05.01.09A(1)(c), (d), and (h).

Based upon the Finding of Facts #3, #6, #7, MSDE finds that the IEP is not clearly written to accurately describe the frequency and the manner in which the student’s supplementary aids and services will be implemented. Therefore, this office finds a violation occurred.

PROGRESS REPORT

The BCPS must ensure the provision of written information about the student’s progress toward the IEP goals and that the written information is based on the data collection required by the IEP (34 CFR §§300.101, .320).

Based on Findings of Fact #4 and #8, the MSDE finds that the BCPS did not ensure the provision of reports of the student's progress towards achievement of the annual IEP goals based on the data collection method required by the IEP, on November 1, 2023, January 8, 2024, and April 3, 2024, in accordance with 34 CFR §300.320. Therefore, this office finds a violation occurred.

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.³ 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.⁴ Ms. Alison Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

³ 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.

⁴ MSDE will notify the public agency’s Director of Special Education of any corrective action that has not been completed within the established timeframe.

Student-Specific

MSDE requires the BCPS to provide documentation by July 14, 2024, of the following actions:

- a. That the IEP team has convened, reviewed and revised the student's IEP to reflect an accurate description of the frequency with which the student's supplementary aids and services will be implemented.
- b. Determine whether the violations related to the failure to appropriately report progress towards the achievement of the annual IEP goals 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 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; and
- c. Provided documentation that the student's progress towards achievement of the IEP goal is being reported to the parent in the manner required by the IEP during quarter one and two of the 2024- 2025 school year.

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 of the steps taken to ensure that the violation regarding the description of the frequency and the manner of implementation of student's supplementary aids and services and the report of progress towards the achievement of annual IEP goals is measured as required by the IEP to not recur at [REDACTED]. Those steps must include the development and implementation of a monitoring tool to review whether students' IEPs specify the frequency for which supplementary aids and services should be provided with clarity so that the student, family, and service providers are able to properly implement the IEP. The submission of the completed monitoring tool for a random sample of twenty-five students at [REDACTED] is to be submitted by September 1, 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.

██████████
Ms. Allison Myers
June 7, 2024
Page 6

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
Dr. Jason Miller, Coordinator, Special Education Compliance, BCPS
Charlene Harris, Supervisor of Compliance in the Department of Special Education, BCPS
██████████, ██████████, Principal, BCPS
Alison Barmat, Branch Chief, Family Support and dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Stephanie James, Complaint Investigator, MSDE