


July 30, 2024




Ms. Allison Myers
Executive Director, Department of Special Education
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: 
Reference: #24-246

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 May 31, 2024, the MSDE received a complaint from , hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County 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 and implemented an Individualized Education Program (IEP) that addresses the student’s identified social/emotional/behavioral needs since September 2023, in accordance with 34 CFR §§ 300.323 - .324.
2. The BCPS has not ensured that the student was provided with the special education instruction as required by the IEP since September 2023, in accordance with 34 CFR §§ 300.101 - .323.
3. The BCPS did not follow proper procedures when responding to parental concerns regarding assessments at the May 15, 2024, IEP team meeting, in accordance with 34 CFR § 300.324.
4. The BCPS did not follow proper procedures in responding to a request for an Independent Educational Evaluation (IEE) that was made on May 15, 2024, in accordance with 34 CFR § 300.502 and COMAR 13A.05.01.14.

BACKGROUND:

The student is 12 years old and is identified as a student with Specific Learning Disability (SLD) under the IDEA. The student attends [REDACTED] ([REDACTED]) and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. On September 7, 2023, the IEP team convened to review and/or revise the student's IEP. The Prior Written Notice (PWN) generated after the meeting reflects that the IEP team discussed the student's IEP and determined that no changes were needed. The IEP team reviewed a private assessment. The assessment results indicated that the student has a learning disability, and the student's pediatrician was "on the fence" about giving the student a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). At the student's previous school, he met with the social worker during lunch, however, the student's IEP does not require social worker services and there is no documentation or notes from the previous social worker. The IEP team determined that the current data did not support the provision of social work services to the student at that time.
2. The amended September 7, 2023, IEP reflects the student's primary disability as SLD. The areas impacted by the student's disability are reading phonics and comprehension, math calculation, written language expression, and social/emotional/behavioral.

The Present Levels of Academic Achievement and Functional Performance (PLAAFP) reflect the student was performing at the 1.6 grade level in reading phonics and comprehension, the 2.9 grade level in math calculation, the 2.0 grade level in written language expression, and below grade-level expectations in the area of social/emotional/behavioral.

The Instructional and Assessment Accessibility Features and Accommodations required by the IEP included the following:

- Assistive Technology (AT);
- Audio amplification;
- Bookmark (Flag Items For Review);
- Blank scratch paper;
- Eliminate answer choice;
- General administration directions clarified;
- General administration directions read aloud and repeated as needed;
- Highlight tool;
- Headphones or noise buffers;
- Line reader mask tool;
- Magnification/enlargement device;
- Notepad;
- Pop-up glossary;
- Redirect student;
- Spell check or external spell check device;
- Writing tools;
- Graphic organizer;

- Audio materials;
- Small group;
- Frequent breaks;
- Reduce distractions to self;
- Reduce distractions to others
- Calculation device and mathematics tools (on calculation and on mathematics assessments); and
- Extended time (1.5x).

The supplementary aids, services, program modifications, and supports required by the IEP included the following instructional supports:

- Allow use of organizational aids, daily as needed;
- Provide proofreading checklist, daily as needed;
- Use of word bank to reinforce vocabulary and/or when extended writing is required;
- Use of spell check;
- Breaks down assignments into smaller units;
- Chunking of texts;
- Provide sentence starters and/or writing frames; and
- Preferential seating.

The supplementary aids, services, program modifications, and supports required by the IEP included the following social/behavioral supports:

- Use of positive/concrete reinforcers, daily as needed, “to build [the student’s] self-esteem and stamina to complete work.”

The IEP provided the following behavior goal:

- “By June 2024, given directions for a task, after the teacher repeats the directions and checks for understanding and/or required materials, [the student] will start the task and remain on-task until a teacher designated check-in, with no more than 1 verbal prompt from the teacher.”

The IEP required the following special education services:

- Five 30-minute sessions of classroom instruction inside general education, weekly, in “[English/Language Arts (ELA)]...to address reading comprehension and writing skills”;
- Five 20-minute sessions of classroom instruction inside general education, weekly, in “[Social Studies]...to address reading comprehension and writing skills”;
- Five 15-minute sessions of classroom instruction inside general education, weekly, in “[Science]...to address reading comprehension skills”
- Five 30-minute sessions of classroom instruction inside general education, weekly, in “Math (calculation)...to address math calculation skills.”

The Least Restrictive Environment (LRE) required by the IEP was inside general education 80% or more of the school day.

3. The IEP goal progress reports dated November 3, 2023, and January 23, 2024, reflect the student was making sufficient progress to meet his behavior goal.

4. Between October 2023 and February 2024, the student was involved in 12 behavioral incidents for behaviors that included physical aggression and failure to return to class after lunch. The student received two disciplinary sanctions of in-school suspension, one in October 2023 and one in January 2024.
5. On March 12, 2024, BCPS staff emailed the complainant requesting to “informally assess [the student to gather] data that will allow the IEP team to make appropriate educational decisions and amendments to his IEP that may be necessary.”
6. On March 12, 2024, the complainant responded to the BCPS staff in an email declining the opportunity to formally or informally assess the student, but instead requested the “delivery of IEP services”.
7. On March 13, 2024, BCPS staff responded to the complainant’s email and stated that her concerns would be discussed at the upcoming IEP meeting.
8. On March 18, 2024, the IEP reconvened to review and/or revise the student’s IEP. The PWN generated after the meeting reflects the complainant’s request for an “emergency” IEP team meeting. The IEP team reviewed a March 12, 2024, email, from the complainant to the IEP team, reflecting that she did not want the student reassessed, but requested the provision of the supplementary aids required by the IEP. Specifically, the complainant requested “smaller class groups, strategies to initiate and sustain attention, having the student taken out of the classroom for additional academic help, meeting with a school social worker, receiving in-school counseling, and tutoring services.”

The IEP team agreed to send the complainant copies of the student’s quarterly progress reports and proposed to conduct a Functional Behavior Assessment (FBA) for the student. The Social Emotional Learning (SEL) teacher explained the purpose of an FBA. The complainant did not agree to have the FBA conducted, however, the team agreed to have the student attend “coach classes” during his lunch period.

The IEP team added the following supports to the student’s supplementary aids and services:

- Check-in support;
- Provide frequent changes in activity or opportunities for movement; and
- Home/school communication system.

The IEP team discussed the student’s current teacher reports and classroom-based assessments indicated that the student was finding success in the general education classroom with the accommodations and modifications that were in place. The team shared that the complainant’s requested “tutoring services” were not indicated on his current or previous IEP.

The IEP team discussed social work services for the student. It was stated that the previous social work services were informal, and there was no documentation of direct or consult social work services in the student’s June 2023 IEP.

The school-based team shared that the student receives “opportunities for small group instruction” in the general education classroom and his IEP requires increased instructional services.

The IEP team discussed the concerns presented by the student’s family, including the student’s placement options, and members of the school-based team reviewed the accommodations and support the student received, including Orton Gillingham.

9. The amended IEP developed at the March 18, 2024, IEP meeting requires the following: Supplementary aids, services, program modifications, and supports required by the IEP were updated to include the following:
 - Home-school communication system “to inform parents of [the student’s] daily/weekly progress with behavioral progress and assignment completion”;
 - Check-in support “through the case manager/special educator/counseling staff/preferred adult to provide support to [the student with] reviewing [the student’s] daily behavior goals/expectations/set daily goals-objectives, help [the student] identify anything that may be impacting [the student’s] mood, and/or encourage [the student] to engage in/complete tasks”; and
 - Provide frequent changes in activity and opportunities for movement “throughout the instructional day...in the form of movement/“brain” breaks...virtual movement activities, walks within the school building, a break area to allow movement within the classroom, access to the SEL room, etc.”

The updated special education services required by the IEP included:

- Five 40-minute sessions of classroom instruction outside general education weekly “to address decoding skills.”

The LRE required by the IEP continued to be inside general education for 80% or more of the school day.

10. In March 2024, the student was involved in three behavioral incidents for behaviors that included physical and verbal aggression. The student received one disciplinary sanction of in-school suspension.
11. On April 19, 2024, the parent provided signed consent to conduct an FBA for the student.
12. On April 29, 2024, the complainant emailed the SEL teacher and requested that he “hold off” on the FBA assessment.
13. On May 13, 2024, the complainant emailed a request for an “IEE assessment” to BCPS staff.
14. On May 15, 2024, the IEP team reconvened to conduct the student’s annual review, discuss the need for Extended School Year (ESY) services, and review or revise the student’s IEP for the provision of Home and Hospital (HHT) services.

The PWN generated after the meeting reflects the team's review of current data to determine the appropriate IEP goals, accommodations, and services for the student. It was shared that the student made progress on his reading comprehension, written language, math, and social/emotional/behavioral goals, and had achieved his phonics goal.

The IEP team discussed how the student's progress toward his IEP goals would be addressed during HHT services, and it was stated that the student's school "re-entry" plan would be reviewed at the next IEP meeting. The IEP team determined that the student would receive six hours of instruction for HHT services.

The PWN reflects the student's behavior concerns were not brought to the IEP team until February 2024, and the school-based team shared that "behavioral needs can supersede academic needs at times in the smaller class setting." The IEP team discussed the student's struggles with peer interactions, and it was shared that the data demonstrates the student can make academic progress in the general education setting.

The IEP team discussed the IEE process. The PWN reflects that the complainant shared that she is having an evaluation completed at [REDACTED].

The complainant shared that the student requires smaller class sizes for academic instruction and more support than he is currently receiving at [REDACTED]. The complainant further shared that the student would not be returning to [REDACTED] and had been enrolled in virtual learning. The school-based team shared that the student often declines the coach class and the support of a reader; when the student receives assistance and/or works in a small group he does well academically. The student's general education English Language Arts class allows for small group instruction and 1:1 support.

The school-based team reported that the student's IEP does not require social work services and previously met informally with the social worker at the elementary school. BCPS staff also reported that previously the complainant declined to add social work services to the student's IEP.

The SEL teacher shared that the student had eight direct behavioral incidents for which he was called to assist, but they were not documented until January 5, 2024. The SEL teacher also shared that he was in the process of completing the FBA, but the complainant requested to pause the process. The FBA cannot be completed until the complainant provides consent.

The advocate inquired about the consent for the FBA, the student's instructional performance levels, AT devices and services, and special transportation, and requested that the team consider looking into the student's adaptive skills and providing the student's services daily as opposed to weekly in addition to other proposed supports. The advocate also shared that she believed the student needed small group instruction throughout the school day, and that she did not agree with the student's current math level.

The PWN reflects the advocate's request to table the conversation around assessments to allow the complainant to understand the process before deciding to consent. The advocate also shared that the student may require a different placement.

15. The IEP developed at the May 15, 2024, IEP meeting is dated May 15, 2024. The IEP was updated to reflect self-management as an area impacted by the disability.

The PLAAFP was updated and “social/emotional/behavioral” was removed and replaced with “self-management [e.g., executive function, organization, attention, etc.] The IEP reflects the student as performing “below that of his typical 6th-grade peers in the area of self-management.”

The supplementary aids, services, program modifications, and supports required by the IEP were continued and the following supports were added:

- Provide student with a copy of student/teacher notes, daily, “when possible; Allow use of speech-to-text feature for lengthy written assignments/note taking”;
- Assistive technology services, daily as needed, “[the student] requires the use of spell check, word prediction software, and/or speech-to-text when completing written (short responses/lengthy responses) and/or reading assignments to support his below grade-level written language and reading skills”;
- Delete extraneous information on assignments and assessments when possible, daily as needed, “this can include limiting the number of answer choices multiple-choice, chunking of tasks on an assignment/assessment, shortened writing requirements, modified directions”
- Social skills training, daily, “to effectively communicate and interact with peers and adults within the school and community. Training is to take place within the special education setting with support provided by the SEL teacher and/or social worker”;
- and
- Adult support, daily as needed, “during all instructional settings, to assist him with task completion, accessing learning through the school day, with on-task behavior, work completion, and work submission...provided by any additional adult in the classroom/school setting.”

The IEP goal in self-management states:

- By May 2025, when given attention and positive behavior reinforcement for appropriate interactions with others, opportunities for positive attention from peers, and the opportunity to participate in conflict resolution/restorative practice activities, [the student] will engage in inappropriate verbal interactions with peers and adults with 80% accuracy in 2 out of 3 trials.”

The updated special education services required by the IEP included:

- One 6-hour session of home and hospital instruction outside general education weekly in the areas of reading phonics, reading comprehensions, math calculation, and written language expression to be delivered flexibly as arranged between the service provider and the parent; and
- One 30-minute session of home and hospital social work services provided by the social worker to be delivered flexibly as arranged between the service provider and the parent.

The LRE required by the IEP continued to be inside general education for 80% or more of the school day.

16. From May 23, 2024, to June 4, 2024, the BCPS HHT social work service provider called and emailed the complainant to schedule social work services.
17. On May 28, 2024, the advocate emailed BCPS staff sharing that the complainant did not receive communication regarding the input and questions shared at the May 28, 2024, IEP meeting and they were not included in the PWN. The advocate further shared that the complainant received an incomplete IEP that was finalized and consent for testing form despite the advocate's request to discuss testing further at the upcoming IEP meeting.
18. On May 29, 2024, BCPS staff emailed the advocate stating that the draft IEP, including the updated information from the May 15, 2024, IEP meeting, was sent to the complainant on May 17, 2024, and is required to be finalized within five business days of the IEP meeting. The BCPS staff member shared that only the items discussed at the May 15, 2024, IEP team meeting were included in the draft sent to the complainant. The email addressed the complainant's refusal to allow the student to be assessed as recommended by the school-based team and shared that even if parents decline the assessments the IEP team must still send the parent the consent form indicating the recommended assessments. The email included the student performance data that was requested at the May 15, 2024, IEP team meeting, and provided clarity concerning the social/emotional/behavioral data that was collected to develop an appropriate self-management goal for the student. The email clarified that a school-based team member emailed the complainant and the advocate shortly after the connection was lost during the meeting to inform them of the lost connection and the school-based team's inability to rejoin or access email. The email also stated that the team was willing to update the parental input that was not reviewed due to connection issues and review the IEP to make any amendments or updates at the June 7, 2024, IEP meeting.
19. On May 29, 2024, the advocate emailed the BCPS staff member sharing that, among other things, their input should have been included in the PWN, the complainant did not decline the assessments but did ask to table the conversation to allow time for the complainant to discuss the assessments with the advocate. The advocate addressed the concern that "social/emotional/behavioral" had been replaced with "self-management [e.g., executive functioning, organization, attention, etc.]" and shared that the complainant felt that social/emotional/behavioral should still be addressed in the IEP. Additionally, the advocate shared that the complainant's input should have been included in the parent input section, and the draft of the student's IEP should have remained open to allow "everyone on the team to finish the discussions and provide feedback" and this should have been noted in the PWN.
20. On June 4, 2024, the complainant emailed the BCPS HHT social worker and stated that the student had been receiving therapy through an outside agency since April 1, 2024, and she was not sure if additional services were needed.
21. On June 6, 2024, the BCPS responded to the complainant's request for an IEE. In its correspondence, the BCPS stated that "the parent of a child with a disability has the right to request an IEE of their child at public expense if the parent disagrees with an evaluation by the school system responsible for the child's education." The BCPS asserted that the complainant had

not expressed concern with an evaluation conducted by the BCPS, and the complainant had denied consent for the school-based team to conduct assessments at the May 15, 2024, IEP team meeting. For those reasons, the BCPS denied the complainant's request.

22. On June 6, 2024, the complainant provided written informed consent for telemental health services from BCPS.
23. On June 7, 2024, the IEP team reconvened to review and revise the student's IEP. The PWN generated after the meeting reflects the abrupt ending to the previous IEP meeting and the student's behavioral data. It was shared that the student receives outside therapy, and the advocate asked if a crisis intervention team was in place to support the student. The complainant inquired about other placement options for the student and shared that she would like the student to receive cognitive and adaptive assessments and a Comprehensive Test of Phonological Processing (CTOPP), however, the advocate stated that she wanted to "table all evaluations until another meeting could be scheduled with the psychologist in attendance."

The IEP team discussed the student's behavior during instruction and interactions with his peers. The school-based team reported on behavioral data and discussed how the FBA would identify specific interventions to implement for the student. It was shared that results from the FBA would likely indicate a need to develop a Behavior Intervention Plan (BIP) and that a self-management goal would be an area targeted under the "social/emotional/behavioral umbrella." The school-based team suggested that the student participate in a specialized advisory group to address SEL needs, and shared what staff members make up the crisis intervention team. The school-based team shared that the IEP had been updated to reflect social/emotional/behavioral as an area of need. It was proposed that the student receive 15 minutes of daily support from the SEL teacher, social worker, teacher, or other adult who works with the student to support his social/emotional/behavioral needs. The school social worker reported that the 1:1 social work services will allow the student to work on personal, interpersonal, and social skills to assist the student with being more productive during the school day. It was shared that the student is receiving outside therapy services and the complainant could complete a referral for the student to receive weekly therapeutic services at school provided by an outside provider. The speech-language pathologist shared that concerns around social skills could be more appropriately addressed through a pragmatic language speech-language evaluation.

The complainant gave consent to continue the FBA. The complainant and advocate requested that the social/emotional/behavioral PLAAFP and goal be more specific and requested that the student receive daily specialized instruction in social/emotional/behavioral.

The advocate shared concerns about the student's safety at school and requested that the student receive adult support during transitions and have a detailed safety plan that the school staff has been trained on, in effect when he returns to school. The school-based team reported that the student would be safer using special transportation because the service provides an attendant. The advocate shared her concerns that the student needs a more "significant therapeutic wrap-around setting" but wanted to ensure that he will receive 1:1 assistance and check-ins with the SEL teacher and social worker upon his return.

The advocate shared that the team could reconvene over the summer and request a 45-day review and a self-monitoring checklist for the student when he returns to the building for the 2024-2025 school year.

24. The amended IEP developed at the June 7, 2024, IEP team meeting was updated to reflect social/emotional/behavioral as an area impacted by the disability.

The PLAAFP was updated with data for “social/emotional/behavioral”; the IEP reflects the student as performing “below that of his typical 6th-grade peers in the area of self-management.” The data in the PLAAFP reflects the student received “a total of 42 referrals, 30/42 occurred in the classroom, 3/42 occurred in the cafeteria, 1/42 occurred on the bus, 3/42 occurred in the bus circle, 5/42 occurred in the hallway/corridor, 1/42 occurred in the athletics facility, 1/42 occurred in “other”. The data also reflects that “17/32 are major referral documents. Of the 17 major referrals 3/17 resulted in in-school suspensions.”

The supplementary aids, services, program modifications, and supports required by the IEP continued.

The special education services required by the IEP were updated to include:

- Two 1 hour and 15-minute sessions of classroom instruction weekly outside general education “to address reading comprehension and written language skills”;
- Five 30-minute sessions of classroom instruction weekly outside general education “to address math problem-solving skills”;
- Two 50-minute sessions of classroom instruction weekly inside general education “to address reading comprehension and written language skills”;
- Two 1 hour and 15-minute sessions of classroom instruction weekly inside general education “to address reading phonics/decoding skills”
- One 30-minute session of home and hospital services social work services outside general education, monthly; and
- Transportation.

The LRE required by the IEP continued to be inside general education for 80% or more of the school day.

25. The IEP goal progress report dated June 12, 2024, reflects the student was making sufficient progress to meet his behavior goal.
26. There is documentation that the student has received the special education instruction required by the IEP since September 2023.

CONCLUSIONS:

ALLEGATION #1

DEVELOPMENT AND IMPLEMENTATION OF THE IEP

Based on the Findings of Fact #1 to #10, #12 to #19, and #21 to #24, MSDE finds that the BCPS has developed and implemented an IEP that addresses the student's identified social/emotional/behavioral needs since September 2023, in accordance with 34 CFR §§ 300.323 - .324. Therefore, this office finds that no violation occurred concerning the allegation.

ALLEGATION #2

PROVISION OF SPECIAL EDUCATION INSTRUCTION

Based on the Findings of Fact #3, #8, #13, and #22, MSDE finds the BCPS has ensured that the student was provided with the special education instruction as required by the IEP since September 2023, in accordance with 34 CFR §§ 300.101 - .323. Therefore, this office finds that no violation occurred concerning the allegation.

ALLEGATION #3

ADDRESSING PARENT CONCERNS

Based on the Findings of Fact #13, #14, #16 to #18, #22, and #23, MSDE finds the BCPS followed proper procedures when responding to parental concerns regarding assessments at the May 15, 2024, IEP team meeting, in accordance with 34 CFR § 300.324. Therefore, this office finds that no violation occurred concerning the allegation.

ALLEGATION #4

PROPER PROCEDURES WHEN RESPONDING TO AN IEE

Based on the Findings of Fact #13 and #21, MSDE finds that the BCPS followed proper procedures in responding to a request for an IEE that was made on May 15, 2024, by 34 CFR § 300.502 and COMAR 13A.05.01.14. Therefore, this office finds that no violation occurred concerning the allegation.

TIMELINES:

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 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

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the IDEA. The 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/ebh

c: Dr. Myriam Rogers, Superintendent, BCPS
Charlene Harris, Supervisor of Compliance in the Department of Special Education, BCPS
Jason Miller, Coordinator, Special Education Compliance, BCPS
[REDACTED], Principal, [REDACTED], BCPS
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
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