

August 30, 2024

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #25-003

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 on the final results of the investigation.

ALLEGATIONS:

On July 1, 2024, MSDE received a complaint from [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) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) team has addressed the parent’s concerns regarding the student’s health issues since July 2023, in accordance with 34 CFR § 300.324.
2. The BCPS did not ensure that the student was consistently provided with extended time and the opportunity to use alternate means of sharing information and answers in class (non-verbal), as required by the IEP since August 2023, in accordance with 34 CFR §§ 300.101 and .323.
3. The BCPS did not ensure that the student was comprehensively assessed in all areas of need since July 2023, in accordance with 34 CFR §§ 300.301, .304 -.311, and COMAR 13A.05.01.04.06.

BACKGROUND:

The student is 16 years old and is identified as a student with Speech-Language Impairment (SLI) 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 FACTS:

1. The student's IEP in effect in July 2023 is dated October 14, 2022. The IEP reflects that the student's primary disability is SLI with communication and employment as areas affected by the disability.

The Present Level of Academic Achievement and Functional Performance (PLAAFP) reflects the student's instructional grade level of performance as below age expectations in communication and does not provide an instructional grade level of performance in secondary transition employment.

The IEP reflects that the student has special communication needs, and "[the student] has difficulties in the areas of fluency, which is an area of speech/communication. These difficulties are addressed through direct services." The IEP does not require assistive technology services or an assistive technology device for the student.

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

- Allow use of organizational aids, daily;
- Use signal to alert student ahead of time when he will be called, daily ("Instructional support will be provided on a daily basis in [the student's] classroom setting. [The student] will be alerted ahead of time before he will be required to share information or answer a question in class.
- Provide visuals/supports to help [the student] organize his classwork."); and
- Allow alternate means of sharing information/answers in class (nonverbal), daily ("Modifications will be provided on a daily basis in [the student's] classroom setting. [The student] will be permitted to use alternate, non-verbal means of sharing answers/information in class.")

The IEP does not require extended time.

The IEP included the following communication fluency goal: "By October 2023, during a small group, [the student] will demonstrate use of fluency enhancing strategies (e.g. easy onset, light, pausing) during a variety of speaking and reading tasks using 4/5 sentences shared."

2. The student's October 2022 communication fluency goal is not measurable as written.
3. The parent contact log reflects that the BCPS staff "discussed support [for the student] for the upcoming school year" with the complainant by telephone on July 19, 2023.
4. On August 18, 2023, the complainant emailed BCPS staff requesting a meeting to review the student's schedule.
5. On August 25, 2023, the IEP team convened to review and revise the student's IEP and to "discuss a plan for his upcoming school year." The Prior Written Notice (PWN) generated after the meeting reflects that the team agreed the student would benefit from a "full-time in-person schedule at the beginning of the year." The team suggested that two musical electives would be added during the student's first-period classes to help motivate the student "to come to school on time and support his attendance." The PWN reflects the student would be taking a new medication, and the team would continue to "monitor his sleep schedule and determine if the Distance Learning Program is appropriate or if [the student] can return to full-time in-person learning."

6. On October 10, 2023, the IEP team reconvened to conduct the annual review and discuss the student's updated IEP. The PWN generated after the meeting reflects that the IEP team reviewed the student's IEP, updated the goals and objectives, recommended strategies for the classroom, and discussed Extended School Year (ESY) services before determining that the student was not eligible for ESY services. Information regarding transition services, a postsecondary plan, and the "current employment field" would be sent to the complainant. The PWN further reflects that the complainant did not consent to a Department of Rehabilitation Services (DORS) or Developmental Disabilities Administration (DDA) representative attending the meeting.
7. The IEP developed at the October 10, 2023, IEP meeting reflects the student's disability information was continued with no changes. The PLAAFP data in communication and employment was updated and the student's grade level performance in those areas continued with no changes. The IEP reflects that the complainant agreed with the student's educational program and supports, and "[the student] has difficulty reading or speaking in front of the class. [The student] also has a diagnosis of [Attention Deficit Hyperactivity Disorder] ADHD which sometimes interferes with his organization and work completion. He benefits from visual supports/organizational aids to follow directions for activities/assignments."

The student's communication and assistive technology information continued, and the student's postsecondary transition data was updated.

The instructional and assessment accessibility features and supplementary aids, services, program modifications, and supports required by the IEP continued. The IEP does not require extended time.

The IEP required the following communication fluency goal: "By October 2024, during a small group activity, [the student] will decrease social avoidance by participating in novel social activities/event/sharing of information within school-based settings, for 3 separate events per treatment quarter."

8. The student's October 2023 IEP communication fluency goal is not measurable as written.
9. On November 12, 2023, BCPS staff exchanged emails regarding the student's schedule. It was shared that the student was apprehensive about changing his history class because "he knows [his] classmates and is feeling and experiencing success." The email stated that the student's speech disfluencies make him apprehensive "to go into a new class where he'll have to make adjustments to students and their response to his speech [which] causes anxiety." The staff member suggested dropping his piano class to have a resource period. The BCPS staff members agreed to include the student's counselor in the discussion.
10. On May 6, 2024, the complainant sent an email to BCPS staff requesting an emergency IEP meeting because the student experienced a medical problem that had him "in and out of the ER for [two weeks and] will be undergoing some tests and may need a procedure to resolve the problem."

11. On May 9, 2024, BCPS staff sent an email to BCPS staff reflecting an email was sent to the complainant regarding the student's probationary status in the magnet program since January 2024. The email stated that BCPS staff members met with the student on February 12, 2024, "to discuss the probation warning letter that was sent home" and "the requirements needed to remain at [the school] as a special permission/magnet student." The email stated that the student "understood" the requirements, and the staff members offered the student some "suggestions for completing work." The email reflects that shortly after the meeting the complainant arrived at the school and met with the BPCS staff members to "discuss the letter and the previous meeting with [the student]." The email states that the staff members "reiterated the requirements stated in the letter, that [the student] had time (until the end of the school year) to meet those requirements and clarified any questions [the complainant] had about the probation process."
12. On May 14, 2024, the complainant emailed a medical note for the student to return to school on May 12, 2024.
13. On June 3, 2024, the IEP team reconvened to review and revise the student's IEP at the complainant's request. The PWN generated after the meeting reflects that the complainant shared that an outside provider was completing educational, psychological, and speech-language assessments for the student, and the complainant proposed ordering the same assessments through BCPS. The IEP team agreed to conduct educational, speech-language, psychological, and social/emotional functioning assessments, ADHD and autism rating scales, and a classroom "to determine classroom performance and attention skills in the classroom."

The complainant shared that insomnia is a side effect of the student's ADHD medication and that there are some "other medical conditions" that are impacting the student's overall health. The complainant shared her concern that speech-language was not the student's primary disability, and the student has sensory issues and avoids eye contact. The IEP team discussed the student's status in the magnet program, and it was shared that the student's final grades will determine if the student is eligible to remain in the program. It was reported that the student did not meet the requirements to continue in the program for the 2023-2024 school year but was given special permission to remain in the program on a probationary basis.

The PWN further reflects that "after the conclusion of the meeting, [the complainant] emailed her thoughts and discussion points to [REDACTED] staff" to be attached to the "meeting summary."

14. On June 4, 2024, [REDACTED] staff emailed the complainant to confirm receipt of the complainant's "observations and concerns". In the information provided, the complainant shared a history of the student's struggles during the 2022-2023 school year and provided insight into the student's health concerns during the 2023-2024 school year. The complainant shared her observations on how the student's health struggles were impacting him academically and stated that "if [the student's] of speech-language impairment were the most appropriate identification for his disability, [the student] would be demonstrating high academic success." The complainant's message requested the team to conduct a cognitive, psychological, and inquired about the need for a speech-language assessment. The complainant also requested an occupational therapy (OT) assessment "to gather about his social, emotional regulation, self-esteem and confidence and his interest and motivation."

The complainant shared that the student had gone to the emergency room twice during the fourth quarter and was suffering from a chronic intestinal issue that prevented him from “[sitting] still long enough to do anything.” The complainant also shared that the student “may be a person with ASD, autism spectrum disorder.”

15. In June 2024, the student was required to complete a Living Systems Capstone project. Among other things, the student was required to create a PowerPoint presentation and present it to the class. The student was given the option to “present the project to the class, present 1:1 with [the classroom teacher], present with the speech language pathologist (SLP) and a preferred adult, [or] record [the] presentation and send it to the teacher.”
16. On June 5, 2024, the complainant provided consent for the student to be assessed in academic, communication, intellectual/cognitive functioning, emotional/social/behavior development, and autism rating scales.
17. On June 7, 2024, the complainant emailed the student’s teacher expressing concern about the failing grade the student received on the assignment and requested to review the grading rubric.
18. On June 7, 2024, the student’s teacher emailed the complainant the grading rubric for the assignment and expressed that the student had not presented the assignment in class, did not complete some of the requirements on the rubric, and had not produced a “voice over PowerPoint”. The teacher agreed to allow the student to present the assignment for 20 points on the following school day. Additionally, the student could make the needed corrections and resubmit the project over the weekend, and it would be re-graded.
19. On June 8, 2024, a BCPS staff member emailed the complainant and shared that she was willing to review the student’s assignment with him before school on the next school day to ensure that the student was “confident presenting his project”.
20. On June 10, 2024, the complainant emailed the assignment to the teacher.
21. On June 11, 2024, the student’s teacher emailed the complainant stating that the student’s “presentation/voice-over piece” could not be accepted because it was not the student speaking in video. The teacher stated the student would receive a “0” for the presentation aspect of the assignment and attached the rubric. The student did not re-submit the presentation with an acceptable alternate voice-over.
22. On June 18, 2024, the complainant emailed the IEP team sharing that the student would be “completing some assessments” that week, but the outside psychological assessment would not be completed. The complainant shared that the IEP team could schedule the BCPS assessments and communicate with her and the outside testing agency to ensure there was no duplicate testing.

DISCUSSIONS AND CONCLUSIONS:

ALLEGATION #1

PARENT CONCERN

Each public agency must ensure that the IEP Team reviews the child's IEP periodically and revises the IEP, as appropriate, to address information about the child provided to, or by, the parents. (34 CFR § 300.324).

ALLEGATION #3

COMPREHENSIVE EVALUATION

A public agency shall ensure that a reevaluation of each student with a disability is conducted: if the public agency determines that the educational and related services needs, including improved academic achievement and functional performance of the student, warrant reevaluation; or if the student's parent or teacher requests a reevaluation. (COMAR 13A.05.01.06E(1)).

In this case, the student's October 2022 and October 2023 IEPs addressed the student's identified areas of need; specifically, speech-language and communication. There is no documentation that the complainant raised concerns about the student's health or requested that the student be reevaluated at the August 25, 2023, and October 10, 2023, IEP team meetings. In June 2024, the parent requested the student be reevaluated due to his health concerns and the BCPS initiated the evaluations. The time period to complete the suggested evaluations has not lapsed.

Based on the Findings of Fact #1, #5 to #7, #13, #14, #16, and #22, MSDE finds that the BCPS did ensure that a comprehensive evaluation was initiated in June 2024 to ensure the student was assessed in all areas of need, in accordance with 34 CFR §§ 300.301, .304 -.311, and COMAR 13A.05.01.04.06. Therefore, this office finds that no violation occurred concerning the allegation.

CORRECTIVE ACTIONS and 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. 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 manner¹. 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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student-Specific

By September 30, 2024, MSDE requires the BCPS to provide documentation that the school system has convened an IEP team meeting to update the IEP with measurable annual goals.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

School-Based

MSDE requires the BCPS to provide documentation by December 2, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for developing measurable IEP goals under the IDEA. These steps must include professional development, as well as tools developed to monitor compliance. Monitoring must include a review of at least 10 randomly selected student records at [REDACTED] to ensure the IEP goals are measurable goals. Full compliance is required. If 100% compliance with all requirements is not reflected, a second sample of 10 students must be completed by February 3, 2025.

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 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/ebh

c: Dr. Myriam Rogers, Superintendent, BCPS
Charlene Harris, Supervisor of Compliance, 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
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
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