

October 4, 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

Ms. Allison Myers  
Executive Director  
Special Education Services  
Baltimore County Public Schools  
105 W Chesapeake Ave,  
Towson, Maryland 21204

RE: [REDACTED]  
Reference: #25-024

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention 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 August 6, 2024, MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complaint 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 did not ensure that the IEP team convened to review the student’s IEP before May 20, 2024, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR § 300.324.
2. The BCPS did not ensure that the student was provided with the Extended School Year (ESY) services required by the Individualized Education Program (IEP) since May 2024, in accordance with 34 CFR § 300.101.

**BACKGROUND:**

The student is 12 years old and is 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.

**FINDINGS OF FACT:**

1. The IEP, in effect at the beginning of the school year, was developed on May 24, 2023. The IEP did not require ESY.
2. On October 4, 2023, the IEP team convened to review/revise the student's IEP. The prior written notice (PWN) reflects the team's agreement that the IEP did not require revisions.
3. On October 23, 2023, the IEP team convened to review/revise the student's IEP. The PWN reflects the IEP team proposed and agreed to revise the IEP the supplementary aids, services, program modifications page to include: "[Student] will fill out his planner daily for each class and each teacher will sign the planner to acknowledge that it was filled out. [Student] will write no homework in his planner even if there is no homework assigned." The team also agreed to the following Instructional and testing accommodation: "[Student] will receive support for testing in his special area classes and will have support in his class or will be pulled for testing." The PWN reflects the team reviewed homework progress and services.
4. On November 27, 2023, the IEP team convened to review/revise the student's IEP. The PWN reflects the team agreed that the IEP did not require revisions.
5. On February 26, 2024, the IEP team convened to conduct reevaluation planning and to review and/or revise [Student's] IEP at the parent's request. The PWN reflects:
  - The school-based staff agreed to conduct a psychological assessment for executive function rating scales proposed by the parent;
  - Conduct a speech-language assessment in the areas of receptive and expressive language;
  - The school-based staff reviewed results from prior assessments;
  - The school-based staff reviewed goals proposed by the complainant. The school-based staff also addressed concerns raised by the complainant regarding areas of need and goals in the following areas- coping strategies, speech pragmatic language, speech receptive language, speech expressive language, reading, math, organization/executive functioning, and handwriting; and
  - The school-based staff responded to the complainant's concerns and proposed to revise the following goals: coping strategies/emotional regulation, pragmatic language, written expression, and keyboarding.
  - The school-based staff agreed to collect additional data to address goals that the complainant proposed. The school-based staff declined to add goals proposed by the complaint that were addressed in prior IEPs.

6. On May 20, 2024, the IEP team convened to discuss the results of assessment report, conduct the student's annual review, and to discuss the need for extended school year (ESY). The PWN reflects:
  - The team reviewed the speech-language assessment report, and psychological assessment, the student continues to qualify for special education services, as a student with an Other Health Impairment (OHI);
  - The team rejected conducting the student's annual review meeting "the PLAAFP was not fully updated with the current data";
  - The team reviewed areas of strengths and needs, testing accommodations, supplementary aids and services; and
  - The team proposed and agreed to reconvene to complete the annual review meeting.
7. On June 11, 2024, the IEP team convened for the student's annual review to include extended school year (ESY). The PWN reflects the team ran out of time and proposed to reconvene to discuss the ESY, LRE, and medical assistance pages of the IEP.
8. On July 10, 2024, the IEP team convened for the student's annual review meeting. The PWN reflects:
  - The parent inquired about participation in summer school. The IEP team reviewed the summer school process, as well as the difference between ESY and Extended Year Learning Program (EYLP).
  - The IEP team reviewed service hours, clarified OT services, LRE, behavioral objectives, testing accommodations, present levels, and ESY. The student did not qualify for ESY and was invited to attend EYLP.
  - The IEP team proposed an agreed to an additional executive function objective.
9. On August 15, 2024, the IEP team convened to review/revise the IEP. The IEP team proposed and agreed to revise the IEP to include math calculation on the eligibility page, change the instructional grade level language, and include the name of the assessment used to evaluate the student's written language ability. The PWN also reflects:
  - The team clarified how the student will receive math supports; and
  - The Complaint shared a report from the private provider will be shared with the team.

## **CONCLUSION AND DISCUSSION**

### **ALLEGATION #1**

### **ANNUAL REVIEW**

Based on the Findings of Fact #1 through #5, MSDE finds that the BCPS met on October 4, 2023, October 23, 2023, November 27, 2023, and February 26, 2024, to review and/or revise the IEP, and determine eligibility. Based on the Findings of Fact #6 - 9, MSDE finds that the IEP was not completed on May 20, 2024, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation occurred concerning the allegation.

Notwithstanding, based on the Findings of Fact #6 - #9, MSDE finds that the IEP team reconvened on June 11, 2024, and July 10, 2024, to complete the annual review meeting in accordance with 34 CFR § 300.324. The IEP team also met on August 15, 2024, for the purpose of reviewing/revising the IEP in accordance with 34 CFR §300.324. Therefore, no further action is required.

**ALLEGATION #2**

**PROVISION OF EXTENDED SCHOOL YEAR SERVICE**

At least annually, the IEP team shall determine whether the student requires the provision of extended school year services in accordance with Education Article, § 8-405, Annotated Code of Maryland. COMAR 13A.05.01.08B(2)(a).

ESY determinations are required to be made annually, typically at the annual review IEP team meeting. However, at times it may not be possible to make a decision regarding ESY eligibility at the annual review meeting. In those cases, the IEP team can convene at a later date to discuss eligibility for ESY. Extended School Year Services, MSDE TAB 23-02.

In this case, the complaint alleges that the IEP team did not determine ESY in a timely manner and as a result, the student was not provided with ESY.

Based on the Findings of Fact #8, MSDE finds that the IEP did not require ESY since May 2024. BCPS was not required to provide the student with the ESY services since May 2024, in accordance with 34 CFR § 300.101. Therefore, this office finds that a violation did not occur concerning this allegation.

Notwithstanding, ESY decisions must be made with sufficient time to allow a parent to exercise their procedural safeguards prior to the start of ESY services if they disagree with any decisions. (*See Reusch v. Fountain*, 872 F.Supp. 1421 (D.MD. 1994)). In this case, the decision regarding the student’s eligibility for ESY was not made until July. Had the student been eligible for those services, the decision clearly would have been untimely.

**CORRECTIVE ACTION AND TIMELINE:**

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

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> 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, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

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

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

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  
[REDACTED], [REDACTED], BCPS  
Alison Barmat, Chief, Family Support and Dispute Resolution Branch, MSDE  
Nicole Green, Compliance Specialist, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Dr. Paige Bradford, Chief, Specialized Instruction, MSDE  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Rabiatu Akinlolu, Complaint Investigator, MSDE