

October 10, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Allison Myers
Executive Director
Department of Special Education
Jefferson Building, 4th Floor
105 W. Chesapeake Ave
Towson, Maryland 21204

RE: [REDACTED]
Reference: # 25-032

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 August 14, 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 Schools (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 did not ensure that the student's teachers and school staff had access to the student's Individualized Education Program (IEP), including the Behavior Intervention Plan (BIP), and, as a result, did not ensure that the student's IEP and BIP were implemented in the student's classes from August 28, 2023, to November 6, 2023, in accordance with 34 CFR §§ 300.101 and .323.
2. The BCPS did not ensure that the student's IEP, including special education instruction, goals and objectives, BIP, supplementary aids and services, and accommodations were implemented as required by the IEP during the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323.
3. The BCPS did not develop an IEP that addressed the student's identified needs for a positive behavior intervention program from February 16, 2024, to June 7, 2024, in accordance with 34 CFR §§ 300.101 and .324.
4. The BCPS did not ensure that the student was provided with special education instruction from a certified special education teacher during the 2023-2024 school year, in accordance with 34 CFR § 300.156 and COMAR 13A.12.02.

5. The BCPS did not follow proper procedures when using physical restraint with the student on November 6, 2023, in accordance with COMAR 13A.08.04.05.
6. The BCPS did not ensure that the parent was provided with accessible copies of each document the IEP team planned to discuss at the November 10, 2023, and the February 16, 2024, IEP team meetings at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
7. The BCPS did not provide the parent with prior written notice (PWN) of the decision to remove the supplementary aid and service of having an alternative meal location from the student's IEP on February 16, 2024, in accordance with 34 CFR § 300.503.

BACKGROUND:

The student is 14 years old and is identified as a student with autism under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

ALLEGATIONS #1, #2, #3, and #4 ACCESS TO THE STUDENT'S IEP, IMPLEMENTATION OF THE IEP, NEED FOR A POSITIVE BEHAVIOR INTERVENTION PROGRAM, AND SPECIAL EDUCATION INSTRUCTION FROM A CERTIFIED SPECIAL EDUCATION TEACHER

FINDINGS OF FACT:

1. The student's IEP in effect during the 2023-2024 school year was developed on May 30, 2023.

The IEP requires a BIP. There is no documentation that the IEP and BIP include the use of restraint.

The IEP requires the provision of supplementary aids and services, and accommodations including social behavioral supports:

- Small group;
- Frequent breaks;
- Reduced distraction to self and others;
- Monitor test responses;
- Extended time (1.5);
- Daily to-do lists;
- Daily proofreading checklists;
- Daily provide student with a copy of student or teacher notes;
- Daily have student repeat or paraphrase information;
- Daily allow use of organizational aids;
- Daily peer tutoring or paired work assignment;
- Daily allow use of highlighters during instruction and assignments;
- Daily chunking of text;
- Daily structured line paper, use of computer, flexible due dates;
- Daily break down assignments into smaller units;
- Daily advanced preparation for schedule changes;
- Daily structured time for organization of materials;
- Daily strategies to initiate and sustain attention;
- Daily frequent eye contact/ proximity control;

- Daily use of positive/concrete reinforcers;
- Weekly home school communication;
- Daily social skills training;
- Daily social/behavior supports, check-ins/check-outs, daily breaks, late transitions;
- Daily alternative location for lunch, bathroom/changing, timers; and
- Daily adult support.

The IEP requires the provision of goals and objectives in the areas of social emotional behavioral: self-management, pragmatic language, written language, and reading comprehension.

The IEP requires:

- Three hours daily of special education instruction outside the general education classroom for language arts, social studies, math, reading, and science provided by the special education teacher or the instructional assistant;
 - 20 minutes daily of special education instruction outside the general education classroom for reading comprehension and to maintain routines provided by the special education teacher or the instructional assistant;
 - One hour monthly of speech-language services provided by the speech-language pathologist;
 - Transportation; and
 - Two hours monthly of social work services provided by the school social worker.
2. The student's BIP in effect during the 2023-2024 school year was developed on May 10, 2023. The BIP reflects the identification of problem behaviors, replacement behaviors, and goal behaviors; strategies that address the function of the behavior; skill development; strategies to address the contributing factors of the behaviors; strategies to minimize the triggers of the behavior; positive strategies (rewards and reinforcers) to reinforce appropriate replacement behaviors; consequence strategies for the problem behavior; staff development; a response plan (if needed); and data collection methods. The BIP does not include the use of restraint.

The BIP reflects that the student will be provided with "rewards (points, praise, high fives, etc.) when he uses a strategy when frustrated, angry, silly, overstimulated, and/or overwhelmed.... Allow [the student] to take structured breaks throughout the day. He should have a set break in the middle of each class, and he can work toward shorter breaks (i.e. if you work for 15 minutes (set timer), then you can earn a 5-minute break (set timer)."

The BIP further reflects the positive strategies (rewards and reinforcers) to reinforce appropriate replacement behaviors as:

- Opportunities to earn quarterly hallway social events;
- Opportunities to play video game(s) of choice (Minecraft);
- Opportunities to use his device for entertainment purposes (videos and games will be monitored for appropriate usage);
- Provide the student with positive praise and attention when he is demonstrating replacement behaviors and using calming strategies;
- Allow him to have lunch bunches, when possible, with a preferred staff member and peer;
- Provide him with time to draw and write stories once he has completed classroom tasks; and
- Allow him to see a preferred staff member to receive positive praise when he is demonstrating appropriate behaviors.

3. The student's IEP developed on February 16, 2024, requires the provision of a BIP. There is no documentation that the IEP and BIP include the use of restraint.

The IEP requires the provision of supplementary aids and services, and accommodations including social behavioral supports:

- Small group;
- Frequent breaks;
- Reduced distraction to self and others;
- Monitor test responses;
- Extended time (1.5);
- Daily to-do lists;
- Daily proofreading checklists;
- Daily have student repeat or paraphrase information;
- Daily allow use of organizational aids;
- Daily allow use of highlighters during instruction and assignments;
- Daily chunking of text;
- Daily structured line paper, use of computer, flexible due dates;
- Daily break down assignments into smaller units;
- Daily advanced preparation for schedule changes;
- Daily structured time for organization of materials;
- Daily strategies to initiate and sustain attention;
- Daily frequent eye contact/ proximity control;
- Daily use of positive/concrete reinforcers;
- Weekly home school communication;
- Daily social skills training;
- Daily social/behavior supports, check-ins/check-outs, daily breaks, late transitions; and
- Daily adult support.

The IEP requires the provision of goals and objectives in the areas of social emotional behavioral: self-management, pragmatic language, written language, and reading comprehension.

The IEP requires:

- Four hours and thirty minutes daily of special education instruction outside the general education classroom for reading, language arts, science, social studies, and math provided by the special education teacher or the instructional assistant;
- 20 minutes daily of special education instruction outside the general education classroom for reading compensation and to maintain routines provided by the special education teacher or the instructional assistant;
- One hour monthly of speech-language services provided by the speech-language pathologist;
- Transportation; and
- Two hours monthly of social work services provided by the school social worker.

4. There is documentation that the student attended [REDACTED] from the start of the 2023-2024 school year to February 16, 2024, and [REDACTED] from February 20, 2024, to the end of the 2023-2024 school year. There is documentation that the student was enrolled in the Social Communication and Learning Support programs at both schools.

5. There is documentation that on August 21, 2023, the student's teachers at [REDACTED] were provided with copies of the student's IEP and BIP.
6. There is documentation that the goals and objectives were reported on in November 2023, January 2024, February 2024, April 2024, May 2024, and June 2024, for social emotional behavioral self-management, and pragmatic language, written language, and reading comprehension.
7. There is documentation that the student was provided with special education instruction and implementation of the BIP as required by the IEP since the start of the 2023-2024 school year.
8. There is documentation that the student was provided with speech-language services as required by the IEP since the start of the 2023-2024 school year.
9. There is no documentation that the student was provided with social work services as required by the IEP from the start of the 2023-2024 school year to February 2024. There is documentation that the student was provided social work services as required by the IEP from February 2024 to the end of the 2023-2024 school year.
10. While there is some documentation that the student was provided with supplementary aids, services, and accommodations, it does not demonstrate that they were consistently provided as required by the IEP since the start of the 2023-2024 school year.
11. There is documentation that the student was provided special education instruction from either a certified special education teacher or an instructional assistant as required by the IEP, since the start of the 2023-2024 school year.

DISCUSSIONS AND CONCLUSIONS:

Allegation #1: ACCESS TO THE IEP AND BIP

Based upon the Findings of Fact #1, through #3, and #5, MSDE finds that the BCPS did ensure that all of the student's teachers and school staff had access to the student's IEP including the BIP, and, as a result, did ensure that the student's IEP and BIP were implemented in the student's classes from August 28, 2023, to November 6, 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION, SPEECH-LANGUAGE SERVICES, SOCIAL WORK SERVICES, GOALS AND OBJECTIVES, BIP, SUPPLEMENTARY AIDS AND SERVICES, AND ACCOMMODATIONS

Special Education Instruction and BIP

Based upon the Findings of Fact #1 through #3, and #7, MSDE finds that the BCPS did ensure that the student's IEP, specifically special education instruction and BIP were implemented as required by the IEP since the start of the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office does not find a violation occurred concerning this aspect of the allegation.

Speech-Language Services, and Goals and Objectives

Based upon the Findings of Fact #1, #3, #6, and #8, MSDE finds that the BCPS did ensure that the student's IEP, specifically speech-language services and goals and objectives were implemented as required by the IEP during the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office does not find a violation occurred concerning this aspect of the allegation.

Social Work Services

Based upon the Findings of Fact #1, #3, and #9, MSDE finds that the BCPS did not ensure that the student's IEP, specifically social work services were implemented as required by the IEP from the start 2023-2024 school year to February 2024, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds a violation occurred concerning this aspect of the allegation.

Based upon the Findings of Fact #1, #3, and #9, MSDE finds that the BCPS did ensure that the student's IEP, specifically social work services were implemented as required by the IEP from February 2024 to the end of the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office does not find a violation occurred concerning this aspect of the allegation.

Supplementary Aids and Services, and Accommodations

Based upon the Findings of Fact #1, #3, and #10, MSDE finds that the BCPS did not ensure that the student's IEP, specifically supplementary aids and services, and accommodations were implemented as required by the IEP during the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds a violation occurred concerning this aspect of the allegation.

Allegation #3: NEED FOR A POSITIVE BEHAVIOR INTERVENTION PROGRAM

In this case, the complainant alleges that the student was inappropriately given breaks as a positive incentive, that in turn increased negative behaviors. There is no documentation to support this allegation.

Based upon the Findings of Fact #1 through #3, MSDE finds that the BCPS did develop an IEP that addressed the student's identified needs for a positive behavior intervention program from February 16, 2024, to June 7, 2024, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #4 SPECIAL EDUCATION INSTRUCTION FROM A CERTIFIED SPECIAL EDUCATION TEACHER

In this case, the complainant alleges that the student was not provided with special education instruction by a certified special education teacher. However, the student's IEPs in effect during the 2023-2024 school year require special education instruction to be provided by the special education teacher or the instructional assistant. Therefore, special education instruction could be provided by either the special education teacher or the instructional assistant.

Based upon the Findings of Fact #1, #3, and #11, MSDE finds that the BCPS ensured that the student was provided with special education instruction from a certified special education teacher or instructional assistant during the 2023-2024 school year, in accordance with 34 CFR § 300.156 and COMAR 13A.12.02. Therefore, this office does not find a 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.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with the 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.² Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student-Specific

MSDE requires the BCPS to provide documentation, by December 9, 2024, that the IEP team has taken the following action:

- a. Provided the student with consistent supplementary aids, services and accommodations as required by the IEP;
- b. Conducted an IEP team meeting to determine the amount and nature of compensatory services or other remedy to redress the violations identified in this Letter of Finding. The IEP team must consider:
 - i. The student's present levels of functioning and performance;
 - ii. The services needed to remediate the violations identified in this investigation; and
- c. Developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

The BCPS must ensure that the parent is provided with prior written notice of the team's decisions. The parent maintains 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 December 9, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the provision of supplementary aids, services, accommodations, social work services, and provision of IEP documents at least five days prior to an IEP team meeting under the IDEA and COMAR. These steps must include staff development, as well as tools developed to monitor compliance.

¹ 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.

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

MSDE requires the BCPS to provide documentation by December 9, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the provision of supplementary aids, services, accommodations, and the provision of PWN under the IDEA. These steps must include staff development, as well as tools developed to monitor compliance.

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/sd

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
Norma Villanueva, Compliance Specialist, BCPS
[REDACTED], Principal, [REDACTED], BCPS
[REDACTED], Principal, [REDACTED], BCPS
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicole Green, Compliance Specialist, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Sarah Denney, Complaint Investigator, Dispute Resolution, MSDE