

October 21, 2024



Ms. Allison Myers
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #25-042

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 30, 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 did not ensure that the Individualized Education Program (IEP) team addressed the parent’s concerns regarding the student’s academic progress in an IEP meeting held in February 2024¹, in accordance with 34 CFR § 300.324.
2. The BCPS did not follow proper procedures when conducting a reevaluation of the student since July 2024, in accordance with 34 CFR §§ 300.303-306.
3. The BCPS did not follow proper procedures in making the determination that the student would participate in the alternative Maryland School Assessment Program and would pursue a Certificate of Program Completion instead of a high school diploma, in accordance with 34 CFR § 300.320 and COMAR 13A.03.02.09.

¹ The Initiation Letter reflects “since October 2024” in error. The investigation was conducted in February 2024.

BACKGROUND:

The student is 20 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.

FINDING OF FACTS:

1. On February 2, 2024, the IEP team convened to conduct the student's annual IEP review. The team proposed updating the present levels of academic achievement and functional performance (PLAAFP), adding speech and language as a consult, finding the student eligible for Extended School Year (ESY) services, and updating the IEP goals in the areas of communication, math, reading, and writing. The Prior Written Notice (PWN) generated after the meeting reflects that the complainant requested "if the student could be moved to the certificate track for the 2024-2025 school year before exiting the school system." However, there is no documentation indicating that the IEP team responded to the complainant's request.
2. On July 9, 2024, the IEP team convened to discuss the results of the assessment reports completed for the student as part of a settlement agreement dated May 22, 2024. The agreement stipulated that the student would receive assessments in the following areas:
 - Academic performance;
 - Emotional, social, and behavioral development, including an Autism rating scale;
 - Cognitive functioning; and
 - Expressive, receptive, and pragmatic language.

The PWN generated after the IEP meeting reflects that the IEP team reviewed the academic assessments during the meeting. The assessments highlighted the student's strengths in spelling, oral reading, and math calculation while identifying areas of need in applied problems, word attack, and sentence reading fluency.

The IEP team discussed the results of the psychological/cognitive assessment, specifically the Comprehension Test of Nonverbal Intelligence, Second Edition (CTONI-2)². The assessment indicated that the student demonstrated nonverbal cognitive abilities with a full scale of 78³ which is within the poor range, placing him at the 7th percentile compared to his peers. The PWN reflects a clinical and statistical difference between his scores on the pictorial and geometric scales, with the student scoring in the low range at the 3rd percentile on the pictorial scale and in the below-average range at the 23rd percentile on the geometric scale.

The Adaptive Behavior Assessment System, Third Edition (ABAS-3), completed by the student's parent and two special education teachers, revealed differing perspectives on his independence with adaptive skills in the home and school settings. The overall adaptive composite was in the extremely low range, according to the parent's report, while the teachers' reports placed it in the below-average to average range when compared to peers of the same age.

² The Comprehensive Test of Nonverbal Intelligence, Second Edition (CTONI-2) is a norm-referenced test using nonverbal formats. Measure general intelligence of children and adults who might be adversely affected by subtle or overt impairments involving language or motor abilities.

³ Compared to his previous full-scale score of 59, which falls within the very poor range as noted in a psychological evaluation conducted by BCPS in 2019.

The student was also assessed for social, emotional, and behavioral functioning, specifically related to challenges associated with autism spectrum disorder. The Social Responsiveness Scale, Second Edition (SRS-2), completed by the student's parent and two special education teachers, revealed differing observations. The parent rated the student as having severe social impairments related to autism. One special education teacher consistently rated the student within the normal range, indicating they did not observe significant autism-related characteristics at school. The other special education teacher rated the student in the mild to moderate range, suggesting the student shows some characteristics of autism to varying degrees in the school setting.

The IEP team reviewed a speech-language assessment conducted on June 10, 2024. The PWN reflects that the student's teachers completed the Oral Language Impact on Educational Performance questionnaire for receptive and expressive language. The questionnaire indicated that the student frequently attends to tasks, asks questions for clarification, responds to direct questions, speaks in complete sentences, asks appropriate questions to gain understanding, uses language relevant to the current topic, initiates appropriate conversations, converses appropriately with others, gains the teacher's attention, participates in classroom discussions, follows oral directions effectively, demonstrates the ability to use new vocabulary, recalls information to retell a story or event, and organizes thoughts for meaningful explanations or stories.

Due to time constraints, the IEP team was unable to confirm eligibility, conduct an annual review, or develop a transition plan. The team agreed to reconvene on July 16, 2024.

3. On July 16, 2024, the IEP team reconvened to continue discussing the assessment results, conduct the student's annual review, discussion of Extended School Year (ESY), and transition services. The PWN generated after the IEP meeting reflects that during the IEP meeting, the IEP team utilized data from various assessments, including the psychological/cognitive, adaptive, social/emotional functioning, educational, and speech-language assessments, along with parent feedback. The student was identified as having Multiple Disabilities (MD) (Intellectual Disability (ID) and Speech-Language Impairment) in the past. However, based on the recent assessments, the team sought to confirm the appropriate primary disability and considered autism and intellectual disability.
4. Using an Intellectual Disability Checklist, the IEP team determined that the student did not meet the criteria for an intellectual disability because the student's cognitive abilities were not within the significantly sub-average range. The IEP team completed an eligibility tool for Autism and determined it as the student's primary disability.

During the meeting, the complainant raised concerns about the student potentially having Other Health Impairment (OHI) due to Attention-deficit/hyperactivity disorder (ADHD) and a speech-language impairment. The team discussed these areas but determined that eligibility tools would not be completed for them. The IEP was updated with the new date and the autism disability code. Due to time constraints the team agreed to hold an additional meeting to assess whether the student qualified for the alternate framework and to further update the IEP.

5. On July 26, 2024, the IEP team reconvened to discuss the assessment results, conduct the student's annual review, address ESY and address transition services. The PWN generated after the IEP meeting reflects that at the beginning of the meeting, the parent provided the IEP team via email with the student's private neuropsychological evaluation from the [REDACTED] ([REDACTED]), completed on June 4, 2024. The parent requested that the IEP team use this data to change the student's

disability code from autism to ID or MD, per the [redacted] assessment recommendations. The PWN reflects that the IEP team "agreed to discuss, review, and consider the [redacted] evaluation at the parent's request."

6. The PWN generated after the IEP meeting reflects the IEP team reviewed the [redacted] assessment in its entirety. The IEP discussed that the student demonstrates needs in receptive and expressive language as evidenced by the BCPS speech-language assessment and the [redacted] assessment. The PWN reflects that BCPS "strategically used" the CTONI2 to assess the student's cognitive functioning to "eliminate barriers associated with the student's receptive and expressive language needs to better obtain an accurate description of [the student's] cognitive functioning" and the [redacted] assessment utilized the Wechsler Adult Intelligence Scale, 4th Edition (WAIS-IV). The PWN reflects, that the evaluation measure is reliant in verbal-based responses and prompts; therefore, "the student's receptive and expressive needs were not taken into consideration." The IEP team also noted the student was raised in "Uganda until he was a teenager"⁴ and there may be some cultural bias that negatively impacted his performance. The IEP team "advised that the non-verbal intelligence evaluation would yield a more accurate reflection of the [student's] cognitive performance." The complainant questioned the "integrity" of the BCPS examiner due to them using the non-verbal intelligence measure and stated, "If the [student] cannot verbally respond to a question or a prompt, then it is evident that the [student] displays the criteria for significant cognitive disability." The IEP team considered and discussed the complainant's concerns by reviewing the standards the private providers use to determine eligibility versus the standards the school must use under IDEA to make an informed determination. The complainant expressed concern that the "student cannot be defined as only having one disability." The IEP team also reviewed the criteria for a student with multiple disabilities, as they may assess that he presents with every disability noted on the MD eligibility tool. The IEP team considered the complaint's requested and noted there is no data to support that the student would qualify for every disability identified on the MD eligibility.

The PWN reflects the [redacted] cognitive assessments (WAIS-IV), showing that the student's full-scale index falls within the extremely low range. Compared to his previous assessment from [redacted] in 2019, the student has shown some improvement; however, he remains behind his peers. [redacted] administered the Adaptive Behavior Assessment System (ABAS), however, it relied on parental input and did not consider input from the educational environment. They also administered the Kaufman Test of Educational Achievement (K-TEA) in the areas of reading and math, where his scores fell within the low to low-average range.

7. The PWN further reflects, that the IEP team indicated the importance of selecting a primary disability category, and on July 16, 2024, autism was identified as the primary disability code, to which "all team members agreed" based on qualitative and quantitative data. The PWN reflects the complainant agreed with the student being identified as a student with autism. After reviewing the assessment from [redacted], the IEP team discussed the Alternate Framework Checklist, Appendix A: Participation Criteria Checklist, as a part of an annual determination driven by data. The PWN reflects the IEP team completed sections one and two of the framework, however, due to time constraints the IEP team agreed to reconvene on July 30, 2024.
8. On July 30, 2024, the IEP team reconvened to discuss the outcome of the assessment results, conduct the student's annual review, discuss ESY, transition services, and complete the Alternate Framework Checklist along with the relevant data to determine if he qualified for participation in the Alternate

⁴ The student is not identified as a Multilingual Learner.

State Assessment. The PWN generated after the IEP meeting reflects that at the June 26, 2024, IEP team meeting, the complainant requested that the student earn his Maryland State Certificate of Completion.

- 9. The IEP team reviewed Appendix A: Participation Criteria and Checklist and determined that based on the data used for the worksheet, the student’s cognitive performance, and adaptive skills, the student did not meet the criteria to participate in the alternate assessment or receive instruction aligned with alternate achievement standards. The complainant disagreed with the decision and noted that the IEP process could not be completed until this matter was resolved. The IEP team reviewed each area of disagreement with the parent and identified the data sources used for determining each section of the worksheet. The IEP team discussed that an “IEP is developed and based on a student’s need, not if a student is identified as certificate or diploma bound.”
- 10. Due to the complainant’s disagreement with the IEP team’s decision, she was provided with her parental rights and procedural safeguards, as well as information for the Family Support and Dispute Resolution Branch, MSDE State Complaint Form, and MSDE Due Process Form.
- 11. There is documentation that the IEP team correctly completed the Appendix A form.

CONCLUSIONS:

ALLEGATION# 1 ADDRESSING PARENT CONCERN

Based on Finding of Fact #1, MSDE finds the BCPS did not ensure that the IEP team addressed the parent’s concerns regarding the student’s academic progress in an IEP meeting held in February 2024. Therefore, this office finds that a violation occurred concerning the allegation.

Notwithstanding the violation, MSDE finds that, based on Finding of Fact #2, the complainant entered into a settlement agreement on May 22, 2024, which precludes the student from receiving any additional compensatory awards or services. Therefore, no student-based corrective action is required.

ALLEGATION #2 PROPER PROCEDURES FOR CONDUCTING A REEVALUATION OF THE STUDENT

Based on Findings of Fact #2 through #7, MSDE finds that the BCPS did follow proper procedures when conducting a reevaluation of the student since July 2024, in accordance with 34 CFR §§ 300.303-.306. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #3 PROPER PROCEDURES TO DETERMINE ALTERNATE MARYLAND SCHOOL ASSESSMENT

Based on Findings of Fact #8 through #10, MSDE finds that the BCPS did follow proper procedures in making the determination that the student would participate in the alternative Maryland School Assessment Program and would pursue a Certificate of Program Completion instead of a high school diploma, in accordance with 34 CFR § 300.320 and COMAR 13A.03.02.09. Therefore, this office finds that a violation did not occur concerning the allegation.

TIMELINE:

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 Hickman, Ed.D.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

ALH/sj

c: Dr. Myriam Rogers, Superintendent, BCPS
Dr. Allison Myers, Executive Director, Special Education, BCPS
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