

December 6, 2024

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #25-088

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 October 7, 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 a music evaluation was completed within the required timelines since October 2023, in accordance with 34 CFR § 300.301 and COMAR 13A.05.01.06.
2. The BCPS did not follow the proper procedures when conducting a reevaluation of the student by not allowing him to use his Assistive Technology device during a music evaluation in October 2023, in accordance with 34 CFR § 300.101.
3. The BCPS has not ensured that the IEP team addressed parental concerns about the data used in observation, student behavioral needs, sensory plan, and placement in an inclusion class and progress since October 2023, in accordance with 34 CFR § 300.324.
4. The BCPS has not developed and implemented an Individualized Education Program (IEP) that addresses the student’s behavioral needs since October 2023, in accordance with 34 CFR § 300.324.
5. The BCPS has not ensured that the student has been provided with the special education instruction, support and accommodations, and related services required by the IEP since October 2023, in accordance with 34 CFR §§ 300.101 and .323.

6. The BCPS did not follow proper procedures when determining the student's educational placement since May 2024, in accordance with 34 CFR §§ 300.114 - .116 and .321.

BACKGROUND:

The student is six years old and is identified as a student with Autism under the IDEA. During the 2023-2024 school year, the student attended [REDACTED]. The student is currently parentally placed at a [REDACTED], a private preschool and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. On October 5, 2023, the IEP team convened at the complainant's request to address questions and concerns. During the meeting, the complainant shared concerns about the student's transition into school, potty training, IEP services, and sensory processing needs. The prior written notice (PWN) generated after the meeting reflects the complainant's request for a formal sensory processing assessment due to the student's sensory needs. The BCPS occupational therapist (OT) discussed with the IEP team that classroom observations often provide more valuable insights than a formal sensory processing assessment. She noted that sensory processing data is highly dependent on the environment and is best collected over an extended period. The OT recommended focusing on obtaining targeted data from the behaviors the student exhibits in the classroom. The IEP team proposed reconvening in 30-45 days to review observations from an occupational therapist and other providers regarding the student's sensory processing concerns.

The PWN reflects the IEP team discussed the complainant's questions and concerns. The BCPS staff provided input that the student adjusted well to his classroom, followed a consistent schedule, and transitioned smoothly. He uses his AT device, gestures, or verbal requests to communicate and can follow one-step directions. While he enjoys circle time and music, he struggles with turn-taking and is working on greetings and multi-step directions. Bathroom breaks are built into his daily routine.

2. The team also proposed collecting data on the student's Social Emotional: Self-Regulation goal to evaluate its appropriateness, which was agreed upon by all members. Updates were made to the student's IEP, including the addition of "daily home-school communication" on the supplementary aids page and a revised description of adult support to address his toileting needs, with a focus on potty training and self-help skills.
3. While the PWN does not document the complainant's request for a music therapy evaluation, audio recordings confirm that the request was made at the end of the IEP meeting. Since music therapy was not an initial topic of concern, a music therapist was not present to hear or address the complainant's concerns. The complainant was informed that a team member would follow up with her regarding the request.
4. On December 5, 2023, the BCPS Office of Related Services received a music therapy referral for the student.
5. On December 5, 2023, the complainant emailed an IEP team member to follow up on the music therapy assessment referral requested during the October 5, 2024, IEP meeting, as no update had been provided. The IEP team member responded, stating that "a music therapy referral was submitted to the district, and we are awaiting a response."

6. On December 6, 2023, the IEP team reconvened following the October 5, 2023, IEP meeting, during which the team agreed to collect data on the student to determine if additional support was needed for his sensory needs and self-regulation and to update the IEP as appropriate. The IEP team reviewed the collected data and proposed revisions to the student's self-regulation goal, transition goal, and turn-taking goal, as well as updates to the OT consult description and the addition of an adult support description to the supplementary aids and services section of the IEP.
7. During the October 5, 2023, meeting, it was agreed that the IEP team would discuss the student's "meaningful inclusion time" in the general education classroom during the current meeting. Based on the discussion, the December 6, 2023, PWN reflects that the complainant requested the school team wait until the student demonstrates better sensory regulation, likely after winter break. The complainant stated she would reach out to the school team when she feels the student is ready to move forward with inclusion opportunities.
8. During the December 6, 2023, IEP meeting, the complainant and educational advocate shared updates and concerns about the student's behavior of being upset to come to school, hunger, and hydration after school. She requested classroom observation opportunities and access to observation reports and raw data. The team discussed the student's progress, adjusted the student's schedule to include snack and water breaks, and agreed to provide additional sensory input opportunities. They also addressed not receiving daily home-school communication, with plans for the complainant to outline specific topics for more detailed updates. All recommendations and IEP revisions were agreed upon by the team. The IEP team administrator informed the complainant that they would look into the music therapy referral with the central office and inform the complainant of the status.
9. On December 19, 2023, via email, the complainant was informed by an IEP team member that the student would be observed by the music therapy therapists on January 11, 2024. On January 23, 2024, the complainant followed up on the status of the assessment and was informed via email by an IEP team member that "the music therapist is going to recommend an assessment to determine if he would qualify and whether music therapy could be a useful tool for him in working on his communication and IEP goals." A tentative date of February 27, 2024, was set to review the assessment results.
10. On January 24, 2024, the complainant emailed to request that the consent form for the music therapy assessment be provided along with the assessment itself. However, the complainant was informed that an IEP team meeting would need to be held before proceeding with the music therapy assessment.
11. On January 27, 2024, the BCPS conducted an "Informal Music Therapy Screening Report" and provided it to the complainant on January 29, 2024. The report notes the screener observed the student during a 1:1 speech therapy session, where he used his speech device to request needs, followed directions, took turns, and participated. The report notes that given the student's limited verbal skills and strong response to music, a "formal music therapy assessment" is recommended to explore its potential benefits for his educational access. This will be discussed with the team and parents at the upcoming IEP meeting.
12. On February 22, 2024, the IEP team convened to conduct a reevaluation planning meeting. The PWN reflects during the IEP meeting, the complainant expressed concerns about the student's reluctance to attend school, his emotional shutdowns after school, and his positive response to music, which helps with regulation and engagement. The student's teacher noted the student calms down quickly after arriving at school and shared his progress, emphasizing the use of music for transitions and routines.

The music therapist in attendance recommended a music therapy assessment to address the student's IEP goals and for communicative intent such as in greetings and expressing his wants and needs based on her observations. The IEP team agreed on the assessment and the complainant signed for consent.

13. On March 7, 2024, the IEP team met at the complainant's request to discuss inclusion and sensory concerns. The complainant, along with her educational advocate, a private speech pathologist, and a private OT, shared observations from December 2023 and February 2024. The advocate noted the student's dysregulation in the classroom, including stimming, ear-covering, and eloping, but also observed him following directions and engaging in lessons. The complainant reported significant dysregulation, especially when another student was upset, and highlighted his reactions to sensory stimuli like the visual timer.

The private OT also observed the student's stimming and ear-covering but noted his engagement in circle time and activities. The speech pathologist emphasized the importance of allowing the student to communicate through his preferred method, whether verbal or via his device. Classroom teachers discussed transitional supports and movement breaks, ensuring these would be in place for his inclusion in the Pre-K classroom.

The IEP team proposed including the student in the general education Pre-K classroom with sensory supports, such as a wagon, headphones, and a wobble seat, to address his sensory needs. They also agreed to revise the student's upcoming IEP to ensure consistent implementation of these supports across all settings.

14. On April 1, 2024, BCPS conducted a music therapy assessment, which noted that the student used his AT device during the assessment.
15. On April 8, 2024, the IEP team reconvened to review the music therapy assessment results per the recommendation from the IEP team on February 22, 2024, conduct an annual review and the need for Extended School Year Services (ESY). The PWN reflects the music therapist reviewed her assessment results and did not recommend music therapy as a direct service as during the assessment, the music did not show to increase the student's performance, motivation, and ability to access the curriculum as it relates to the student's IEP. The IEP team agreed to consult services for music therapy in which the music therapist would consult with the student's classroom teacher and provide songs that can be used throughout his school day. The complainant was in disagreement with all parts of the assessment and observations and shared concerns about the assessment. The educational advocate was concerned about the assessment, noting the times that the student was "non-compliant" and asked why his compliance is tied to receiving music therapy. The IEP team recommended consultation services for the student and for the IEP team to meet again in six months to discuss if another assessment is needed.
16. During the IEP meeting, the complainant expressed concerns regarding the student's communication, transitions to and from school, potty training, and behaviors indicating shutdown after school. The PWN reflects that the IEP team addressed these concerns and proposed solutions for each. Due to time constraints, the IEP was not updated during the meeting, and the team agreed to reconvene on May 1, 2024, to update the IEP and review new data that would be collected to explore different strategies for transitions.

17. On May 1, 2024, May 13, 2024, May 24, 2024, and May 31, 2024, the IEP team convened to conduct an annual review of the student's IEP. Over the course of the multiple meetings, the IEP team used the most recent parent and teacher reports, progress reports, and classroom data to update the IEP. The PWN generated after each IEP meetings reflects:

May 1, 2024

The complainant shared that she has noticed an improvement in the student's transition to school, as he has had fewer incidents of being upset upon arrival. The IEP team reviewed the data collected following the recommendations from the IEP meeting held on April 8, 2024, and noted that the student prefers the "wobble cushion" as a flexible seating option. Additionally, the student is engaging more in the inclusion classroom with the general education PK class. The general education teacher shared that the student has been engaging more and has only had one or two incidents of being upset when in class. The class sings a good-bye song when it is time for the student to leave which helps with his transition back to his self-contained class. The IEP team discussed that the incidents may have been due to dysregulation when the teacher gave the student directives, and the IEP team discussed strategies and activities for the student when dysregulated.

May 13, 2024

The complainant's educational advocate questioned why the student did not qualify for music therapy, noting that he is a "Gestalt Language Learner." An IEP team member explained that the music therapy evaluation had been previously reviewed, and it was determined that the student did not qualify.

The PWN reflects that the IEP team updated the student's goals to reflect the student's use of Gestalt phrases and language, adjusting social-emotional support to focus on the support needed for the student rather than social norms, and updating the OT objective to reflect his current progress. The team also added a monthly consult for AT support to ensure new staff can effectively use the student's device and update any necessary phrases. The handwriting goal was also updated and all IEP team members agreed to the revisions.

May 24, 2024

The IEP team updated the student's annual IEP. The updates included revisions to the Social-Emotional/Behavioral and Functional Communication goals, ESY services, and Least Restrictive Environment (LRE). The team also revisited the handwriting goal and supplementary aids page. During the IEP meeting, the complainant expressed concerns that the student "may become prompt dependent," which the IEP team documented in the IEP. Additionally, a request was made for the meeting notes to reflect that another IEP meeting will be held in six months to obtain a new music therapy assessment. It was also discussed and noted that being a Gestalt learner should not exclude the student from qualifying for music therapy.

The May 24, 2024, IEP reflects that the student demonstrates language deficits impacting his communication and progress on IEP goals and objectives. To support his communication needs, the IEP specifies that he requires access to a digital device with voice output and a communication application featuring leveled vocabularies. Additionally, to facilitate curriculum access and enhance functional capabilities, the use of low-tech visual supports and/or a communication partner book with gestalt phrases may be employed as models to assist the student in making requests, commenting, and engaging in social interactions.

The IEP also states that a designated staff member(s) working with the student is responsible for the daily maintenance and integration of the communication device throughout his academic day. The student's placement is described as being in a special education [REDACTED] class (separate class) with opportunities for inclusion. To meet his needs, the IEP requires modified instructional support and special education services to ensure his ability to access the curriculum and address his communication and regulation requirements effectively.

18. May 31, 2024

The IEP team met to discuss the students' progression for the upcoming year. During the meeting, the IEP team proposed that the student advance to kindergarten and attend [REDACTED] ([REDACTED]), the student's homeschool, noting progress with his goals and age-level standards. The school team reported that the student can follow classroom routines and rules, make requests using his AT device or voice at grade level, and is meeting grade-level expectations for math and literacy. The PWN reflects that the complainant and educational advocate disagreed with the proposed placement at [REDACTED] stating the student was "not ready for Kindergarten or a larger class size." The IEP team proposed revisions to the student's IEP to ensure he receives the necessary support in the kindergarten class; however, the complainant rejected these changes, as she disagreed with the recommended placement. The complainant requested a meeting with a member of the district to discuss how the decision was made for the student to attend [REDACTED] the following year.

19. On June 7, 2024, the complainant emailed the BCPS district representative regarding the IEP meeting held on May 31, 2024. She requested clarification as to why the student was recommended to attend [REDACTED], as the IEP team indicated that the decision was made by the district representative. On June 10, 2024, via email, the BCPS district representative redirected the complainant to the IEP team.
20. On June 27, 2024, the IEP team reconvened to continue the discussion regarding the student's transition for the upcoming school year. The team proposed revising the IEP to include one hour daily in the outside general education setting for ELA, one hour and 15 minutes daily for mathematics, and one hour daily for social emotional learning. These revisions were accepted by the IEP team but were not agreed upon by the complainant and her advocacy team. The complainant expressed concern that the student's needs would not be met in this setting and that he would regress in the progress made this year. They raised concerns about the student's safety, noting his history of elopement and the lack of a fence around the playground at [REDACTED]. The complainant also emphasized the need for a special education class with opportunities for inclusion, rather than a general education setting with outside general education hours. They voiced concerns that, during outside general education services, the student would be isolated from his peers and require significant time for transitions, bathroom breaks, and movement opportunities.

The school team discussed the student's experiences with inclusion opportunities in the Prekindergarten class and his transitions. The PWN reflects that the IEP team reviewed the kindergarten curriculum, ELA, and math blocks, determining the outside general education hours based on his current participation and progress in both the [REDACTED] class and the PreK class. The [REDACTED] administrator shared that safety protocols are in place for the playground, and the student's IEP, including supplementary aids for movement, transitions, and additional adult support, would be followed. The complainant was provided with a copy of the Parental Rights/Maryland Procedural Safeguard Notice.

The IEP reflects the student's LRE is in the "general education with special education services in the outside general education setting in a separate class." The student requires modified instructional support as well as special education support to ensure that he is able to access the curriculum and ensure that his communication and regulation needs are met.

21. The report of the student's progress dated October 3, 2023, and January 23, 2023, towards the achievement of the annual academic and behavioral goals, reflects that the student is "Making sufficient progress to meet goal" for his goals.
22. The report of the student's progress dated April 5, 2024, towards the achievement of the annual academic and behavioral goals, reflects that the student is "not making sufficient progress to meet goal" his goals.
23. The report of the student's progress dated January 23, 2023, and April 5, 2024, towards the achievement of the annual expressive communication goals, reflects that the student is "not making sufficient progress to meet goal" his goals.
24. The report of the student's progress dated January 23, 2023, and April 5, 2024, towards the achievement of the annual receptive communication goals, reflects that the student has "achieved" his goals.]
25. There is documentation that the student received OT and speech services as required by the IEP.
26. There is documentation that the student received special education instruction and support as required by the IEP.
27. There is documentation indicating that the student did not receive all the accommodations required by the IEP. Specifically, the complainant was not provided with daily home-school communication, and the student was not given daily access to his AT device.

DISCUSSION AND CONCLUSIONS:

ALLEGATION #1

PROPER PROCEDURES FOR COMPLETING A REEVALUATION IN THE REQUIRED TIMELINE

When conducting a reevaluation, the public agency must ensure that assessments are conducted, the results are considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety days of the date the team determines that assessments are required (COMAR 13A.05.01.06E).

In this complaint, the complainant requested a music therapy assessment for the student on October 5, 2024. The IEP team took an unreasonable time to convene, discuss the need for the assessment, conduct the assessment, and provide a response to the IEP team.

Based on Findings of Fact #1, #3 through #5, #8 through #15, MSDE finds that BCPS did not ensure that a music evaluation was completed within a reasonable timeframe in October 2023, in accordance with 34 CFR § 300.301 and COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred concerning the allegation.

ALLEGATION #2 **PROPER PROCEDURES FOR CONDUCTING A REEVALUATION OF THE STUDENT WITH REQUIRED AT DEVICE**

Based on Findings of Fact #11 and #14, MSDE finds that the BCPS followed the proper procedures when conducting a reevaluation of the student by allowing him to use his assistive technology device during a music evaluation in October 2023, in accordance with 34 CFR § 300.101. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #3 **ADDRESSING PARENT CONCERN**

Based on Findings of Fact #1, #2, #6 through #8, #12 through #18, and #20, MSDE finds that the BCPS ensured that the IEP team addressed parental concerns about the data used in observation, student behavioral needs, sensory plan, and placement in an inclusion class and progress since October 2023, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #4 **IEP THAT ADDRESSES THE STUDENT'S BEHAVIORAL NEEDS**

Based on Findings of Fact #1, #2, #6, #8, #12, #13, #16, #17, MSDE finds that the BCPS has developed and implemented an IEP that addresses the student's behavioral needs since October 2023, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #5 **PROVISION OF SPECIAL EDUCATION INSTRUCTION, SUPPORTS, ACCOMMODATIONS AND RELATED SERVICES**

Based on Findings of Fact #1, #21 through #26, MSDE finds that the BCPS has ensured that the student has been provided with the special education instruction, support, and related services required by the IEP since October 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Based on Finding of Fact #27, MSDE finds that the BCPS has not ensured that the student has been provided with his accommodations as required by the IEP since October 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

ALLEGATION #6 **PLACEMENT DETERMINATION**

Based on Findings of Fact #7, #13, #17 through #20, MSDE finds that BCPS did follow proper procedures when determining the student's educational placement since May 2024, in accordance with 34 CFR §§ 300.114 - .116 and .321. Therefore, this office finds that a violation did not occur concerning the allegation.

CORRECTIVE ACTIONS AND TIMELINES:

The IDEA requires that State complaint procedures include those for 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 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 January 30, 2025, that the IEP team has convened and determined whether the violation related to the delay in the music therapy assessment and the lack of daily accommodations had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedies to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The BCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant 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 February 1, 2025, outlining the steps taken to ensure that [REDACTED] staff properly implements the requirements for evaluations and provides accommodations as outlined in the IEP. The documentation must also include a description of how the BCPS will evaluate the effectiveness of these steps to ensure that similar violations do not recur. As of the date of this correspondence, this Letter of Findings is considered final.

MSDE 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 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.

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, 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.

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/Special Education Services

ALH/sj

c: Dr. Myriam Rogers, Superintendent, BCPS
Denie Mabry, Director, Compliance and Due Process, BCPS
Charlene Harris, Supervisor of Compliance, Special Education, BCPS
Dr. Jason Miller, Coordinator, Special Education Compliance, BCPS
[REDACTED], [REDACTED], Principal, BCPS
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Stephanie James, Complaint Investigator, MSDE
Nicole Green, Compliance Specialist, MSDE