

December 13, 2024

Ms. Nicole Joseph
10421 Stevenson Road, #442
Stevenson, Maryland 51153

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

RE: [REDACTED]
Reference: #25-102

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 15, 2024, MSDE received a complaint from Ms. Nicole Joseph, 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 proper procedures were followed when responding to a request to inspect and review the student’s educational record during the 2023-2024 school year, in accordance with 34 CFR § 300.613.
2. The BCPS has not ensured that the parent was provided with quarterly progress reports toward achieving the annual Individualized Education Program (IEP) goals during the third quarter of the 2023-2024 school year and ESY in July 2024, in accordance with 34 CFR §§ 300.320 and .323.
3. The BCPS did not ensure that the student’s progress towards achievement of the annual IEP goals were measured as described in the IEP, during the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .324.
4. The BCPS did not ensure that the parent was provided with timely quarterly progress reports toward achieving the annual IEP goals during the 2023-2024 school year, in accordance with 34 CFR §§ 300.320 and .323.

5. The BCPS did not ensure that the student was consistently provided with the special education instruction and supplementary aids, services, program modifications, and supports required by the IEP during the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323.
6. The BCPS did not ensure that the student was provided with the special education instruction required by the IEP from a certified special education teacher from March 2024 through June 2024, in accordance with 34 CFR § 300.156 and COMAR 13A.12.02.
7. The BCPS did not ensure that the student was consistently provided with the assistive technology (AT) required by the IEP during the 2023-2024 school year in accordance with 34 CFR §§ 300.101 and .323. Specifically, the complainant alleged that the students' teachers did not receive training on how to use the student's AT device with the exception of one teacher who was trained in March 2024.

BACKGROUND:

The student is seven years old and is identified as a student with Other Health Impairments (OHI). The student 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 2023-2024 school year is dated April 27, 2023. The IEP reflects the student's primary disability as a Developmental Delay with early literacy, early math literacy, fine motor, speech-language articulation, and communication as the areas affected by the disability.

The IEP reflects that the student required an assistive technology (AT) device and services, however, "services may address the required devices or additional data collection with trials is needed."

The instructional and assessment accommodations required by the IEP included the following:

- Audio amplification;
- Bookmark (flag items for review);
- Blank scratch paper;
- Eliminate answer choice;
- General administration directions clarified;
- General administration directions read aloud and repeated as needed;
- Highlighting tool;
- Headphones or noise buffers;
- Line reader mask tool;
- Magnification/enlargement device;
- Notepad;
- Pop-up glossary;
- Redirect student;
- Spell check or external spell check device;
- Writing tools;
- Graphic organizer;
- Audio materials
- Small group;

- Separate or alternate location;
- Reduce distractions to self;
- Reduce distractions to others; and
- Extended time until complete.

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

- Differentiated small group instruction, scribe, daily;
- Allow use of manipulatives, daily;
- Have student repeat and/or paraphrase information, daily;
- Repeated attempts at teaching; differentiation of instruction and materials, daily
- Break down assignments into smaller units, daily;
- Use pictures to support reading passages whenever possible, daily;
- Social skills training, daily;
- Home-school communication system, daily;
- Strategies to initiate and sustain attention, daily;
- Frequent eye contact/proximity control, daily
- Flexible seating opportunities, daily;
- Occupational therapist consult, periodically; and
- Speech-language pathologist consult, monthly.

The IEP required the following IEP goals to be reported on a quarterly basis:

- Early literacy – phonics: “By April 2024, given modeling, guided practice, and visual/tactile supports, [the student] will be able to produce in isolation, and blend each phoneme presented within a cvc [consonant-vowel-consonant] word with 80% accuracy in 3 out of 4 targeted trials.”
- Early literacy – high-frequency words: “By April 2024, given modeling, guided practice, and visual/tactile supports [the student] will be able to automatically recognize in isolation, and read in context, 30 pre-primer sight words, with 100% accuracy in 3 out of 4 targeted trials.”
- Early math – rote counting: “By April 2024, given direct instruction, modeling, visual supports [(i.e. number lines), the student] will identify and rote count numbers 1-50, with 80% accuracy in 3 out of 4 targeted trials.”
- Early math – addition and subtraction: “By April 2024, given direct instruction, modeling, visual supports and hands on manipulatives [(i.e. ten frames, number racks, connecting cubes), the student] will increase her understanding of addition and subtraction within 10, with 80% accuracy, in 3 out of 4 targeted trials.”
- Fine motor: “By April 2024, given materials and cues as needed, [the student] will demonstrate improved fine motor and visual motor skills to increase [,] participate [,] and [succeed] in classroom activities, with 80% accuracy, based on informal procedures.”
- Articulation /k/ /g/: “By April 2024, during a small group activity, with no more than one visual prompt, [the student] will produce /k, g/ in phrases while talking to peers or familiar staff to increase her intelligibility for her educational performance.”
- Articulation: “By April; 2024 during a small group activity or discussion and given no more than 1 visual prompt, [the student] will produce 1-2 syllable words in 2–3-word utterances while talking to peers or familiar staff members in a structured activity.”

The IEP reflects the student is eligible for Extended School Year (ESY) services.

The IEP required the following special education services:

- Five 30-minute sessions of classroom instruction, outside general education provided by a special education classroom teacher or instructional assistant, weekly: “[The student] will receive 30 minutes daily, outside of general education, to support her addition and subtraction goal.”;
 - Five 30-minute sessions of classroom instruction, outside general education provided by a special education classroom teacher or instructional assistant, weekly: “[The student] will receive 5x30 weekly, outside of general education, to address her phonics goal.”;
 - Five 15-minute sessions of classroom instruction, outside general education provided by a special education classroom teacher or instructional assistant, weekly: “[The student] will receive 5x15 minutes weekly, outside of general education, to address her high-frequency words goal.”;
 - Five 15-minute sessions of classroom instruction, outside general education provided by a special education classroom teacher or instructional assistant, weekly: “[The student] will receive 5x15 minutes weekly, outside of general education, to address her rote counting goal.”;
 - Five 20-minute sessions of classroom instruction, inside general education provided by a general education teacher, special education classroom teacher, or instructional assistant, weekly: “[The student] will receive 5x20 weekly, inside general education, to support her addition and subtraction and rote counting goals.”
 - One 20-minute session outside general education, weekly: “[The student] will receive 20 minutes per week of Occupational Therapy (OT) services outside of general education to address her visual motor skills.”;
 - One 20-minute session inside general education, weekly: “[The student] will receive 20 minutes per week of OT services inside general education to address her visual motor skills.”; and
 - Three 20-minute sessions of speech/language pathology services outside general education, weekly: “Services may be provided in person or via telehealth/virtually. Services will be provided 3x weekly for 20 minutes in an individual or group setting in the special education environment.”
2. Documentation states that the progress reported on November 3, 2023, towards the achievement of the early literacy phonics, early math, fine motor, and articulation goals reflects the student was making sufficient progress and was measured as required by the IEP.

The progress reported towards the achievement of the early literacy – high-frequency words reflect the student was making sufficient progress however, the progress was not measured as required by the IEP.

3. On November 1, 2023, the IEP team convened to review the student’s first quarter progress. The prior written notice (PWN) generated after the meeting reflects the IEP team decided to implement a reading intervention (Orton Gillingham) to address the IEP phonics goal. Input from the parents, teacher, speech therapist, and occupational therapist was shared during the meeting, and it was decided that a schedule of the times the student was pulled out of class for the 30 minutes of math and English Language Arts would be shared with the parents.
4. There is documentation that the student did not receive speech-language services from November 10, 2023, to December 4, 2023.
5. There is documentation that the student’s speech-language services resumed on December 7, 2023, and missed services were made up.

6. On January 2, 2024, the student's mother emailed BCPS staff requesting the schedule for the provision of the student's special education services.
7. On January 8, 2024, BCPS staff emailed the student's mother sharing that the student is "pulled throughout the day to address her IEP goals in the areas of rote counting, addition subtraction, and site words." The staff member shared that she is also in "constant communication" with another BCPS staff member regarding the student's progress toward her phonics goals.
8. On January 24, 2024, the IEP team reconvened to conduct reevaluation planning for the student. The PWN generated after the meeting reflects the IEP team decided to conduct assessments in expressive and receptive language, fine motor skills, reading, math, writing, and spoken language. The parents expressed concern that the student was not making enough progress on her IEP goals. Input from the parents, general education teacher, speech therapist, special education teacher, occupational therapist, and reading specialist was shared during the meeting. It was determined that the team would reconvene in 60 days to review the assessment results and update the student's eligibility code.
9. There is documentation that the progress reported on January 25, 2024, towards the achievement of the early literacy phonics, early math, and fine motor goals reflects the student was making sufficient progress and were measured as required by the IEP.

The progress reported towards the achievement of the early literacy – high frequency words and fine motor reflects that the student was making sufficient progress. However, the progress was not measured as required by the IEP.

The progress reported towards the achievement of the articulation goals (2) reflects the student was not making sufficient progress to meet goal. There is no documentation that the IEP team met to discuss the student's lack of progress.

10. There is documentation that on April 1, 2024, the student's special education teacher resigned from BCPS.
11. On April 3, 2024, the IEP team reconvened to review the assessment results and determine the eligibility for the student. The PWN generated after the meeting reflects that the student's father shared that he was pleased with the student's progress. The IEP team reviewed input from the parents, and the general education teacher. The IEP team also reviewed the educational, speech-language, and occupational therapy assessment reports. The PWN reflects the team completed the eligibility tool form and determined that the student was eligible for special education services as a student with an Other Health Impairment (OHI). The IEP team further determined that the draft IEP would be developed and reviewed in 30 days.
12. On April 9, 2024, BCPS staff informed the student's mother that the special education teacher resigned on April 1, 2024, and she would be contacted about the student's services as BCPS "made adjustments in order to stay within compliance of the IEP."
13. There is documentation that on April 15, 2024, BCPS acknowledged the student's mother's concerns that the student was not receiving speech-language and assistive technology (AT) services.
14. On April 16, 2024, the student's mother emailed BCPS staff requesting to know who was providing special education services for the student.

15. On April 16, 2024, BCPS staff emailed the parent sharing that a BCPS supervisor would be “observing implementation of speech-language service delivery” and who has been working with the AT provider to consider any additional training support that may be needed.
16. On April 23, 2024, the student’s mother emailed BCPS staff sharing that the student had not used her AT device during the school year “due to the staff’s lack of training and knowledge about the device.” The parent requested for the student to receive one-to-one assistance to help the student adjust to using the device. The parent also requested a copy of the schedule of when the student receives special education services.
17. No progress toward the student’s IEP goals was reported for the third quarter.
18. On May 2, 2024, BCPS staff emailed the parent to request an opportunity to speak with her about her concerns and requests.
19. On May 6, 2024, the parent emailed BCPS staff inquiring to know how far along the BCPS staff was in printing the student’s files.
20. On May 6, 2024, BCPS staff emailed the parent and shared that the files would be waiting in the front office. The staff member also shared the following information:
 - The student knows how to use the AT device and is using it during speech and when she receives her services.
 - The general education teacher was trained on the AT device and how to implement it with the student in the classroom.
 - A long-term special education substitute teacher started working at the school on May 3, 2023, and was being informed on how to implement “her schedule and servicing the students.” The email shared that the staff member would get back to the parent regarding when the teacher would be working with the student.
 - The email provided the student's speech schedule and how the student was utilizing her AT device during speech sessions.
21. On May 6, 2024, the parent emailed the BCPS staff member to tell them that she received the requested documents. These documents did not include the schedule of the student’s IEP services.
22. On May 7, 2024, the parent emailed BCPS staff sharing that the student had not received special education services “for all of 3rd quarter” to May 7, 2024, in addition to sharing concerns regarding teacher training for the student’s AT device and how the device was being utilized in class.
23. On May 8, 2024, the complainant emailed BCPS staff requesting the schedule for the student’s IEP services.
24. On May 10, 2024, BCPS staff emailed a copy of the student’s IEP progress data for the speech-language goals to the parent.
25. On May 13, 2024, the IEP team met to conduct the student’s annual review and discuss ESY services. The PWN reflects the IEP team proposed to schedule an additional IEP meeting to discuss providing the student with compensatory services because [REDACTED] did not report third quarter progress. The Speech-Language Pathologist (SLP) was not available to attend the IEP meeting due to scheduling, and the IEP team decided to convene a continuation meeting to review the speech-language portions of the IEP.

The PWN reflects the student's mother shared that she had not received the schedule of services requested for the student's special education services. She also requested the name and qualifications of the long-term substitute, and the qualifications and training of the reading specialist. Input was shared from the general and special educators, and the draft IEP was reviewed except the speech-language and communication sections.

The team agreed to continue the meeting on May 15, 2024.

26. On May 15, 2024, the IEP team reconvened to review the draft IEP. The SLP reviewed the speech-language and communication information in the IEP and shared that the student is being "pulled out of the general education setting with her younger sibling [to support the development and use of the AT device. The team added SLP consult, described "home school communication," added sensory strategies, changed the frequency of SLP, OT, and AT consult frequency to periodically. The IEP team continued reviewing the IEP, and the family's lawyer requested that the PWN note that the student is receiving Orton Gillingham as her phonics program. The team discussed ESY, and it was determined that ESY would cover "expressive language, phonics goals, math goals, and occupational therapy." Due to time constraints, the team decided to continue reviewing the remaining portions of the IEP during another meeting.
27. On May 23, 2024, the IEP team reconvened to complete the annual review of the student's IEP and the ESY discussion. The PWN generated after the meeting reflects the IEP team accepted the revised draft IEP and "proposed to reach out to [the department of special education compliance] to set a meeting to further discuss the compensatory hours being offered and [the rationale regarding the calculation of compensatory service hours and to answer any questions]." The IEP team corrected the dates of ESY and made other updates to the IEP services. The PWN reflects the family and attorney desired more compensatory service hours than what was offered and would be requesting reimbursement for the payment of a private provider.
28. The IEP developed at the May 13, 2024, May 15, 2024, and May 23, 2024, IEP meetings is dated May 13, 2024. The IEP lists the student's primary disability as Other Health Impairments (OHI) with speech and language articulation, speech-language receptive language, speech-language expressive language, reading phonics, reading comprehension, math calculation, written language expression, and visual motor as the areas affected by the disability.

The assistive technology determination in the IEP continued, and the following instructional and assessment accommodations were added to those previously required by the IEP:

- Human reader or human signer for mathematics, science, and government assessments;
- Frequent breaks; and
- Extended time double time.

The supplementary aids, services, program modifications, and supports required by the IEP continued, and the following supports were added:

- Tracking strategies for reading;
- Adaptive equipment;
- Sensory strategies; and
- AT consult.

The IEP required the following special education services:

- Five 20-minute sessions of classroom instruction inside general education provided by a general education teacher, special education classroom teacher or instructional assistant, weekly: “[The student] will receive five 20-minute sessions inside general education to support her addition and subtraction and rote counting goals. Five minutes will be for rote/skip counting and fifteen minutes will be for math computation practice;”
- Five 25-minute sessions of classroom instruction, outside general education provided by a special education classroom teacher or instructional assistant, weekly: “[the student] will receive five 25-minute sessions weekly, outside of general education, to work on her math computation goal;”
- Five 45-minute sessions of classroom instruction, outside general education provided by a special education classroom teacher or reading specialist, weekly: “[The student] will receive three 45-minute sessions weekly, outside of general education, to address her phonics goal using an evidence-based small group, teacher-led structured literacy that is cumulative, diagnostic, and prescriptive and multi-sensory. This can be implemented by the special educator or reading specialist/resource teacher. Dictation of CVC words will also be done during this time;”
- Five 25-minute sessions of classroom instruction, outside general education provided by a special education classroom teacher or instructional assistant, weekly: “The student] will receive five 25-minute weekly sessions outside general education to support her reading comprehension and writing goals;”
- One 20-minute session of OT outside general education, weekly “[The student] will receive OT services 30 minutes per week of OT services outside of general education to address her fine motor and visual motor skills. Services may be provided in person or via telehealth/virtually;” and
- Three 20-minute sessions of speech/language pathology services outside general education, weekly: “Services may be provided in person or via telehealth/virtually. Services will be provided 3x weekly for 20 minutes in an individual or group setting in the special education environment.”

The IEP required the following special education services during ESY:

- Three 45-minute sessions of classroom instruction, outside general education, weekly: “[The student] will [receive] three 45-minute sessions weekly, outside general education, to address her phonics goal using an evidence-based, small group, teacher-led structured literacy intervention that is cumulative, diagnostic, and prescriptive and multi-sensory. This can be implemented by the special educator or reading specialist/resource teacher;”
- One 20-minute session of OT outside general education, weekly:” [The student] will receive OT 20 minutes weekly during ESY to address her fine motor and visual motor skills;”
- Two 15-minute sessions of speech/language pathology services outside of general education, weekly: “[The student] will receive 2, 15-minute speech therapy sessions weekly to address articulation goals during ESY;” and
- One 20-minute session of OT inside general education, weekly: “[The student] will receive occupational therapy services 20 minutes weekly in the general education classroom to help her keep up with the visual motor demands of the class.”

The IEP required the following IEP goals:

- Reading-phonics: "By May 2025, given evidence-based, small group, teacher-led structured literacy intervention that is cumulative, diagnostic, and prescriptive and multi-sensory, [the student] will be able to produce and blend cvc [consonant-vowel-consonant] words and pre-primer high frequency words with 90% accuracy in 3 out of 4 targeted trials."
- Math-foundational skills: "By May 2025, given direct instruction modeling, visual supports, [(i.e. number lines and hundred charts), and manipulatives, [the student] will identify and rote count numbers 1-100 by ones, fives, and tens, with 100% accuracy in 3 out of 4 targeted trials."
- Math-calculation: "By May 2025, given direct instruction, modeling, visual supports and hands on manipulatives [(i.e. ten frames, number racks, connecting cubes, or a part, part, whole mat)] [the student] will add and subtract numbers to 30 with 80% accuracy, in 3 out of 4 targeted trials."
- Visual motor: "By May 2025 given a model and practice trials, [the student] will make diagonal lines when forming letters and shapes, she will also be successful to copy a 4-word sentence with grade appropriate skills given no more than verbal cues."
- Articulation: "By May 2025, during a small group activity or discussion and given an initial model and no more than 1 visual prompt, [the student] will reduce the phonological processes of medial consonant deletion and stopping by producing age-appropriate sounds in 80% of opportunities across sessions."
- Receptive language: "By May 2025, [the student] will improve her understanding of basic foundational concepts by following a variety of 1 step directions in 75% of opportunities across 3 consecutive sessions."
- Expressive language: "Given aided language input, [the student] will communicate her wants and needs, describe actions/videos/pictures, and maintain conversations either verbally or using her speech generating device in 75% of opportunities across 3 consecutive sessions."
- Writing: "By May 2025, given direct instruction and opportunity for practice, [the student] will compose a sentence with a subject and an action in order to answer a question or describe, label pictures, and write cvc [consonant-vowel-consonant] words with 80% accuracy in 3 out of 4 trials."

"[The student] will be pulled out 3x per week for 20 minutes to improve her overall language skills and articulation skills."

"[The student] will be pulled out 5x per week for 25 minutes for computation skills."

"[The student] will be pulled out 5x per week for 45 minutes for phonics skills."

"[The student] will be pulled out 5x per week for 25 minutes for [comprehension]/writing skills."

"[The student] will be pulled out 1x per week for 20 minutes for fine motor skills."

29. There is documentation that the progress reported on June 13, 2024, towards the achievement of the early literacy phonics, early math, articulation and fine motor goals reflects that the student was making sufficient progress and were measured as required by the IEP.

30. The August 2, 2024, reporting of the student's progress toward the IEP goals is as follows:

- Reading – phonics: No progress code provided. "At the end of quarter 4, this was newly introduced, and progress was not measurable at that time. Given evidence-based, small group, teacher-led structured literacy intervention that is cumulative, diagnostic, and prescriptive and multi-sensory [the student] was able to produce and blend cvc words and pre-primer high frequency words with 20% accuracy (2/10 words) in 3 out of 4 targeted trials."
- Math – calculation: No progress code provided. "Given direct instruction, modeling, visual supports and hands on manipulatives (i.e. ten frames, number racks, connecting cubes or a part, part, whole mat) [the student] is able to add and subtract numbers to 30 with 0% accuracy, in 3 out of 4 targeted trials. When given an addition or subtraction equation, [the student] may confuse the operations and may over or undercount with her manipulatives which results in an incorrect answer."
- Articulation: No progress code provided. "[The student] produced the /s/ sound in the beginning of words given a model and cues using the fricative /h/ sound (e.g. s-hun for sun) with 66-80% accuracy and in imitated phrases with 20% accuracy. She imitated the /k/ sound in the middle of a word given cues during 100% of trials and imitated 1/1 phrases (100%)."
- Expressive language: No progress code provided. "Given action pictures, [the student] produced simple, grammatically correct sentences to describe the pictures during 0-50% of trials. At times, she omitted "is," used the incorrect pronoun (her/she), or used they is/they are. [The student] imitated sentences with 60% accuracy.

31. There is no documentation that the parent was provided with the IEP progress reports during the 2023-2024 school year and ESY 2024.

32. While there is some documentation that the student was provided with the special education instruction and supplementary aids, services, program modifications, and supports required by the IEP during the 2023-2024 school year, it does not demonstrate that these services and supports were consistently provided to the student.

33. There is no documentation that the parent received the schedule of special education services as requested.

DISCUSSIONS AND CONCLUSIONS:

ALLEGATION #1

ACCESS TO STUDENT RECORDS

Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. (34 CFR § 300. 613).

In this case, while the parent received access to the student's file, she did not receive a copy of the student's schedule for the provision of special education services.

Based on the Findings of Fact #6, #7, #14, #16, #19 through #21, #23, #25, and #33, MSDE finds that the BCPS did not ensure that proper procedures were followed when responding to a request to inspect and review

the student's educational record during the 2023-2024 school year, in accordance with 34 CFR § 300. 613. Therefore, this office finds that a violation occurred concerning the allegation.

ADDITIONAL VIOLATION DISCOVERED DURING THE COURSE OF THE INVESTIGATION

Proper Procedures for Completing a Reevaluation in the Required Timeline

The results of assessment procedures shall be used by the IEP team in reviewing, and, as appropriate, revising the student's IEP within 90 days of the IEP team meeting. (COMAR 13A.05.01.06).

In this case, the student's new IEP should have been reviewed, revised, and finalized by April 23, 2024. However, the IEP was not finalized until May 23, 2024, dated May 13, 2024.

Based on Findings of Fact #8, #11, and #25 to #28, MSDE finds that the BCPS did not ensure that the student's reevaluation was completed within the required timelines, in accordance with 34 CFR § 300.303 and COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred.

ALLEGATIONS #2 & #4

PROVISION OF PROGRESS REPORT

Based on the Findings of Fact #1 through #3, #9, #17, and #24, MSDE finds that the BCPS has not ensured that the parent was provided with timely quarterly progress reports toward achieving the annual Individualized Education Program (IEP) goals or during the third quarter of the 2023-2024 school year and ESY in July 2024, in accordance with 34 CFR §§ 300.320, and .323-.324. Therefore, this office finds that a violation occurred concerning the allegation.

ALLEGATION #3

REPORTING OF PROGRESS

Based on the Findings of Fact #1, #2, and #9, MSDE finds that the BCPS did not ensure that the student's progress towards achievement of the annual IEP goals were measured as described in the IEP, during the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office finds that a violation occurred concerning the allegation.

ADDITIONAL VIOLATION DISCOVERED DURING THE COURSE OF THE INVESTIGATION

Addressing the Lack of Progress

It is the public agency's responsibility to ensure that the IEP team reviews the student's IEP to address any lack of expected progress toward the annual goals (34 CFR § 300.324).

In this case, the progress reported on January 25, 2024, toward the annual articulation goals reflects the student was not making progress to meet the goal. The IEP team did not meet to address the lack of progress.

Based on Finding of Fact #9, MSDE finds that the BCPS did not ensure that the IEP team met to address the lack of progress reported on January 25, 2024, towards the achievement of the articulation goals in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation occurred.

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

Based on the Findings of Fact #1, #4, #5, #7, #10, #12 to #16, #20, #22, #25 to #28, and #32, MSDE finds that the BCPS did not ensure that the student was consistently provided with the special education instruction and supplementary aids, services, program modifications, and supports required by the IEP during the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred concerning the allegation.

**ALLEGATION #6 PROVISION OF SPECIAL EDUCATION INSTRUCTION INCLUDING
THE REQUIREMENT OF A CERTIFIED SPECIAL EDUCATION TEACHER**

The State Educational Agency (SEA) must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. (34 CFR § 300.156).

In this case, the student's IEP requires services to be provided by a general education teacher, special education teacher, or instructional assistant. The IEP did not require special education services for the student to be solely provided by a special education teacher.

Based on the Findings of Fact #1, #6 to #8, #10, #12, #14, #16, #20, #22, #25, #28, and #34, MSDE finds that the student's IEP did not require the provision of special education services to be solely provided by a special education teacher. Therefore, BCPS was not required to ensure that the student was provided with the special education instruction required by the IEP from a certified special education teacher from March 2024 through June 2024, in accordance with 34 CFR § 300.156 and COMAR 13A.12.02. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #7 PROVISION OF ASSISTIVE TECHNOLOGY

Based on the Findings of Fact #1, #13, #15, #16, #20, #22, #26, #28, and #32, MSDE finds that the BCPS did not ensure that the student was consistently provided with the assistive technology (AT) required by the IEP during the 2023-2024 school year in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that 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. 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 Branch, 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

By March 30, 2025, MSDE requires the BCPS to provide documentation that the school system has:

- Provided the parent with the requested progress reports;
- Measured progress towards the achievement of the annual goals as required by the IEP;
- Provided the student with the special education instruction and supports required by the IEP; and
- Convened an IEP team meeting and determined the amount and nature of compensatory services or other remedies to redress the violations herein and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

School-Based

MSDE requires the BCPS to provide documentation by March 13, 2025, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the implementation of access to student records, timely provision of progress reports, and measuring progress as required by the IEP, addressing the lack of progress, reevaluation procedures, and ensuring the provision the special education instruction and supports as required by the IEP under the IDEA. These steps must include staff development.

BCPS must also conduct a review of 15 randomly selected student's IEPs to ensure that the IEP goals are measured as required by the IEP, that any lack of progress has been addressed on a timely basis, and that there is documentation of the provision of progress reports to the parent. Full compliance is required. Monitoring must be provided to MSDE on or before March 30, 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 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 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.

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 and Special Education Services

ALH/ebh

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