




AMENDED ON NOVEMBER 3, 2023

October 23, 2023




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

RE: 
Reference: # 24-029

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On August 24, 2023, the MSDE received a complaint from Mrs. , 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) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. BCPS has not ensured that the student has been consistently provided with the supplementary aids and services required by the Individualized Education Program (IEP) during the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323.
2. BCPS did not provide prior written notice of the IEP team's decisions from the IEP team meetings held during the 2022-2023 school year, in accordance with 34 CFR §300.503.
3. BCPS has not ensured that the student is being provided with the special education classroom instruction required by the IEP, during the 2022-2023 school year, in accordance with 34 CFR §§ 300.101 and .323.
4. BCPS did not ensure that the IEP team considered the parent information and concerns at the IEP meetings held during the 2022-2023 school year, in accordance with 34 CFR §300.324.

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5. BCPS has not ensured that the decisions regarding recovery or compensatory services made during the 2022-2023 school year were consistent with needs of the student, in accordance with 34 CFR §300.324.
6. BCPS has not ensured that the student's progress towards achievement of the annual goals was measured as described in the IEP, during the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .324.
7. BCPS has not ensured the opportunity for parent participation when revising the IEP during the 2022-2023 school year in accordance with 34 CFR §300.322.
8. BCPS has not ensured that the Individualized Education Program (IEP) includes present levels of academic achievement and functional performance in order to properly identify and address all of the needs that arise from the disability, in accordance with 34 CFR §300.323.

BACKGROUND:

The student is 12 years old and is enrolled at [REDACTED] School. She is identified as a student with Specific Learning Disability under the IDEA and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The IEP in effect at the beginning of the 2022-2023 school year, was developed on January 11, 2022 and amended on June 7, 2022. The IEP reflects the writing and mathematics areas impacted by the disability. The present levels include classroom-based assessment data. The IEP does not include a narrative of the student's strengths or a statement of how the disability impacts the student's involvement and progress in the general education curriculum. The IEP required that the student be provided with the following supplementary aids, services, program modifications and supports:
 - daily – proofreading checklist, limit amount copied from the board, use of word bank to reinforce vocabulary and/or when extended writing is required, provide student with copy of student/teacher notes, other instructional supports (explicit teaching and modeling, use of manipulatives and other concrete examples), breakdown assignments into smaller units, strategies to initiate and sustain attention, preferential seating; and
 - daily as needed- break down units into smaller assignments, use of scribe for extended writing assignments, when text to speech is not accessible.

The IEP reflected goals in math calculation and mathematics problem solving. The IEP required that the student receive five weekly sessions of special education instruction inside of the general education classroom for three hours and forty-five minutes per week “with opportunities for small group pull-out for reinforcement of skills aligned with her IEP goals and objectives.” Services were to be provided by the general educator, special educator, and/or instructional assistant. The IEP team determined that the student's needs could be met in the general education environment. The IEP requires that the student's parents be provided with progress reports on a quarterly basis.

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2. The first quarter IEP progress reports developed on November 4, 2022, reflect the student was making progress in the math calculation and math problem solving domains. The progress report narrative included examples of how the student demonstrated skills and reflects the progress on the goal as required by the IEP.
3. On December 19, 2022, the IEP team met for the purpose of conducting an annual review of the student's IEP. During the meeting, the team proposed addressing the student's math calculation and written language needs with instructional and testing accommodations and supplementary aids and services. The team proposed addressing the student's math problem solving needs with an annual goal. The team proposed gathering additional data for the purpose of developing a math calculation goal. The parent proposed that the student have a math calculation goal and questioned when the student had opportunities for small group instruction. The IEP team informed the complainant that data would be collected to support the development of a math calculation goal. The IEP team also informed the complainant that small group instruction takes place in a supported classroom with a special educator, general educator, and the support of the instructional assistant. The complainant expressed concern that "there has been 66 days into the school year and 66 missed sessions" of specialized instruction. As a result of missed services, the parents requested compensatory services.
4. There is documentation the PWN developed from the IEP team meeting on December 19, 2022, was provided to the complainant.
5. The IEP developed on January 10, 2023, reflects that the student's disability impacts her in the following areas: Math Problem Solving, Math Calculation, and Written Language Content. The present levels include classroom-based assessment data, parental input, a narrative of the student's strengths, and a description of how the disability impacts the student's access to the general education curriculum. The IEP requires that the student receive two hours and forty minutes of specialized instruction (math problem solving) per month inside the general education setting, and three twenty-minute sessions of specialized instruction (math calculation) per week of specialized instruction inside the general education setting. Services were to be provided by the general educator, special educator and/or instructional assistant.

The IEP requires that the student be provided with the following supplementary aids, services, program modifications and supports:

- weekly - provide student with copy of student/teacher notes;
- periodically as needed - use of word bank to reinforce vocabulary and/or when extended writing is required;
- periodically - as needed for writing - provide proofreading checklist;
- periodically - allow use of manipulatives, social/behavior supports assistance/reminders with accessing resources; and
- bi-weekly - home-school communication system.

The IEP reflects the math calculation and math problem solving goals were revised.

6. There is documentation the PWN developed as a result of the IEP team meeting on January 10, 2023, was provided to the complainant.
7. The second quarter IEP progress reports developed on January 17, 2023, reflect the student's math calculation and math problem solving goals were just introduced. These goals were new following the IEP team meeting on January 10, 2023.
8. On February 7, 2023, the IEP team met for the purpose of reviewing and revising the IEP. The team proposed and agreed to re-evaluate the student to determine present levels of performance and to determine if the student continues to require special education services. The team agreed to a Phonological Assessment, ADHD rating scales, Educational Assessment, and Classroom observation. The IEP team discussed the need for compensatory services resulting from the parent's concerns of "lack of implementing the IEP during the first half of the year." Despite having some evidence that the student did receive services, the team proposed "providing twenty-six hours of after school help provided by a special educator to compensate for missed services." The team reviewed classroom-based assessments/assignments, and informal assessments. The complainant expressed concern that lack of "cemented skills" are impeding the student's progress in math. The data reviewed for written language reflects that the student is making progress with the implementation of "check ins, proofreading checklist, word bank, and reminders to utilize resources and notes from class when writing." The complainant shared that sixty-three hours of instruction was missed by the student as a result of services not provided and requested fifty-four to sixty hours of compensatory education services. The BCPS form regarding compensatory services reflects thirteen hours of math calculation instruction, and thirteen hours of math problem solving. The student was to receive daily instruction for fifteen minutes in the morning, and one two-hour session weekly after school through the remainder of the school year.
9. On February 13, 2023, the complainant confirmed receipt of a hard copy of the PWN from the February 7, 2023 IEP team meeting, and requested an electronic copy of the PWN. The BCPS provided the complainant with an electronic copy of the PWN the same day.
10. The third quarter IEP progress report developed on March 24, 2023, reflects the student was making progress in the math calculation and math problem solving domains. The progress report narrative included examples of how the student demonstrated skills and reflects the goal as required by the IEP.
11. On April 12, 2023, the IEP team met for the purpose of reviewing the results of assessments recommended by the IEP team at the February meeting. The team reviewed the educational assessment, classroom observations, and the psychological assessment. Assessment results indicate the student qualifies for special education services as a student with a Specific Learning Disability in the mathematics domain. As a result, the IEP team determined the need for a change in service delivery in a new math class to address the student's math needs. The team discussed the need for a specific math class with support. The team also proposed and agreed to "continuing compensatory services" and confirmed the dates/times with the complaint. The complaint confirmed the student's availability to receive compensatory services on April 19th^{am}, April 25th and May 3rd, after school for one hour and proposed to discuss additional times on May 3, 2023.
12. There is documentation that the PWN developed as a result of the IEP team meeting on April 12, 2023 was provided to the complaint.

13. On May 15, 2023, the BCPS met for the purpose of conducting an annual review meeting and discussing the need for extended school year services (ESY). The team reviewed present levels of performance, supplementary aids and services, social/behavioral supports, and instructional supports. The team ran out of time and did not review the student's goals or discuss ESY. The team agreed to reconvene to review other areas of the IEP. The PWN reflects the complaint expressed concerns with the following:

- the need for a math fluency goal;
- the student's MCAP level;
- discussion of "item analysis";
- the use of grade 5 performance matter data;
- the math grade level equivalency identified on the Woodcock Johnson assessment says 3.5 however the present levels says grade level is 4;
- student's proficiency when using math formulas;
- data used to determine progress on prior objectives; and
- student has difficulty when adding mixed numbers, using the area model, long division, and multiplying 3-digit numbers by 3 digit numbers.

The IEP team provided the following response to the complaint's concerns. Math fluency will be addressed through supplementary aids and services. The documented Maryland Comprehensive Assessment Program (MCAP) levels are accurate. Item analysis was added to the draft after the initial draft was sent home. Grade six performance matters data is current and include in the present levels. The IEP team used a combination of data to determine the student's grade level equivalent. Math formulas is a skill that is practiced in grades six, seven, and eight. The team will send "a closed-out progress report with updated data for each goal from the previous objectives."

14. There is documentation that the PWN developed as a result of the IEP team meeting on May 15, 2023, was provided to the complaint.

15. The student and teacher schedule in effect during the 2022- 2023 school year reflects instruction provided by the general education teacher, special education teacher, and a paraeducator (instructional assistant).

16. There is documentation of the provision of compensatory services for specialized instruction for math calculation and math problem solving between March 27, 2023, through June 7, 2023.

17. There is no documentation of the provision of supplementary aids and services between August 2022 through March 2023.

18. There is documentation of the provision of supplementary aids and services between March 27, 2023, through June 7, 2023 as required by the student's IEP.

19. The fourth quarter IEP progress report developed on June 8, 2023, reflects the student achieved the math calculation and math problem solving goals. The progress report narrative included examples of how the student demonstrated skills and reflects the goals were measured as required by the IEP.

20. There is documentation that the parent was afforded opportunities to participate in IEP team meetings during the 2022-2023 school year.
21. On August 8, 2023, the BCPS met for the purpose of reviewing and revising, as appropriate, the student's IEP. The IEP team determined that the student's disability continues to impact her in the following areas: Math Problem Solving and Math Calculation. The IEP requires Math Problem Solving, Math Calculation, and Math Equations/Expression goals. The present levels include classroom-based assessment data, parental input, a narrative of the student's strengths, and how the disability impacts the student's access to the general education curriculum. The IEP requires that the student receive two thirty-minute weekly sessions of specialized instruction per month inside the general education setting, and one hour and thirty minute session of specialized instruction per week inside the general education setting. Services outside of the general education setting are provided by a special educator and instructional assistant. Services inside of the general education classroom is provided by the general education teacher and the special education teacher. The IEP requires quarterly provision of IEP progress reports.
22. The PWN developed as a result of an IEP team meeting on August 8, 2023, reflects the team reviewed the student's Math Problem Solving, Math Calculation, and Math Expression/Equations goals and objectives. The complaint requested the addition of "the error analysis" and "all of the performance matters data" to the present levels of performance discussion. The BCPS agreed to add this information to the IEP. The complaint also expressed disagreement with the documentation that the student achieved prior IEP goals and did not want the team to develop new goals that do not address the student's needs. The BCPS proposed and agreed to enroll the student in the "effective learning class" once per week for ninety minutes to address the student's math needs outside of the general education classroom.
23. There is documentation on September 7, 2023 the PWN from the August 8, 2023 IEP meeting was provided to the complainant.

DISCUSSION/CONCLUSION

Allegation #1 Provision of Supplementary, Aids, and Services

Based on Finding of Facts #1, #5, and #17, MSDE finds the BCPS did not ensure that the student was provided with the supplementary aids and services required by the IEP from August 2022 through March 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on Finding of Fact #18, MSDE finds the BCPS ensured that the student was provided with the supplementary aids and services required by the IEP from March 27, 2023 through June 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #2 Provision of PWN

Prior written notice must be given to parents of a child with a disability a reasonable time before the public agency proposes to initiate, change the identification, evaluation, or educational placement of the child or

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provision of FAPE to the child or refuses to initiate, change the identification, evaluation, or educational placement of the child or provision of FAPE to the child §300.503.

Based on Findings of Facts #4, #6, #9, #12, #14 and #23 MSDE, finds BCPS provided prior written notice of the IEP team's decisions from the IEP team meetings on December 19, 2022, January 10, 2023, February 7, 2023, April 12, 2023, and August 8, 2023 in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Allegation #3 Provision of Specialized Instruction as Required by the IEP

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education (34 CFR §300.39).

Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children (34 CFR § 300.39).

In this case the complainant alleges that the student was not provided with daily specialized instruction for math. The student's IEP was amended at the end of the 2021-2022 school year by the elementary school IEP team. The amendment changed the service from specialized instruction outside and inside the general education classrooms to specialized instruction inside the general education classroom.

Based on Finding of Facts #1, #5, #8, and #15, MSDE finds BCPS ensured that the student was provided with the special education classroom instruction required by the IEP, during the 2022-2023 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Allegation #4 Consideration of Parent Information and Concerns

In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, the academic, developmental, and functional needs of the child (34 CFR §300.324).

The public agency must ensure the IEP is reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. It must revise the IEP, as appropriate, to address: any lack of expected progress toward the annual goals described in the IEP, and in the general education curriculum, if appropriate; the results of any reevaluation conducted; information about the child provided to, or by, the parents; the child's anticipated needs; or other matters (34 CFR §300.324).

Based on Finding of Facts #3, #5, #8, #11 and #22, MSDE finds BCPS considered the parent information and concerns at the IEP meetings held during the 2022-2023 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Allegation #5 Decision Regarding Compensatory Education

While the IDEA regulations do not specifically address the issue of missed special education and related services, the courts have offered compensatory education services as an equitable remedy to redress a failure to provide a free appropriate public education (FAPE). The public agency (PA) must consider the impact of a missed service, irrespective of the reason for missing the service, on the student's progress and performance. They must also determine how to ensure the continued provision of FAPE in order for the student to continue making progress and ultimately meet the annual goals of the IEP. Decisions regarding whether missed IEP services are considered a denial of FAPE and should be made up must be on a case-by-case basis. As decisions should be made on a case-by-case basis, the PA should not establish a specific number of sessions that constitute a denial of FAPE.

In this case, the complainant alleges that the IEP team did not determine the appropriate amount of compensatory services in February 2023. However, based on Finding of Facts #8 MSDE finds that the BCPS ensured that the decisions regarding recovery or compensatory services made during the 2022-2023 school year were consistent with needs of the student, as although there was no indication that the student has suffered an education impact in response to the parent concern, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Allegation #6 Reports of Progress Towards Achievement of IEP Goals

In this case the complaint alleges that the BCPS did not provide "raw data on progress monitoring" that reflects the student is making progress towards mastery of IEP goals and objectives.

Based on Finding of Facts #2, #7, #10, and #19, MSDE BCPS ensured that the student's progress towards achievement of the annual goals was measured as described in the IEP, during the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .324. Additionally, the IEP team discussed goals and progress in the IEP team meeting with the parents on December 19, 2022, January 10, 2023, and May 15, 2023. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Allegation #7 Parent Participation

Each public agency, must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place.

If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls.

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received and detailed records of visits made to the parent's home or place of employment and the results of those visits (34 CFR §300.322).

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Based on Finding of Facts #3, #5, #8, #11, #13, and #21, MSDE finds BCPS ensured the opportunity for parent participation when revising the IEP during the 2022-2023 school year in accordance with 34 CFR §300.322. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Allegation #8 IEP that Includes Present Levels of Academic Achievement and Functional Performance

In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, the academic, developmental, and functional needs of the child (34 CFR §300.324).

The public agency must ensure the IEP is reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. It must revise the IEP, as appropriate, to address: any lack of expected progress toward the annual goals described in the IEP, and in the general education curriculum, if appropriate; the results of any reevaluation conducted; information about the child provided to, or by, the parents; the child's anticipated needs; or other matters (34 CFR §300.324).

Based on Finding of Facts #1, MSDE finds BCPS did not ensure that the IEP in effect from August 2022 through December 2023 included present levels of academic achievement and functional performance in order to properly identify and address all of the needs that arise from the student's disability, in accordance with 34 CFR §300.323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding, based on Finding of Facts #3, #5, #13, #21 and #22, MSDE finds BCPS ensured that the IEP in effect from January 2023 through June 2023 includes present levels of academic achievement and functional performance in order to properly identify and address all of the needs that arise from the disability, in accordance with 34 CFR §300.323

CORRECTIVE ACTIONS/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. 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.

Student Based

The MSDE requires that the BCPS provide documentation by December 30, 2023 that it has convened an IEP team meeting for the purpose of determining the impact of the missed supplementary aids and supports, and lack of appropriate present levels in the IEP prior to December 2022. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy 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.

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School Based

The MSDE requires the BCPS to provide documentation by January 30, 2023, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at [REDACTED] School. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented with regard to the provision of supplementary aids and supports to students eligible under the IDEA. Documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann Collins
Deputy Superintendent
Division of Early Intervention/Special Education Services

DMC:ra

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