



November 9, 2023

Ms. Megan Jones, Esquire
Disability Rights Maryland
1500 Union Avenue Suite 2000
Baltimore, Maryland 21211

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

RE: [REDACTED]
Reference: #24-034

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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.

ALLEGATION:

On September 11, 2023, MSDE received a complaint from Ms. Megan Jones, hereafter, “the complainant,” on behalf of her client, 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 allegation that the BCPS has not ensured that proper procedures were followed to identify the student as a student with a disability and conduct an evaluation under the IDEA since September 11, 2023, in accordance with 34 CFR §§300.300- 306, .111, and COMAR 13A.05.01.04(A)(3)(a).

BACKGROUND:

The student is 16 years old and is identified as a student with Other Health Impairment under the IDEA. He attends [REDACTED] School. During the 2022- 2023 school year, the student attended [REDACTED] School, a comprehensive school in Baltimore County. The student has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. At the beginning of the 2022-2023 school year, the student received accommodations through Section 504¹, as an eligible student due to a diagnosis of Attention Deficit Disorder (ADD), Attention Deficit

¹ “Section 504” refers to Section 504 of the Rehabilitation Act of 1973, requiring schools to provide a free appropriate public education (FAPE) to each eligible student, including the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student as adequately as the needs of a student without a disability are met. (34 CFR § 104.33).

Hyperactivity Disorder (ADHD), and Oppositional Defiant Disorder. The Section 504 plan was drafted to support the student in addressing challenges related to concentration, work, learning, and thinking.

2. The student had a Functional Behavioral Plan (FBA) dated March 28, 2019, that identified him as having behaviors related to noncompliance and elopement. He also had a Behavioral Intervention plan (BIP) dated April 1, 2019, that provided strategies to address the identified functions of the behaviors.
3. During the 2022-2023 school year, the student received 12 referrals for tardiness to class and/or disrespectful behavior.
4. For the school year 2022-2023, the student did not earn credits toward his high school graduation requirements and achieved a cumulative grade point average of 0.47, failing all of his classes.
5. On September 30, 2022, the Student Support Team (SST) convened to discuss the student's progress. The "Student Support Team Summary Form" reflects the teacher's concerns, noting that the student is not attending English class and that his disruptive and distracting behavior is affecting the learning environment. The student's behavioral issues were "addressed with his mother", and a school staff member was assigned to "collaborate with the parents on implementing at-home strategies" to support positive behavior at school. As an outcome of the meeting, it was decided that the student would continue to work with a designated staff member, and ongoing communication would be maintained with his parent.
6. On October 18, 2022, the student received a revised BIP. When compared to the previous one created on April 1, 2019, it reflects the student was still working on the same problematic behaviors of noncompliance and elopement. The student displayed behaviors of not completing classwork, sleeping in class, arguing with adults, and refusing to follow directions unrelated to classwork. The revised BIP featured minimal revisions to the targeted goals and strategies aimed at addressing the student's behaviors. The student was assigned a social emotional learning teacher as a support strategy.
7. On November 22, 2023, the student was removed from the school building for allegedly sexually assaulting another student.²
8. On December 22, 2022, the BCPS formally proposed a ten day suspension for the sexual assault.
9. On January 3, 2023, the BCPS informed the parent that the student would face an extended suspension and/or expulsion beyond the 10 days previously approved by the principal.
10. On January 13, 2023, the SST held a manifestation meeting for the student due to a consecutive 10-day removal from school. The written summary of the Manifestation Determination Team Summary states the team examined the student's current assessments and the report from the incident that occurred on November 22, 2023. The report documented the team's discussion of the student's academic performance, which included the student earning 0% in English Language Arts 9, 50% in English Language Arts 10, 64% in Algebra 1, 6% in Health, an E in Earth Systems, and 70% in Physical Education. The student had a varying number of absences, ranging from 20 days to 10 days, across his classes. Teacher reports from the student's current classes identified the student as "not motivated, consistently on his phone, and disruptive in class." The reports also noted that the student "never

² The parties report that the student was not allowed to return to school pending a police investigation of the incident.

submitted any work" and "frequently called out and used profanity." The teachers' reports reflected a pattern of excessive absences during both Quarter 1 and Quarter 2, causing the student to not pass any of his classes.

11. The written summary reflects that during a parent-teacher conference in early November, the parent requested a one-on-one support strategy to address the student's off-task behaviors. However, it was communicated to the parent that the student did not qualify for this support due to his "current 504" status.
12. During the meeting held on January 13, 2023, the team determined that the behavior from the incident on November 22, 2022, was not directly related to his disability. During the meeting, the SST recommended that the student be evaluated under IDEA to help determine if he required additional support and receive an updated FBA. The parent and the complainant shared that the "504 behaviors are a concern that may have led to the action" and are "in support of the idea of an IEP team and FBA recommendation". The complainant shared that the student's current BIP was not appropriate to address his needs. The team determined that the behavior was not a manifestation of his identified disability under Section 504 and did not occur as a direct result of the school not implementing the Section 504 plan. The team recommended referral to the IEP team to determine eligibility under the IDEA.
13. On January 13, 2023, the parent submitted a referral for an evaluation under IDEA, related to concerns about the student's social, emotional, and behavioral issues, as well as academic performance.
14. On January 17, 2023, the BCPS conducted a disciplinary conference with the BCPS "Student Conduct Hearing Officer". As a result of this conference, the student was expelled for the remainder of the 2022-2023 school year based on the conclusion that the student posed an "imminent threat of serious harm to other students and staff". The student was assigned to an "eLearning" online tutoring program in order to provide him with educational services during his removal.
15. On March 7, 2023, the IEP team convened to consider the student's eligibility under the IDEA. During the meeting, the parent expressed concerns about the student's eLearning performance, noting that he had not consistently logged in since the middle of February. They also mentioned that while at Loch Raven, the student struggled to stay in class and follow instructions. The parent outlined difficulties with the student's engagement in eLearning, as he had trouble looking at his computer, staying focused, and displayed defiant and oppositional behavior. The student displayed these behaviors in the school and at home.
16. In addition to the parent's input, the student's teachers reported that he consistently did not complete his classwork and it was challenging to assess the student's reading, writing, and math performance. Using the feedback from both the parent and teachers, as well as the student's grades, the team proposed conducting educational, psychological, and functional behavior assessments. The parent provided consent for these assessments on the same day.
17. On April 12, 2023, the IEP team met to review assessments and determine eligibility. The BCPS completed a psychological evaluation on the student on March 23, 2023, which reflects his cognitive abilities in the mildly low range. His relative strength in the area of nonverbal abilities is in the borderline range and his weakness in the area of word reasoning is in the mildly low range. The educational assessment completed for the student on April 11, 2023, measured the student's levels of performance in the areas of reading, math, and written language (spelling). It found that the student had weaknesses in the area of math calculations as compared to strengths in the area of letter- word

identification and spelling. The IEP determined that the student was eligible for special education services. There is no documentation that the complainant received copies of the documents discussed at this meeting prior to the IEP team meeting.

18. The FBA completed for the student reflected his problematic and maladaptive behavior, some of which posed a danger to himself and/or others. The team's primary behavior concerns revolved around the student's challenges in remaining in a specific location, refusal to follow directions, and verbal disruptions. Data for the FBA indicates that the student was absent without an excuse or removed from school on many days prior to his expulsion completed in January. The FBA could not be completed because the team was "unable to collect data in the typical school building" due to the student's significant absences, suspension, and placement in an eLearning environment.
19. On May 12, 2023, the IEP team met to develop an IEP for the student. The IEP team determined that the student had needs related to reading comprehension, self-management, social-emotional/behavioral, and employment. The IEP team proposed goals in the area of reading comprehension, executive functioning, and social/emotional: self management. The IEP requires that the student receive one hour weekly of specialized instruction inside of the general education classroom, 15 minutes daily of specialized instruction to address his executive functional goal outside of the general education classroom, and one hour monthly of social work services outside of the general education classroom as a related service.
20. The IEP team proposed that the student should receive instruction at [REDACTED] School, with its therapeutic support services. During the meeting, the parent expressed that Rosedale "sounds like a good fit for the student." However, she also shared concerns that the student may not be compliant with attending, suggesting a potential challenge in ensuring the student's attendance at this new educational setting.
21. On May 15, 2023, the student enrolled in [REDACTED] School.
22. There is documentation the BCPS provided the parent a copy of the IEP on May 12, 2023 and May 17, 2023, however, there is no documentation the parent signed consent for the student to receive special education services.

CONCLUSION:

ALLEGATION: PROPER PROCEDURES WHEN IDENTIFYING A STUDENT WITH A DISABILITY UNDER IDEA

In this case, the complainant alleges that the student consistently struggled throughout his time in the BCPS in areas specifically related to problem behaviors reflected on his BIP, and eventually, his IEP. The SST did not consider referral to an IEP team until it was requested by the student's parent at an MDR meeting held in January of 2023. The IEP created for the student notes that his behavioral problems at school "appeared to result from significant difficulties with focusing, regulating his emotions, managing impulse/hyperactivity, choosing/implementing appropriate behaviors." Teacher reports affirmed this has been occurring for at least the entire school year. For months, the school team implemented minimal interventions without making changes when they saw the ones put in place were not working and did not refer to an IEP team for an IDEA evaluation or put in additional supports for the student because of complicating factors in his life. In the end, the student was identified as a student with a disability based on the same information, characteristics, data, behavior, teacher reports, classroom performance, observations, and interactions he has had for his tenure at Loch Raven High School. There was no basis to delay the referral.

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR § 300.111). It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services.

To meet this expectation, school staff may review a student's academic and behavioral performance and determine teaching strategies, modifications to instruction, and behavior management techniques, which will appropriately assist the student. However, the public agency must ensure that implementation of intervention strategies do not delay or deny a student's access to special education services under the IDEA (34 CFR §300.111).

Furthermore, when a referral is made for a student with a suspected disability, the public agency shall promptly request parental consent to assess a student to determine if the student needs special education and related services COMAR 13A.05.01.04(A)(3)(a)(b).

Based on the Finding of Facts #1- #22, MSDE finds that the BCPS did not ensure that proper procedures were followed to identify the student as a student with a disability and conduct an evaluation under the IDEA since September 11, 2022, in accordance with 34 CFR §§300.300- 306, .111, and COMAR 13A.05.01.04(A)(3)(a). Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation based upon Findings of Fact #22, MSDE finds because the parent has not signed consent for the IEP, the public agency will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent 34 CFR § 300.300 (b)(3)(ii). Therefore, no further student specific corrective action is required.

ADDITIONAL VIOLATION FOUND DURING THE COURSE OF THE INVESTIGATION

When determining eligibility and/or reviewing an IEP, the public agency must ensure that the parent is provided with accessible copies of each document the IEP team planned to discuss at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07(a).

Based on the Finding of Fact # 17, MSDE finds the BCPS did not ensure that the parent was provided with accessible copies of each document the IEP team planned to discuss at the April 12, 2023, IEP team meeting at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation based upon Findings of Fact #17, MSDE finds because the parent has not signed consent for the IEP, the public agency will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent 34 CFR § 300.300 (b)(ii). Therefore, no further student specific corrective action is required.

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.³ 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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.⁴ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

MSDE requires that BCPS provide documentation by January 31, 2024, that the violation does not recur at Loch Raven High School. Specifically, staff development in addressing the area of identifying students as a student with a disability in a timely fashion. Professional development should also entail including tools to aid in the provision of completed IEP documents five before the IEP meeting.

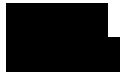
As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this 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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DC/sj

c:	Myriam Yarbrough	Charlene Harris	Gerald Loiacono
	Allison Myers	Norma Villanueva	Paige Bradford
	Conya Bailey		Nicol Elliott
	Jason Miller		Stephanie James

³ 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.

⁴MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.