



April 21, 2023



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

RE: 
Reference: #23-158

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.

ALLEGATIONS:

On February 23, 2023, MSDE received a complaint from Ms. , hereafter, “the complainant,” on behalf of her son, 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. The BCPS has not ensured that the student has been provided with adult support as required by the student’s Individualized Education Program (IEP) since the start of the 2022-2023¹ school year, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS did not ensure that the IEP team convened to review the student’s IEP before August 24, 2022, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.
3. The BCPS has not developed an IEP that addresses the student’s behavior, academic, and toileting needs since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .324.

¹ Only those violations that are alleged to have occurred within one (1) year of the date of the complaint can be resolved through the State complaint investigations procedure. (34 CFR §300.153).

BACKGROUND:

The student is eight years old and is identified as a student with Autism under the IDEA. He attends [REDACTED] School and has an IEP that requires the provision of specialized instruction and related services.

FINDINGS OF FACTS:

1. On June 15, 2022, the IEP team met to conduct an annual review of the student's IEP. This IEP was in effect at the start of the 2022-2023 school year. The IEP reflects the student is identified as a student with Developmental Delay and has academic, social/emotional/behavioral, communication, and visual perceptual/motor needs. The IEP requires specialized instruction for thirty hours per week outside of the general education setting. In June 2022, the student was participating in the "Communication Learning Support Program" in which he received instruction from Home and Hospital Teaching (HHT).
2. The Prior Written Notice (PWN) generated following the June 15, 2022, IEP team meeting, reflects that the IEP team used current communication data from weekly speech and language sessions and "historical data" to develop the student's IEP. The HHT provider indicated that the student was not making progress. The IEP team noted, "It was not possible for accurate academic data to be gathered in the virtual tutoring environment." The IEP team determined the student was eligible for extended school year services (ESY) and determined that he would return to the school building for ESY. Upon the student's return, he would be "informally evaluated by his service providers to better inform the IEP." There is no documentation that the student attended ESY or that informal evaluations were conducted.
3. The student's present level of academic achievement and functional performance (PLAAFP) in academics indicates the student's impairment "negatively impacts educational progress and is demonstrating a greater than 25% delay in skills." The IEP team determined that this area impacts the student's academic achievement and functional performance.
3. The student's present level of academic achievement and functional performance (PLAAFP) in social/emotional/behavioral indicates the student's impairment "negatively impacts educational progress and is demonstrating a greater than 25% delay in skills." The IEP team determined that this area impacts the student's academic achievement and functional performance.
4. The June 15, 2022, IEP included the following areas of impact related to the student's disability including his ability to:
 - communicate wants/needs
 - utilize language to demonstrate knowledge of pre-academic concepts
 - interact with adults/peers using language
 - follow daily classroom routines and structures
 - interact with peers and adults appropriately
 - participate in age appropriate play activities
5. The June 15, 2022 IEP requires the following supplementary aids and services:
 - visual supports - to increase understanding of orally presented information
 - advance preparation for schedule changes
 - social skills training - to encourage appropriate peer interaction
 - frequent eye contact - to help decrease physical aggression
 - strategies to initiate and sustain attention - to help decrease negative behaviors
 - adult support in all academic settings

6. The June 15, 2022 IEP includes goals to address the student's social/emotional/behavioral, reading, and mathematics needs.
7. There is no documentation that the student demonstrates toileting needs.
8. On January 19, 2023, the IEP team met to review progress and revise the IEP, as appropriate. The IEP team agreed to add crisis intervention to the student's supplementary aids and services, the use of restraint to the student's IEP, update the student's behavior PLAAFP to reflect current progress, and update transportation supports. The IEP continued to require specialized instruction for thirty hours per week outside of the general education setting. The IEP team further agreed to reconvene on February 9, 2023, to review the student's formal assessments that were recommended in September, but were delayed based on the student's unavailability due to his hospitalization. The student's behavior, PLAAFP, and transportation supports were updated on the IEP.
9. On February 16, 2023, the IEP team met to review assessments and determine continued eligibility for special education services. The IEP team reviewed the student's adult support schedule, developmental profile, observations, psychoeducational assessment, adaptive behavior scales, autism rating scales, functional behavior assessment, behavior intervention plan (BIP), student safety plan, fine motor assessments, and speech and language assessments. The IEP team determined that the student qualifies for special education services as a student with Autism. During the meeting, the IEP team developed a BIP for the student and included the use of restraint in the student's IEP. The IEP team agreed to reconvene on February 23, 2023, to complete the annual review of the student's IEP.
10. On February 28, 2023, the IEP team met to complete the annual review of the student's IEP. The IEP developed for the student included reading, math calculation, social/emotional/behavioral, communication, visual motor, and sensory processing strategy goals and supports. The IEP requires specialized instruction five hours daily outside of the general education setting. The student's IEP also requires the use of physical restraint in the student's IEP/BIP. The parent consented to the use of physical restraint in the student's IEP/BIP.
11. The student's PLAAFP in reading indicates the student performs below a second grade level. The summary of assessment findings includes updated data from classroom observations, classroom data, developmental profile, communication scales, and quarterly progress reported on January 17, 2023 and indicates that the student can match uppercase letters to uppercase letters, lowercase letters to lowercase letters, and match sight words and that the student struggles to match uppercase letters to lowercase letters and answer "who" and "what goals" from a field of two. The IEP team determined that this area impacts the student's academic achievement/functional performance.
12. The student's PLAAFP in math calculation indicates the student performs below a second grade level. The summary of assessment findings includes updated data from classroom observations, classroom data, developmental profile, communication scales, and quarterly progress reported on January 17, 2023 indicates that the student can match shapes, numbers and colors, and sort colors and that the student struggles to "count dots with 1:1 correspondence from 1-20 and match set to the correct number card" and partially solve addition problems to ten. The IEP team determined that this area impacts the student's academic achievement/functional performance.
13. The student's PLAAFP in social/emotional/behavioral indicates the student performs "below a second grade level". The summary of assessment findings includes updated data from data collected from December 12, 2022 to January 26, 2023 indicates that the student demonstrates strong

problem-solving skills, perseverance during preferred tasks, communicates some needs/wants through gestures and pointing to visuals, and is curious and creative and that the student struggles to reduce the number of incidents of physical aggression and disruption. The IEP team determined that this area impacts the student's academic achievement/functional performance.

14. Following the review of the student's IEP, on February 28, 2023, the IEP team determined that the student's disability continues to impact his ability to:
 - communicate wants/needs
 - utilize language to demonstrate knowledge of pre-academic concepts
 - interact with adults/peers using language
 - follow daily classroom routines and structures
 - interact with peers and adults appropriately
 - participate in age appropriate play activities.

15. To assist the student in his identified areas of need, the IEP team determined that the student requires the following supplementary aids and services:
 - use of manipulatives - in math and reading
 - use of highlighters during instruction and assignments
 - altered/modified assignments
 - break down assignments into smaller units
 - reduce number of answer choices
 - delete extraneous information on assignments
 - use pictures to support reading passages
 - encourage the student to ask for assistance when needed
 - provide frequent changes in activities
 - provide manipulatives or sensory activities to promote listening and focusing
 - advance preparation for schedule changes
 - social skills training - to encourage appropriate peer interaction
 - use of positive concrete reinforcers
 - home-school communication system
 - access to crisis intervention team
 - preferential seating
 - sensory strategies
 - picture schedule
 - clear and physical boundaries
 - daily adult support - that includes close proximity to the student for toileting needs.

16. During the February 28, 2023, IEP team meeting, the IEP team developed goals to address the student's physical aggression and destruction, reading comprehension and print concepts, counting and cardinality, and mathematics problem solving.

17. On March 29, 2023, the IEP team met to review and revise the student's IEP and BIP, as appropriate. The IEP team agreed to update the student's BIP to include monthly meetings to discuss his progress and including the use of restraint, and make any necessary revisions. The IEP continues to require specialized instruction five hours daily outside of the general education setting, daily adult support and the use of physical restraint. The student's behavior PLAAFP was updated to reflect updated behavior data from February 2023 to March 3, 2023. The student's IEP goals were not updated.

18. The student's daily schedule reflects that the student is provided with adult support at times during the day, but that the service is not provided throughout the entire day.

CONCLUSIONS:

Allegation #1:

PROVISION OF ADULT SUPPORT

Based upon Findings of Facts #1, #5, #8, #10, #15 and #18, MSDE finds that the BCPS has not ensured that the student has been provided with adult support as required by the student's Individualized Education Program (IEP) since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this allegation.

Allegation #2

ANNUAL IEP REVIEW

Based on Findings of Facts #1 to #6, MSDE finds that the BCPS has ensured that the IEP team convened to review the student's IEP before August 24, 2022, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #3

IEP THAT ADDRESSES THE STUDENT'S BEHAVIOR, ACADEMIC, AND TOILETING NEEDS

Based on Findings of Facts #1 to #8, and #10 to #17, MSDE finds that the BCPS reviewed information for the student, identified each area of need for the student, and addressed each area of need related to his behavior, academic or toileting needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find that a violation has occurred with respect to this allegation.

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 non-compliance is corrected in a timely manner.² 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

² 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.

³ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

Student Specific:

MSDE requires the BCPS to provide documentation by June 15, 2023, of the following actions:

- That the student is provided with adult support as required by the IEP; and
- Convened an IEP team meeting to determine the amount and nature of compensatory services to redress the violation related to the provision of adult support and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

The BCPS must ensure that the parent is provided with written notice of the team's decisions. The parent 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 of professional development completed by June 1, 2023, to ensure that the staff at [REDACTED] School properly implements the requirements for the provision of supplementary aids and services, under the IDEA. BCPS must also develop a monitoring tool to ensure the consistent implementation of supplementary aids and services for students at [REDACTED] School, beginning no later than June 1, 2023.

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

DMC/tg

c: Darryl Williams
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[REDACTED]

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