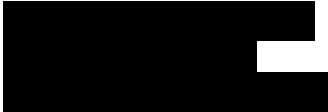



February 26, 2025




Ms. Allison Myers  
Executive Director  
Baltimore County Public Schools  
Department of Special Education  
Jefferson Building, 4<sup>th</sup> Floor  
105 W. Chesapeake Ave  
Towson, Maryland 21204

RE:   
Reference: #25-210

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 January 3, 2025, MSDE received a complaint from  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 has not developed an Individualized Education Program (IEP) that addresses the student’s identified behavioral needs specifically, they have not developed the Behavior Intervention Plan (BIP) since October 30, 2024, in accordance with 34 CFR § 300.324.
2. The BCPS has not ensured that the IEP team addressed the parent’s concerns regarding the request for staff training specific to interactions with the student made on October 30, 2024, and the student’s unmastered IEP goals raised on December 6, 2024, in accordance with 34 CFR § 300.324.
3. The BCPS has not ensured that the IEP team considered the results of a private Applied Behavior Analysis (ABA) observation report obtained at private expense since November 18, 2024, in accordance with 34 CFR § 300.502.

4. The BCPS did not provide prior written notice of the IEP team's decisions from the IEP team meetings held on December 6, 2024, in accordance with 34 CFR § 300.503.

#### **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 special education instruction and related services.

#### **FINDINGS OF FACT:**

1. The student's IEP in effect in October 2024, was developed on December 6, 2023. The IEP does not reflect behavior as an identified area of need. The IEP does not include a behavior present level of academic achievement and functional performance (PLAAFP). The IEP does not require the implementation of a BIP.

The IEP required a behavioral: participation and focus goal: "With social skills instruction, and visual incentives chart, during whole group, small group and 1:1 instruction and/or activities, with a positive incentive and reward system, [the student] will attend to speakers, the center of joint attention and classmates for the duration of an activity ranging from 10-15 minutes, with no more than 4 verbal reminders and 4 visual reminders per task;" with a 90% increase from the baseline.

The IEP required supplementary aids, services, and accommodations:

- Human reader or human signer for mathematics, science, and government assessments
  - Small group
  - Frequent breaks
  - Reduced distractions to self and others
  - English Language Arts (ELA) response human scribe
  - Monitor test responses
  - Extended time (1.5x)
2. On October 30, 2024, the IEP team convened to discuss the results of the Functional Behavior Assessment (FBA) and develop a BIP. The prior written notice (PWN) generated following the meeting reflects that the IEP team reviewed the data collected as part of the FBA process and developed a BIP that addressed the student's needs, including the use of conscious discipline strategies, short walks around the building, thera-putty, and a reward system. The PWN further reflects that the complainant requested the student's adult assistant to be mandated to participate in a 40-hour Registered Behavior Technician Training. The PWN reflects that the BCPS contacted the Office of Special Education requesting guidance on the request. The PWN does not reflect the response from the BCPS Office of Special Education.

There is documentation that the complainant was provided with the required IEP documents before the IEP team meeting on October 24, 2024.

There is no documentation that the IEP was amended to include the requirement of the implementation of the BIP.

3. The BIP developed on October 30, 2024, reflects background information, behaviors of concern, functional replacement behaviors, baseline levels for the behavior, date the behavior target is anticipated to be met, target level for behaviors, staff assisting with data collection, staff members responsible for reporting data, perceived functions of the behaviors, contributing factors, antecedents/triggers, skill development, positive reinforcements, response strategies, urgent response plan, and staff development requirements.
  - Behaviors of concern:
    - a. Behavior #1: "At the end of a task (e.g., clean up time), [the student] can be aggressive towards additional adult and his classroom teacher. During the verbal aggression, [the student] will start banging on the desk between 1-5 minutes. Also, during content time and small groups [the student] often yells and disrupts the classroom. When given a direction that [the student] does not want to do, he will push away the classroom materials and yell no thank you. [The student] will also click out of school websites when a teacher or additional adult is not near him. However, when the teacher or adult support comes back to [the student], he will click onto the correct website," and
    - b. Behavior #2: "[The student] spends the majority of his time out of his seat. When [the student] enters the classroom at the beginning of school, he immediately walks towards the back of the room instead of his seat. When redirecting [the student] to his seat, he will often refuse to go. [The student's] behavior out of his seat occurs roughly 12 times every day and these behaviors occur across all content levels. [The student] needs additional adult assistant to redirect him when walking in the hallways in line, in specials, lunch, and being walked out to the bus loop."

Staff development requirements: the staff will watch a video to better understand how to help and support children who have autism.

4. On November 4, 2024, the complainant emailed the BCPS requesting that the BCPS assign a Board Certified Behavior Analyst (BCBA) to support the student, and that the BCPS "explore" the request that the student's adult assistant complete a 40-hour Registered Behavior Technician Training. On November 5, 2024, the BCPS responded indicating that they would forward the requests to the Office of Special Education. There is documentation that the Office of Special Education will conduct a school based professional development on February 21, 2025, in response to the parent's request for additional staff training.
5. There is documentation that November 8, 2024, the student was observed by a parent provided private BCBA/ABA. On November 13, 2024, the private BCBA/ABA emailed her notes and observation report to the BCPS. While there is documentation that the BCPS responded to the email, there is no documentation that the IEP team has reviewed the notes and observation report.
6. On December 6, 2024, the IEP team convened to review the IEP and discuss the need for extended school year (ESY) services. The PWN generated following the meeting reflects that IEP team agreed that the student requires special education services inside and outside the general education classroom, speech-language services, occupational therapy (OT) services, and ESY. It is reflected that

the IEP team added parental input to the IEP, reviewed the PLAAFP, special considerations, accommodations, supplementary aids, services, goals and objectives, and the least restrictive environment (LRE).

The PWN reflects that progress on speech-language and OT goals were reviewed. The speech-language pathologist shared that although the student had not met the goals that were reviewed, he had made good progress and that the skills would continue to be monitored and/or addressed.

There is documentation that the complainant was provided with the required IEP documents before the IEP team meeting on November 26, 2024.

There is documentation that the complainant was provided with the PWN on December 14, 2024.

7. The audio recording of the December 6, 2024, IEP team meeting reflects that the IEP team discussed the IEP goals. It reflects that the complainant raised concerns regarding whether she would be informed if the student achieved goals from the previous IEP, despite them being amended on the new IEP. The BCPS explained to the complainant that any goals not met on the previous IEP would continue to be monitored and/or addressed.

There is no documentation that the parent mentioned the private ABA observation report to the IEP team.

8. The student's IEP developed on December 6, 2024, does not reflect behavior as an identified area of need. The IEP does not include a behavior PLAAFP. The IEP reflects that an FBA was completed on November 25, 2024. The IEP requires the implementation of a BIP.

The IEP requires a behavioral: participation and focus goal: "By December 2025, with social skills instruction, adult support, and visual incentive chart, [the student] will attend to speakers, and/or the center of joint attention for the duration of an activity ranging from 10-15 minutes during instruction and/or activities, with no more than 3 verbal reminders and 3 visual reminders per task;" on 3 out of 5 targeted trials.

The IEP requires supplementary aids, services, and accommodations:

- Small group
- Frequent breaks
- Reduced distractions to self and others
- Extended time (1.5x)

The IEP requires five sessions of 20 minutes weekly of special education instruction in the general education classroom to address the student's behavior goal.

## **DISCUSSION AND CONCLUSIONS:**

### **ALLEGATION #1**

### **DEVELOPMENT OF IEP**

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR § 300.324).

The PLAAFP statement should include the following components: a description of the student's current academic achievement, strengths and weaknesses, functional performance details including a narrative and data when applicable, information about how their disability impacts their involvement and progress in the general education curriculum (34 CFR § 300.320), baseline data to measure progress, and input from caregivers and service providers (MARYLAND STATEWIDE INDIVIDUALIZED EDUCATION PROGRAM (IEP) PROCESS GUIDE, Early Intervention and Special Education Services, March 2024).

In this case, the complainant alleges that the BIP was not a part of the student's IEP. The IEPs in effect since October 30, 2024, do not reflect behavior as an identified area of need. The IEPs do not include a behavior PLAAFP. On October 30, 2024, the BIP was developed. However, the IEP was not amended to require the implementation of the BIP. The December 6, 2024, IEP requires the implementation of the October 30, 2024, BIP. Additionally, the IEPs developed on December 6, 2023, and December 6, 2024, include a behavior goal, supplementary aids, services, and accommodations to aid in the student's behavior.

Based on Findings of Fact #1 through #3, and #8, MSDE finds that the BCPS has not developed an IEP that addresses the student's identified behavioral needs from October 30, 2024, to December 6, 2024, in accordance with 34 CFR § 300.324. Therefore, MSDE finds a violation.

Based on Findings of Fact #1 through #3, and #8, MSDE finds that the BCPS has developed an IEP that addresses the student's identified behavioral needs since December 6, 2024, in accordance with 34 CFR § 300.324, specifically the December 6, 2024, IEP requires the implementation of a BIP. Therefore, MSDE does not find a violation.

Based on Findings of Fact #1 through #3, and #8, MSDE finds that the BCPS has not ensured that the IEP includes a behavior PLAAFP in order to properly identify and address all of the needs that arise from the student's disability, including behavior since October 30, 2024, in accordance with 34 CFR §§ 300.303-.311, .320, .323, and .324. Therefore, MSDE finds a violation.

### **ALLEGATION #2**

### **ADDRESSING PARENTS CONCERNS**

Based on Findings of Fact #2, #4, and #7, MSDE finds that the BCPS has ensured that the IEP team addressed the parent's concerns regarding the request for staff training specific to interactions with the student made on October 30, 2024, and the student's unmastered IEP goals raised on December 6, 2024, in accordance with 34 CFR § 300.324. Therefore, MSDE does not find a violation.

### **ALLEGATION #3**

### **CONSIDERATION OF INFORMATION FROM THE PARENT**

Based on Finding of Fact #5, MSDE finds that the BCPS has not ensured that the IEP team considered the results of a parent private ABA observation report obtained at private expense since November 18, 2024, in accordance with 34 CFR § 300.502. Therefore, MSDE finds a violation.

### **ALLGEATION #4**

### **PROVISION OF PWN**

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision, a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR § 300.503).

There is no requirement to provide the parent of a student with a disability with a verbatim transcript of discussions that occur at the IEP team meeting. Additionally, as explained in the *Analysis of Comments and Changes* to the IDEA, there is nothing that would prohibit the public agency from using the IEP document as part of the prior written notice so long as it has all of the required content (Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46691).

In this case, the complainant alleged that the December 6, 2024, PWN did not reflect the agreement that the student would continue working on "unmet" IEP goals and that the status would be shared in the most current IEP. While there is documentation from the December 6, 2024, IEP team meeting audio recording and the PWN reflects the BCPS agreed to continue to monitor and/or address the "unmet" goals, there is no documentation the BCPS agreed to document the status in the most current IEP.

Based on Findings of Fact #6 and #7, MSDE finds that the BCPS did provide proper written notice of the IEP team's decisions from the IEP team meetings held on December 6, 2024, in accordance with 34 CFR § 300.503. Therefore, MSDE does not find a violation.

### **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.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

### **Student-Specific**

MSDE requires the BCPS to provide documentation, by May 1, 2025, that the IEP team has taken the following action:

- a. Convened an IEP team meeting to discuss the parent provided private ABA observation report, amend the IEP to reflect behavior as an area impacted by the student's disability, and develop a behavior PLAAFP.
- b. Determined whether the violations identified in this Letter of Findings had a negative impact on the student's ability to benefit from the education program. If the IEP team determines that there was a negative impact; it must also determine the amount and nature of compensatory services or other remedies to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The BCPS must ensure that the parent is provided with prior 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 by May 1, 2025, of the steps it has taken to ensure that the [REDACTED] School staff properly implements the requirements for reviewing parent provided observation reports/assessments, identifying areas impacted by disabilities, and developing appropriate PLAAFPs. These steps must include staff development, as well as tools developed to monitor compliance.

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<sup>1</sup> 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, the 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.

<sup>2</sup> MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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. The written request for reconsideration should be provided to Tracy Givens, Section Chief, Dispute Resolution via email [Tracy.Givens@maryland.gov](mailto:Tracy.Givens@maryland.gov). 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,

Antoine L. Hickman, Ed.D.  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services

ALH/sd

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