

March 26, 2025

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

Dr. Chelsie Manges  
Director of Special Education  
Garrett County Public Schools  
770 Dennett Road  
Oakland, Maryland 21550

RE: [REDACTED]  
Reference: # 25-239

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 28, 2025, MSDE received a complaint from Ms. Megan Jones, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Garrett County Public Schools (GCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The GCPS did not follow proper procedures when the Individualized Education Program (IEP) team determined the placement in which the student would receive special education instruction since January 28, 2024, in accordance with 34 CFR §§ 300.114, .115 and .116.
2. The GCPS did not provide the student with special education and related services in the placement required by the IEP from January 28, 2024, to July 2024, in accordance with 34 CFR §§ 300.114, and .116.

**BACKGROUND:**

The student is 12 years old and is identified as a student with Other Health Impairment (OHI) 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 was enrolled in the [REDACTED] behavioral program from January 2020 to September 3, 2024. The [REDACTED] behavioral program is a regional behavior program within GCPS. The [REDACTED] behavioral program  
200 West Baltimore Street Baltimore, MD 21201 | 410-767-0100 Deaf and hard of hearing use Relay.

provides intensive therapeutic behavior structures and supports designed to meet each child's needs. The [REDACTED] behavioral program has a full-time special education teacher. The students enrolled in the [REDACTED] program include a combination of special education and general education students. The [REDACTED] program is considered a general education setting.

2. On January 5, 2024, the GCPS unsuccessfully attempted to contact the guardian regarding non-public placement. On January 8, 2024, the GCPS successfully contacted the guardian. The documentation reflects that the [REDACTED] School denied the student's application to their program and that the GCPS we would need to proceed with a residential educational placement. Again, the guardian indicated that she would send the student to the [REDACTED] School but did not want him sent to a residential placement. It is further reflected that the guardian would be placing the student on home school instruction and withdrawing the student from GCPS.

There is no documentation that the guardian placed the student on home school instruction, however, there is some documentation that GCPS provided a hybrid learning format for the student, combining virtual and in person instruction. This was offered in response to the student's unsafe behaviors in the school setting and his inability to be in school for a full day, as reported by school staff. The guardian agreed to this instructional program while the student's educational placement was finalized.

3. The student's IEP in effect on January 28, 2024, was developed on March 6, 2023, and amended on December 15, 2023. The least restrictive environment (LRE) reflects that on December 15, 2023, the IEP team "reviewed [the student's] progress in the [REDACTED] behavioral program from December 6- December 13<sup>th</sup>. The team determined the [REDACTED] program placement was no longer appropriate and [the student] requires a nonpublic instructional placement."

The IEP reflects that the following continuum of placement options were considered: grade-level classroom with behavior supports; [REDACTED] behavioral program classroom full-time placement; and a nonpublic placement.

The IEP reflects the following as a basis for the LRE decision:

"a review of behavioral data from 12/6 - 12/13/2023 shows that [the student] continues to demonstrate significantly escalated behaviors that are disruptive to the classroom and school environment and place him and staff in danger. [The student] is verbally and physically aggressive towards adults and peers in the [REDACTED] classroom. [The student] is eloping from the [REDACTED] classroom with the intention of causing disruption. [The student] has started charging towards adults with the intention of causing physical harm. [The student] is unable to regulate his emotions and becomes extremely agitated when things do not go his way or how he perceives it should go. The team determined the [REDACTED] placement is no longer appropriate for [the student] as his safety cannot be maintained in this setting."

The IEP requires the student to be inside the general education classroom 80% or more:

- 31 hours and 20 minutes weekly in the general education classroom
- One hour and 10 minutes weekly outside the general education classroom

"[The student] will not participate with his same-aged peers for any part of his instructional day due to significant challenging behaviors and safety concerns."

"A nonpublic instructional placement is the most restrictive instructional setting within continuum of placement options considered for [the student]. The team determined this instructional setting is required as [the student's] safety cannot longer be managed within the [REDACTED] behavioral program. The team determined [the student] requires a highly structured and specialized program to address his dysregulation and aggressive behaviors... The team determined there are potentially harmful effects to [the student] as he will be removed from his same-aged peers and his school setting. [The student] has attended [REDACTED] since 1st grade due to the need for a more intensive behavioral program. [REDACTED] Elementary is his home school."

"[The student] requires a nonpublic placement, which is not his home school. [The student's] nonpublic placement will be located as close to his home as possible. [REDACTED] is the closest nonpublic school. However, at this time, [REDACTED] is not accepting applications for enrollment. The next closest nonpublic option would be [REDACTED]. Due to the geographical distance between GCPS and the closest nonpublic, accepting students is not an appropriate distance for transportation. The IEP team recommended a residential placement due to the barrier of transportation to a nonpublic school. Based on [the student's] behavioral progress within the school structure at [REDACTED] Elementary, the team determined [the student] will benefit from continuing within the general education classroom at [REDACTED] without moving to his home school at this time."

The IEP service page reflects:

- Five hours weekly of special education instruction within the general education classroom
  - 30 minutes monthly of speech-language therapy outside the general education classroom
  - Three sessions of 20 minutes weekly of counseling services outside the general education classroom
4. On February 6, 2024, the GCPS responded to the guardian's email. The email reflects the GCPS was following up regarding a request for the student to be placed in an out-of-state nonpublic placement within the same distance as [REDACTED], however, GCPS was unable to locate one within the same distance.
  5. On February 8, 2024, the GCPS contacted the guardian to discuss convening an IEP team meeting to discuss placement. The documentation reflects that the guardian did not want to discuss placement over the phone, the GCPS requested to convene an IEP team meeting. No agreement for an IEP team meeting date is reflected.
  6. On March 28, 2024, the IEP team convened for an annual review. The prior written notice (PWN) generated after the meeting reflects:

"The IEP team reviewed [the student's] current instructional placement of nonpublic, as determined at his December 15, 2023, IEP team meeting. The team determined this placement continues to remain appropriate. The geographical distance between GCPS and the closes nonpublic accepting students is not an appropriate distance for transportation. The IEP team recommended a residential placement due to the barrier of transportation to a nonpublic school. As parent/guardian continues to dispute the nonpublic residential placement, [the student] will continue to receive instruction through a modified virtual format..."

"To begin the 2023-2024 school year, [the student] was completing all of his schoolwork in the 5th-grade general education classroom. His teacher, [the teacher] would consult with [REDACTED] staff, as needed. During this school year, [the student] was transported to [REDACTED] on October 2, 2024. He was placed on Home and Hospital during the meeting on October 5, 2024. He returned to the [REDACTED] program on December 6, 2024..."

"As [the guardian] is in disagreement with a residential nonpublic placement, as determined by the IEP team on December 15, 2024, [the student] has not returned to in-person instruction. [The guardian] stated [the student] would be placed on Parent Home instruction on January 8, 2024. No paperwork for Parent Home Instruction was submitted. [The guardian] stated she was seeking additional resources. As a result, a modified virtual learning format was provided to [the student] with instruction for six hours weekly, in addition to continuing to offer his speech and counseling services."

"[The student] returned from a 60-day Home and Hospital placement on 12-6-23 due to an emotional crisis that required him to be transported from the school to the hospital. Upon returning from Home and Hospital, [the student] exhibited escalating physical aggression toward peers and adults in the [REDACTED] program at [REDACTED] Elementary."

7. The student's IEP developed on March 28, 2024, requires the following LRE:

"The GCPS IEP team determined the general education [REDACTED] behavioral program is no longer appropriate for [the student] due to increasing aggressive and unsafe behaviors within the school setting. The GCPS IEP team determined [the student] continues to require a nonpublic placement."

The IEP reflects that the following continuum of placement options were considered: grade-level classroom with behavior supports; [REDACTED] behavioral program classroom full-time placement; and a nonpublic placement.

"The GCPS IEP team determines [the student] requires an intensive, highly structured behavioral program to allow him to gain self-management, self-regulation, and coping strategies to allow him to effectively participate in the grade-level general education classroom setting. [The student] continues to demonstrate significantly aggressive, challenging, and unsafe behaviors. The team determined the [REDACTED] placement is no longer appropriate for [the student] as his safety cannot be maintained in this setting."

The IEP requires the student to be inside the general education classroom 80% or more:

- 31 hours and 20 minutes weekly in the general education classroom
- One hour and 10 minutes weekly outside the general education classroom

"[The student] will not participate with his same-aged peers for any part of his instructional day due to significant challenging behaviors and safety concerns."

"A nonpublic instructional placement is the most restrictive instructional setting within the continuum of placement options considered for [the student]. The team determined this instructional setting continues to be required as [the student's] safety can no longer be managed within the [REDACTED] behavioral program."

The IEP continues to require the same special education instruction, speech-language and counseling services.

8. On May 25, 2024, the IEP team convened to review formal assessments and placement. The PWN generated after the meeting reflects that the IEP team reviewed the student's current instructional placement and determined that nonpublic placement continues to remain appropriate. It is further reflected that the guardian continues to dispute the nonpublic residential placement. Therefore, the student will continue to receive instruction through a modified format for the remainder of the 2023-2024 school year.
9. On July 16, 2024, the IEP team convened to review and revise the IEP and discuss educational placement. The PWN generated after the meeting reflects that the IEP team agreed that nonpublic placement remains the appropriate placement.

"The team reviewed the educational placement option provided by the non-public day program placement at [REDACTED]. The team determined the non-public day program provided by [REDACTED] is required to meet [the student's] behavioral, emotional, and academic needs. The team determined a nonpublic residential placement is no longer appropriate due to the availability of nonpublic day program."

10. The student's IEP developed on March 28, 2024, and amended on July 16, 2024, reflects the LRE: "The GCPS IEP team determined the general education [REDACTED] behavioral program is no longer appropriate for [the student] due to increasing aggressive and unsafe behaviors within the school setting. The GCPS IEP team determined [the student] continues to require a nonpublic placement."

The IEP reflects that the following continuum of placement options were considered: grade-level classroom with behavior supports; [REDACTED] behavioral program classroom full-time placement; and a nonpublic placement.

The IEP requires a private separate day school:

- 26 hours and 30 minutes weekly in the general education classroom
- 6 hours weekly outside the general education classroom

"The GCPS IEP team determines [the student] requires an intensive, highly structured behavioral program to allow him to gain self-management, self-regulation, and coping strategies to allow him to effectively participate in the grade-level general education classroom setting [The student] continues to demonstrate significantly aggressive, challenging, and unsafe behaviors. The team determined the [REDACTED] placement is no longer appropriate for [the student] as his safety cannot be maintained in this setting. The GCPS IEP team determined [the student] requires a more intensive, specialized behavioral program and setting within a non-public educational setting."

"Due to the severity of [the student's] behavioral challenges and concern for safety, [the student] will not participate with his same-aged, nondisabled peers for any part of his instructional day. [The student] will receive all instruction, therapies, etc. within the special education environment."

"A nonpublic instructional placement is the most restrictive instructional setting within the continuum of placement options considered for [the student]. The team determined this instructional setting continues to be required as [the student's] safety can no longer be managed within the [REDACTED] behavioral

program. The team considered the potentially harmful effects of restricting [the student's] access to his same-aged non-disabled peers in the areas of academic and social engagement. However, due to the severity of [the student's] aggressive and non-compliant behaviors, the team determined the benefits of selecting this LRE significantly outweigh potentially harmful effects."

The IEP continues to require the same special education instruction and counseling services.

The IEP no longer requires the provision of speech-language services.

11. On July 25, 2024, the GCPS called the guardian. The documentation reflects that the guardian agreed to placement at the [REDACTED] School.
12. On August 23, 2024, the IEP team convened to conduct an intake meeting for the [REDACTED] School. The PWN generated after the meeting reflects that the IEP team reviewed placement and amended the student's IEP to reflect [REDACTED]. The student began instruction at the [REDACTED] School on September 3, 2024.
13. The IEP developed on March 28, 2024, and amended on August 23, 2024, requires:
  - Five hours weekly of special education instruction outside the general education classroom from July 16, 2024, to September 2, 2024
  - 29 hours and 30 minutes weekly of special education instruction outside the general education classroom from September 3, 2024, to March 27, 2025
  - Two sessions of 30 minutes of counseling services outside the general education classroom from September 3, 2024, to March 27, 2025
  - Three sessions of 20 minutes of counseling services outside the general education classroom from July 16, 2024, to September 2, 2024

The IEP requires a private separate day school:

- 40 hours outside the general education classroom
14. While there is documentation of some provision of the provision of special education instruction and related services from January 28, 2025, to August 23, 2025, it does not demonstrate it was provided in the placement required by the IEP.

#### **DISCUSSIONS AND CONCLUSIONS:**

##### **ALLEGATION #1 PLACEMENT DETERMINATION**

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP Team. The placement decision must be made in conformity with the LRE provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

Unless the IEP of a student requires some other arrangement, the student is educated in the school setting that the student would attend if not disabled. In selecting the LRE, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs. A student with a disability is not removed from education in an age-appropriate regular classroom setting solely because of needed modifications in the general curriculum (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

If a student with a disability is so disruptive in a regular classroom that the education of other students is significantly impaired, the IEP team may determine that the needs of the student with a disability cannot be met in the regular classroom and shall document supplementary aids and services that have been provided, and the specific behaviors and incidents that support the determination (COMAR 13A.05.01.10(C)(2)).

In this case, the IEP team determined that the student was not able to participate with nondisabled peers in any educational setting during the school day and recommended a separate special education day school. However, the IEP team did not determine that the student required a residential placement for educational reasons. The IEP team recommended a separate special education day school to meet the student's educational needs but placed the student in a residential school for administrative reasons because GCPS does not offer a full continuum of placements.

Based on Findings of Fact #2 through #13, MSDE finds that the GCPS did not follow proper procedures when the IEP team determined the placement in which the student would receive special education instruction since January 28, 2024, in accordance with 34 CFR §§ 300.114, .115 and .116. Therefore, MSDE does find a violation.

## **ALLEGATION #2                      PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES**

In this case, the IEPs in effect since January 28, 2024, reflect that the student requires a non-public placement. However, the student service hours indicate he requires more than 80% in the general education setting.

From January 8, 2024, to August 23, 2024, the student was provided a modified learning format which was a combination of virtual and in-person instruction.

Based on Findings of Fact #3, #7, #10, and #13, MSDE finds that the GCPS did not provide the student with special education and related services in the placement required by the IEP from January 28, 2024, to August 23, 2024, in accordance with 34 CFR §§ 300.114, and .116. Therefore, MSDE finds a violation.

### **ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

#### **IEP WRITTEN CLEARLY**

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*,

Vol. 64, No. 48, p.12479, March 1999). In addition, the projected date for the beginning of the special education services, and modifications, and the anticipated frequency, location and duration of those services and modifications must be included in the IEP (34 CFR § 300. 320 (7)).

In this case the IEPs in effect from January 28, 2024, to July 16, 2024, reflect an LRE section that requires a non-public placement. However, the LRE special education placement section of each IEP reflects the student to be placed 80% or more in the general education setting.

Based on Findings of Fact #3, #7, and #10, MSDE finds that the GCPS did not clearly develop an IEP that identified the location in which the student would receive the special education services from January 28, 2024, through July 16, 2024, in accordance with 34 CFR § 300. 320 (7). Therefore, MSDE finds 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 GCPS to provide documentation by June 20, 2025, that the IEP team has convened and determined whether the violation related to the provision of special education instruction and related services in the placement required by the IEP and the IEP being written clearly 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 GCPS 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.

#### **Systemic**

MSDE will meet with GCPS to discuss the steps it has taken to ensure that the GCPS offers a full continuum of special education placements. These discussions must take place by June 20, 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 for why the documentation was not made available during the investigation. The written request for reconsideration

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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 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 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.



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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 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. Brenda McCartney, Superintendent, GCPS  
[REDACTED], Principal, [REDACTED] School, GCPS  
[REDACTED], Education Director, [REDACTED]  
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE  
Molly Conner, Branch Chief, Performance Support and Technical Assistance, 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