

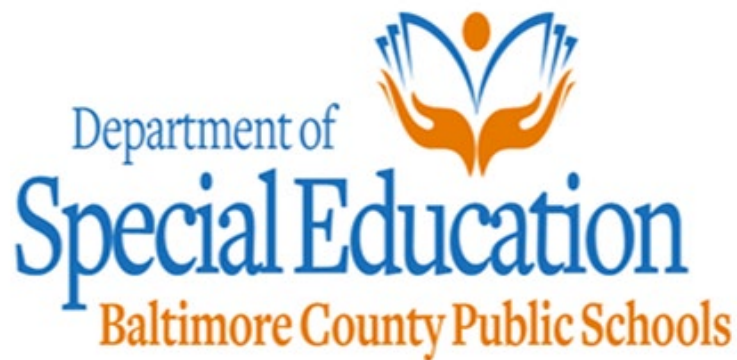
Internal
Audit
Report

*Division of Curriculum & Instruction – Department of Special
Education*

Superintendent of Schools - Office of Law

**Special Education & Office of Law:
Dispute Resolution Audit**

March 2024



Office of Law

***Supports engagement, empowerment and excellence in preparing
students for future success by providing high quality legal counsel,
advice and representation to the Board of Education, the
Superintendent of Schools, schools and offices.***



Baltimore County Public Schools
Office of Internal Audit

Andrea M. Barr, CGAP, CBM
Chief Auditor

Executive Summary

March 2024

Division of Curriculum & Instruction – Department of Special Education

Superintendent of Schools - Office of Law

Special Education & Office of Law: Dispute Resolution Audit

Background

The Compliance Office within the Department of Special Education (DSE), Division of Curriculum & Instruction, investigates special education concerns and complaints filed pursuant to the Individuals with Disabilities Education (IDEA) dispute resolution processes, such as requests for mediations and due process hearings and Maryland State Department of Education (MSDE) state complaints. Additionally, the Compliance Office investigates all inquiries from MSDE and assists with student-specific and systemic-corrective actions. Lastly, in collaboration with the BCPS Office of Law, the Compliance Office develops and reviews policies and procedures to ensure compliance with all state and federal statutes and regulations.

Objective

The audit objective was to determine if eligible children and their families are supported through IDEA dispute resolution processes. Additionally, we determined if the processes implemented by the Office of Law comply with COMAR and BCPS Standard Operating Procedures (SOPs).

Results in Brief

Our audit identified eight commendations and two findings. Additionally, an analysis of statistical data related to the dispute resolution process for Special Education mediation and due process hearings was completed.

Potential Risks

- Special education related services were not provided to students in a timely manner. BCPS could incur additional costs.
- Parent/advocate may not be aware of steps or services offered to them when requesting a due process hearing, resulting in their failure to meet the required time limits.

Recommendations

1. Identify the special education services needed on an annual basis and determine if the current allocation of BCPS resources can fulfill these needs. Additionally, if BCPS does not have the necessary related service resources available, obtain them in a timely manner.
2. The Office of Law should continue to update and follow their SOPs and continue to train staff when transitions and turnover occur.

Response

1. A contract for related services was obtained in Summer 2022 which allowed for procurement of contractual services for various related service providers. Beginning in Fall 2023, BCPS was fully staffed with related service providers through the use of both full time FTE's and contractual providers.
2. Office of Law will review the subject SOPs and revise where appropriate. Office of Law will review the revised SOPs with administrative staff.

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BACKGROUND

Organizational Status & Purpose

The DSE Compliance Office supports BCPS staff and parents in understanding and implementing the legal requirements of special education statutes and regulations by providing central office and school-based staff with ongoing professional development (PD). The Compliance Office also investigates and addresses special education concerns and complaints filed pursuant to the Individuals with Disabilities Education (IDEA) dispute resolution processes, such as requests for mediations and due process hearings and MSDE state complaints. In collaboration with the BCPS Office of Law, the Compliance Office develops and reviews policies and procedures to ensure compliance with all state and federal statutes and regulations.

The DSE provides each student with an instructional environment that nurtures potential and enhances academic success. BCPS assures a free appropriate public education (FAPE) for all students with disabilities, from birth through the end of the school year in which the student turns 21 years old, in accordance with the student's individualized education program (IEP). Reasonable efforts will be made at the school level through the IEP team process to resolve any disagreement(s) between parents and other IEP team members concerning the student's program, services, and recommendations. If the disagreement(s) cannot be resolved at the school level, a request for assistance or review may be made to the DSE's Compliance Office to initiate further attempts toward informal resolution. If informal resolution is ineffective or a parent opts not to pursue informal means, a request for mediation and/or a due process hearing may be submitted in writing to the Office of Administrative Hearings (OAH).

Dispute Resolution Options

The Office of Law supports the DSE's Compliance Office when a parent files a request for mediation and/or due process hearing.

The Maryland Procedural Safeguards Notice document, provided to all parents/advocates at least annually at an IEP team meeting, describes the options available to parents and public agencies for resolving disagreements regarding a child's early intervention or special education program and related services, including eligibility. These options include filing a State complaint with MSDE or a request for mediation, and/or due process hearing with OAH. These options have different rules and procedures.

To assist parents in filing a due process complaint, a Request for Mediation and Due Process Complaint Form is available from the public agency from which the early intervention services are provided, where the child attends school, and on the MSDE website at www.marylandpublicschools.org.

*Mediation*¹

Mediation is a voluntary process that can be used to resolve disagreements between the parents of a student with a disability, or a student suspected of having a disability, and the public agency responsible for the student's education.

State Complaint^{1&2}

A State Complaint is a written, signed letter directed to the Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services (DEI/SES), which alleges that a public agency responsible for the education of a student with disabilities violated a requirement of the Individuals with Disabilities Education Act (IDEA) and accompanying State and federal regulations. The complaint may be filed on behalf of an individual student or a group of students that were affected by the alleged violation.

*Due Process*¹

A due process complaint is a formal complaint regarding the identification, evaluation, educational placement, or the provision of a free appropriate public education for a student with a disability or suspected of having a disability, which may result in a due process hearing.

Regulations

The applicable regulations for the Special Education dispute resolution process are:

- 20 U.S.C. § 1400, et seq., Individuals with Disabilities Education Act; IDEA Statute and Regulations
- 34 C.F.R. Part 300
- Md. Code Ann., Educ. § 8-405
- Md. Code Ann., Educ. § 8-413
- COMAR 13A.05.01.15 – Procedural Safeguards – State Complaints, Mediation, and Due Process
- Board Policy and Superintendent's Rule 6402: Special Programs, Special Education Services
- Office of Special Education SOPs
 - State Complaint SOP
 - Mediation and Due Process SOP
- Office of Law SOPs
 - Mediation SOP
 - Due Process SOP

¹ Definitions per [Family Support & Dispute Resolution Branch \(marylandpublicschools.org\)](http://marylandpublicschools.org)

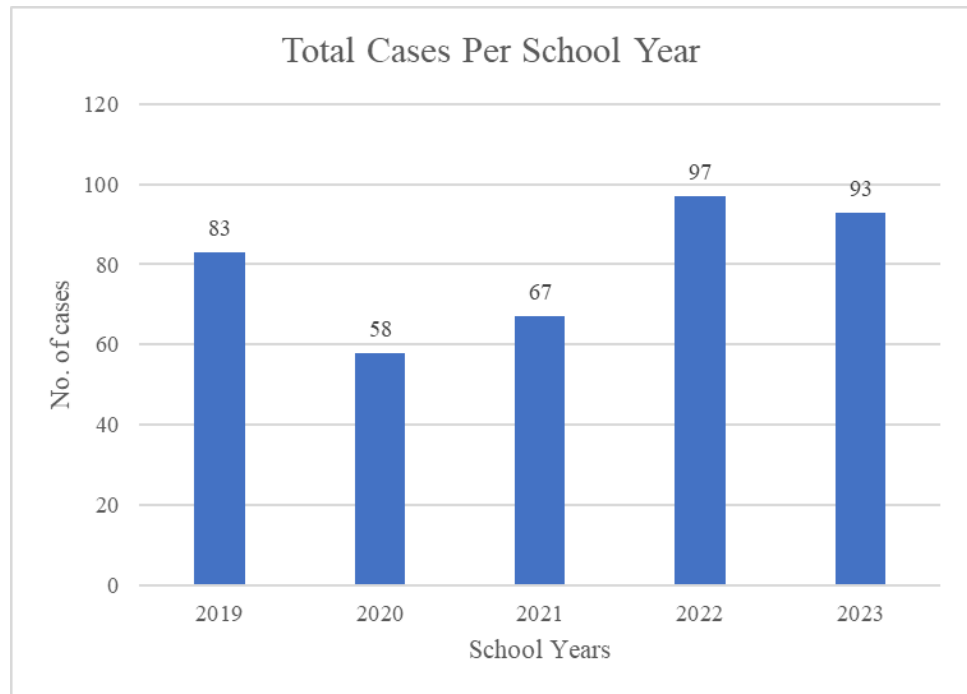
² BCPS is responsible for addressing and monitoring State Complaint findings within one year.

DATA ANALYSIS

Number of Cases

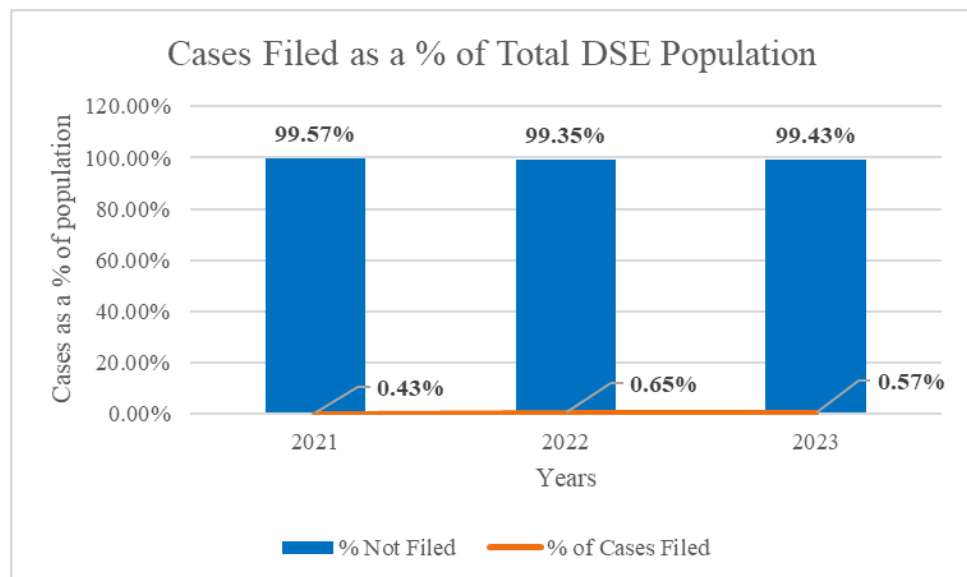
The number of dispute resolution cases per school year (SY), which includes mediation and due process cases, have been consistent, except for SY20 and SY21 due to COVID.

NOTE: As of January 1, 2024, there were 40 cases filed in SY24.



Total Number of Special Education Students to Number of Cases Filed

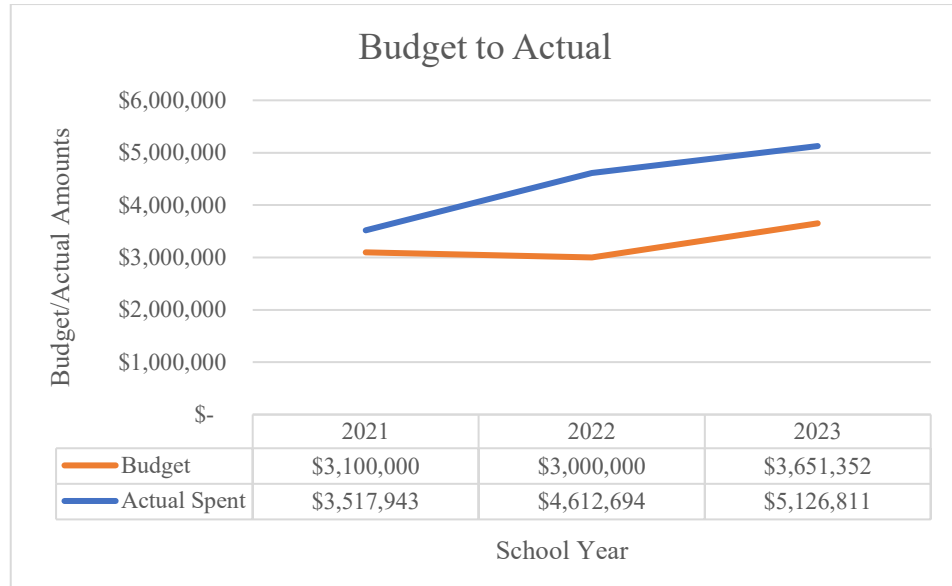
The number of dispute resolution cases filed per SY has increased 26% from SY21 to SY23. However, the number of dispute resolution cases is a small percentage in comparison to the Special Education population.



Budget to Actual Spent for Settlements³

The funds for dispute resolution settlements are budgeted within the DSE’s operating budget. The budget to actual from SY21 through SY23 has been 113%, 154%, and 140%, respectively of actual settlements over their budgets for each school year. For the first four months of the SY24, \$1,642,567 has been spent on settlements with an annual budget set at \$4,000,000.

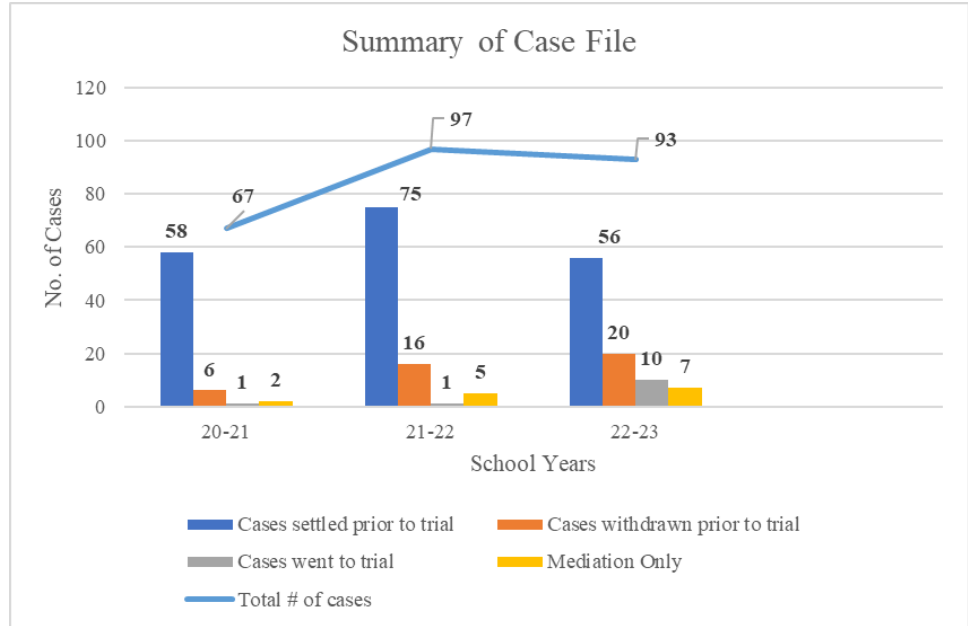
In addition to settlements for dispute resolution, this budget line also includes those expenses used to fund educational services to ensure provision of FAPE and limit system liability.



³ The budget and actual spending amounts include funding for students who are privately placed not as a result of the dispute resolution process.

Dispute Cases Resolved or Withdrawn Prior to Trial

The effort of BCPS in the work that they do surrounding disputes was also evaluated over the years. BCPS works with the parties to resolve issues underlying the complaint causing the complaint to be withdrawn prior to the scheduled hearing. As a result, BCPS reduces the risk of additional costs that may come from litigation.



COMMENDATIONS

Communications

The Coordinator of the Office of Compliance, DSE, and the Paralegal in the Office of Law were both prompt in their responses to audit requests and provided detailed explanations when follow-up was requested.

Required information regarding the dispute resolution process options is provided to families. The DSE website includes links to the related content.

Applicable literature, including the Maryland Procedural Safeguard/Parental Rights notice is provided at least annually at each student's IEP meeting. Additionally, for the cases reviewed, we determined that the Office of Law sends a packet of information, required by COMAR and their SOP, to the parents/advocate when they file for mediation and due process.

Budget monitoring

The DSE monitors the budget used to pay case settlements from the dispute resolution processes. The transactions are monitored monthly and communicated with the Office of Budget and Finance.

In SY23, the DSE Compliance Coordinator added an SOP; and additional monitoring per case, using a smartsheet to track the actual spending per case. This SOP documents the budget tracking for each case.

Complaint monitoring

The DSE works with the schools and parents to resolve issues before offering MSDE state complaint, mediation, and due process hearing options. Additionally, mediation and due process cases are tracked and monitored by the DSE and the Office of Law.

Standard Operating Procedures (SOPs)

There are detailed SOPs for mediation and due process hearing requests and State Complaint processes in the DSE and the Office of Law, and they all align with COMAR.

State Complaint Process

For the cases reviewed, we determined that the DSE follows the State complaint COMAR regulations and their internal SOPs for the State complaint process. Additionally, the applicable corrective actions were addressed within the one-year requirement for the selected cases tested.

RESULTS

1. BCPS failed to provide FAPE.

Criteria	<p>IDEA Section 300.101 - Free Appropriate Public Education (FAPE): A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities... each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.</p> <p>The U.S. Department of Education, Office for Civil Rights (OCR) protects students with disabilities against discrimination. Regarding FAPE, OCR states, "Students with disabilities have the same right to K-12 public education that students without disabilities have. In order to receive and benefit from that education, students with disabilities may need special education and/or related aids and services. OCR works to ensure that public elementary and secondary schools, including charter schools, provide FAPE to all qualified students with disabilities (generally, students with disabilities who are of school age), regardless of the nature or severity of their disabilities. Section 504 and Title II require public schools to provide appropriate education and modifications, aids, and related services free of charge to students with disabilities and their parents or guardians. The "appropriate" component means that this education must be designed to meet the individual educational needs of the student as determined through appropriate evaluation and placement procedures. However, students with disabilities must be educated with students without disabilities to the maximum extent appropriate.</p>
Finding	<p>For two of the eight dispute resolution cases reviewed, FAPE was not provided to the student. For these two cases, BCPS paid for compensatory services owed to the student, per their IEP.</p>
Cause	<p>There was a lack of professionals available to provide the required related services to the students during the period when the cases were filed. There is a nation-wide shortage in the areas of speech language and private duty nurses.</p>
Effect	<p>Students do not receive the special education services due to them in a timely manner. Additionally, BCPS could incur additional costs for compensatory services that are not provided.</p>
Recommendation	<p>Identify the special education related services needed on an annual basis and determine if the current allocation of BCPS resources can fulfill these</p>

needs. Additionally, if BCPS does not have the necessary related service resources available, obtain them in a timely manner.

Management's Corrective Action

A contract for related services was obtained in Summer 2022 which allowed for procurement of contractual services for various related service providers. Beginning in Fall 2023, BCPS was fully staffed with related service providers through the use of both full time FTE's and contractual providers.

Responsible Person(s)

Executive Director, Department of Special Education; Coordinator – Related Services, Department of Special Education

Anticipated Completion Date Completed

2. The Office of Law failed to provide proper notifications to the party filing dispute.

Criteria	<p>COMAR 13A.05.01.15 - Procedural Safeguards - State Complaints, Mediation, and Due Process:</p> <p>Step 9: When a parent files a due process complaint, the public agency shall respond in a manner consistent with 34 CFR 300.508(e)</p> <p>Office of Law SOPs (updated November 2, 2023)</p> <ul style="list-style-type: none">• Mediation & Due Process Hearing Request• Mediation Hearing Request• Due Process Hearing Request <p>Step 7 of all 3 SOPs: Draft and finalize on letterhead an acknowledgement letter of the receipt of the mediation and due process request to parent and/or advocate.</p>
Finding	<p>For seven of the fifteen dispute resolution cases reviewed, notification acknowledging that the complaint was received was not sent to the party that submitted the complaint.</p>
Cause	<p>There was turnover and transitions within the Office of Law during the period the cases were filed that resulted in these processes not always being followed and/or the lack of retained documentation to support compliance.</p>
Effect	<p>The complaint party is not aware of all the appropriate steps or services offered to them, which could result in the party's failure to meet the required time limits within COMAR.</p>
Recommendation	<p>The Office of Law should continue to update and follow their SOPs and continue to train staff when transitions and turnover occur.</p>

Management's Corrective Action

Office of Law will review the subject SOPs and revise where appropriate. Office of Law will review the revised SOPs with administrative staff.

Responsible Person(s)

BCPS Staff Attorney for Special Education and BCPS Paralegal.

Anticipated Completion Date

Completed – Office of Law has reviewed and revised the subject SOPs. In addition, Office of Law will review SOPs with staff during staff transition to ensure compliance.

OBJECTIVE, SCOPE & METHODOLOGY

- Objective** The audit objective was to determine if eligible children and their families are supported through IDEA dispute resolution processes. Additionally, we determined if the notification processes implemented by the Office of Law comply with COMAR, and BCPS SOPs.
- Scope** The audit period is SY23.
- Methodology** To achieve the audit objectives, we performed the following:
- Obtained and reviewed applicable laws, policies, rules, and SOPs.
 - Evaluated risks and controls over the dispute resolution process.
 - Compared SOPs to applicable laws for compliance.
 - Reviewed the Special Education website for information provided to families.
 - Interviewed various personnel regarding the dispute resolution processes (State complaints, Mediation, and Due Process):
 - Coordinator of the Office of Compliance, DSE
 - Staff Attorney and Paralegal for Special Education disputes
 - Supervisor of Special Education Grants
 - Director of DSE
 - Executive Director of DSE
 - Reviewed a sample of SY23 Mediation and Due Process cases and SY22 State Complaint cases to determine compliance with the law and SOPs.
 - Performed data analysis on SY21 through SY24 data related to the dispute resolution cases.