



January 27, 2023

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

RE: [REDACTED]
Reference: #23-100

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 November 30, 2022, MSDE received a complaint from Ms. Nicole Joseph, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that 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 did not ensure that the Individualized Education Program (IEP) team considered the parent’s information and concerns, including the recommendations on the independent psychological assessment provided by the parent, at the IEP meeting held on November 15, 2022, in accordance with 34 CFR §300.324.
2. The BCPS did not follow proper procedures when determining the student’s educational placement for the 2022-2023 school year, in accordance with 34 CFR §§300.114 - .116 and .321.

3. The BCPS did not provide proper written notice of the IEP team's decisions made during the IEP team meetings held on September 20, 2022, and November 15, 2022, in accordance with 34 CFR §300.503.
4. The BCPS has not ensured that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achieving his IEP goals, since November 30, 2021, in accordance with 34 CFR §§300.101 and 324.
5. The BCPS has not ensured that the student has been consistently provided with the speech/language related services required by the IEP since November 30, 2021, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is 12 years old and is assigned to [REDACTED] School. During the 2022-2023 school year, he also received home and hospital teaching (HHT) services. He is identified as a student with Multiple Disabilities under the IDEA and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP in effect at the beginning of the 2021-2022 school year reflects that he received 13 hours of instruction per week inside the general education setting, and 19 hours 30 minutes per week outside the general education setting for a total of 32 hours 30 minutes per week. The student was placed in a BCPS regionalized special education program offering "social communication learning support" classes. The student's IEP also reflects related service of speech/language once per week for 30 minutes, and social work once per week. Both services are provided outside of the general education classroom. The student had goals in the areas of social/emotional/behavioral, mathematics, reading, writing, and communication.
2. Progress reports completed for the student prior to April 2022 indicate that the student was making progress on each of his annual IEP goals.
3. There is documentation that the BCPS scheduled, and then requested to reschedule, an IEP team meeting on February 22, 2022, for the purposes of reviewing a private assessment provided to the IEP team by the parent for consideration.
4. On March 2, 2022, the IEP team met, in part, to consider the results of the private assessment submitted by the parent. Based on the results of the assessment, the IEP team recommended that the student continue to receive 30 minutes per week of speech/language and 30 minutes per week of social work services. The IEP team further recommended that the student participate in "Social Communication Learning Supports" and weekly social skills training.
5. On March 15, 2022, the BCPS received an application for HHT services on behalf of the student indicating that the student could not attend school due to an emotional condition.

6. On March 23 and 24, 2022, the IEP team met to review and revise the student's IEP, as appropriate, and continue to consider the results of the private assessment for the student. The IEP team noted that many of the recommended accommodations were already included in the student's IEP. The IEP developed following the meeting reflects that the team included information from the private assessment in the student's present levels of achievement and accepted the following recommendations from the report:
 - Use of visual and verbal cues for expectations and task completion
 - Low student to teacher ratio
 - Structured daily schedule and routine
 - Use of visual and verbal cues for behavioral expectations and task completion
 - Emphasis on social interaction and communication
 - Reduced distractions
 - Pairing verbal information with pictures, charts, graphs, etc. to assist with comprehension
 - Use of checklists, a personal schedule, and tangible reward system
7. During the March 23, and 24, 2022, IEP team meeting the IEP team also determined the services the student would receive during the time that he was eligible to receive HHT services. The IEP team determined that the student would receive five hours of instruction per week and continue to receive speech/language services. The student's eligibility for HHT services was expected to end on May 14, 2022. The IEP team agreed to meet prior to the student's return to school to develop a reentry plan. The IEP team determined that the student would return to his assigned school following the end of HHT services. The parents expressed concerns with the student's safety, anxiety and mental health as a result of his placement at the regional program.
8. On May 6, 2022, the parents emailed staff at the student's assigned school requesting information on the student's proposed visit to the school as part of a proposed reentry plan. On May 13, 2022, the student and parent visited his assigned school.
9. The student's eligibility for HHT services ended on May 14, 2022.¹
10. The parent sent an email on the same day expressing that she would like to enroll the student immediately. On May 16, and 24, 2022, the parent sent additional emails to the school indicating that the student would enroll.
11. On May 24, 2022, the parent sent an email to the student's school staff expressing that the student's private mental health provider has "some questions". The parent mentioned that she will be in communication with school staff following the conversation with the provider on May 24, 2022. There is no documentation that the parent sent additional correspondence to the school staff concerning the student's enrollment at this time.

¹ There is documentation that the HHT services were not provided to the student promptly following the student's eligibility for services in March 2022. During an IEP team meeting in June 2022, the BCPS determined that the student was owed compensatory services for the instructional services not provided from March to May 2022.

12. On June 6, 2022, staff at the student's school emailed the parent to schedule an IEP team meeting proposed for June 16, 2022. The parent requested that this meeting be scheduled for another date.
13. On the same date, the BCPS generated a progress report for the student indicating that he was not making progress on his social emotional "self-advocacy" social/emotional/behavioral annual IEP goal. However, the BCPS did not include information on the student's progress towards achieving his other annual IEP goals.
14. On July 13, 2022, the parent sent an email to the student's school staff informing them that the student's provider "has not released" the student to return to school.
15. On July 13, 2022, the BCPS sent correspondence to the parent proposing an IEP team meeting on July 26, 2022.
16. On July 29, 2022, the IEP team met to review and revise, as appropriate, the student's IEP. During the IEP team meeting, the IEP team reviewed correspondence from the student's private mental health provider who recommended that the student be "placed in an alternative therapeutic school" and that the student be provided with "significant one to one teacher support and interactions, significant breaks, sensory rooms with one-to-one support, classrooms that focus on mental health de-escalation." The IEP team determined that the IEP developed in previous meetings included many of the recommendations from the student's private assessment report, and that the student's needs could be met in his current educational placement. The parents disagreed with this IEP team decision and asked to speak to representatives from the BCPS district office. The IEP team discussed assigning the student to another location with a similar program.
17. On August 23, 2022, the IEP team met to review and/or revise the student's IEP, as appropriate. During the IEP team meeting, the team reiterated its decision that the student could access the general education curriculum when he is provided with accommodations and modifications. The team further determined that with the structure, small classroom sizes, reduced distractions, and social emotional support available in his program provided him a "highly structured environment with a low teacher to student ratio, significant breaks, sensory support and an emphasis on social emotional learning." The IEP team also proposed additional supports based on input from the student's parents, including a one to one aid, counseling and psychological consultations, and conducting a functional Behavior Assessment. The parents disagreed with the IEP team proposals and requested a more restrictive environment to include access to mental health support inside the classroom daily.
18. The IEP developed on August 23, 2022, continued to require that the student receive instruction in the general education setting and outside of the general education setting in his educational placement in the regional BCPS program located at a comprehensive school.
19. On or around September 9, 2022, the BCPS received an application for HHT services on behalf of the student. There is documentation that the BCPS approved the application on or around September 13, 2022.

20. On September 20, 2022, the IEP team met to review and/or revise the student's IEP. During the IEP team meeting, the team noted that the student's LRE was updated to reflect temporary Home and Hospital services. The IEP team considered correspondence dated October 3, 2022 from the private provider stating that the student "needs... extra support outside of a traditional setting, placement at a school specializing in special education services or a day school with comparable supports... [including]... a small classroom structure with low student to teacher ratio, individualized learning plans, educational programming, one on one support, social learning and thinking programs, and interventions related to life skills." The team noted, however, that the student has not attended school in person since March 2022, and that "additional data is needed to support a least restrictive placement or placement other than (the student's assigned school)."
21. On November 15, 2022, the IEP team met to review and/or revise the student's IEP and determine the services and supports he would need following his return from HHT. During the IEP team meeting, the IEP team determined that the student's placement continued to be appropriate, but that he would benefit from a change in location of services. The IEP team documented its consideration of the private provider's recommendations but stated that the provider's recommendations do not include "how the student is impacted in the school setting." The IEP team reported that there was not enough data to support the need for a more restrictive setting. The meeting included a review of home and hospital data, input from the BCPS service provider, input from the private mental health provider, and parental input.
22. On November 22, 2022, the IEP team met to review and/or revise the student's IEP and develop a reentry plan for the student. During the IEP team meeting, the parents again proposed that the student required a more restrictive placement. The IEP team rejected that proposal stating there was insufficient data to support a more restrictive environment. The IEP was revised to reflect an increase in the following: "school based Social Work services may include additional sessions needed for urgent social-emotional needs" in part because the student did not make sufficient progress towards his self-advocacy annual IEP goal.
23. While there is documentation that the student received the speech/language services required by his IEP from November 2021 to March 2022, there is no documentation that the student received the Speech/Language Services required by his IEP during the time that he was eligible for HHT services.
24. The IEP team summary for the September 20, 2022, meeting indicates that the summary was mailed to the parents on September 28, 2022.
25. There is documentation that the prior written notices generated following the November 15, 2022, and November 22, 2022, IEP team meetings were provided to the parents.
26. There is no documentation that the BCPS provided the parents with progress reports on the student's progress towards achievement of his academic or speech annual IEP goals following the IEP meetings convened for the student in March 2022.

DISCUSSION/CONCLUSIONS:

Allegation #1

Consideration of Parent Input and Recommendations Made in the Private Assessment Report

Based on Findings of Facts #3, #4, #6, #9, #11, #14, #16, #17, and #20 - #22, MSDE finds that the BCPS did ensure that the IEP team considered the parent's information and concerns, including the recommendations on the independent psychological assessment provided by the parent, at the IEP meetings since March 23, 2022, in accordance with 34 CFR §300.324. The recommendations from the private evaluation provided by the parents were discussed over two IEP team meetings and incorporated into the student's IEP. During discussions about placement, the IEP team referenced the recommendations included in the report and determined they could be implemented in the recommended placement. Therefore, this office finds that a violation did not occur with respect to this allegation.

Allegation #2

Placement Determination

Based on Findings of Facts #1, #4, #5, #7, #8 and #10-#22, MSDE finds that the BCPS followed proper procedures when determining the student's educational placement for the 2022-2023 school year, in accordance with 34 CFR §§300.114 - .116 and .321. The PWN from each meeting reflected that the IEP team considered the parent's placement request, considered the placement continuum, and determined that the student's IEP could be met in the recommended placement. Therefore, this office finds that a violation did not occur with respect to this allegation.

Allegation #3

Provision of Proper Written Notice of the IEP Team Decisions

Based on Findings of Facts #24 #25, MSDE finds the BCPS did provide proper written notice of the IEP team's decisions made during the IEP team meetings held on September 20, 2022, and November 2022, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did not occur with respect to this allegation.

Allegation #4

Addressing the Lack of Expected Progress

Social/Emotional/Behavioral Goals

Based on Findings of Facts #12 and #22, MSDE finds that the BCPS has ensured that the IEP team addressed the student's lack of expected progress on his social/emotional/behavioral goals annual IEP goals since November 20, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Academic Goals

Based on Findings of Facts #1, #2, #13 and #26, MSDE finds that the BCPS did not provide reports of the student's annual IEP goals to the parent since April 2022. Therefore, there was no obligation of the BCPS, in accordance with 34 CFR §300.324, to convene an IEP team to address the student's lack of expected progress

during this time. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Notwithstanding these findings, MSDE finds, based on Finding of Fact #13 and #24 that the BCPS has not ensured that the parents consistently received progress reports for the student reflecting his progress towards annual IEP goals, in accordance with 34 CFR §§300.320 and .323 since April 2022. Therefore, MSDE finds that a violation has occurred.

Allegation #5 **Provision of Speech /Language Services**

Based on Findings of Facts #1 and #23, MSDE finds that the student was not consistently provided with Speech/Language services as required by the IEP since March 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

Home and hospital teaching is to be provided only when a student is unable to attend their school of enrollment for either: a medical condition, as verified by a licensed physician or certified nurse practitioner; or an emotional condition, as verified by a certified school psychologist, licensed psychologist, or licensed psychiatrist (COMAR 13A.03.05.03 and 04). Upon receipt of the verification, the IEP team must follow specific steps to ensure that the student receives appropriate services. The IEP team must review and revise the IEP, as appropriate, to determine the instructional services to be provided and to develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10). In no event can a student enrolled in a full time program receive fewer than six hours per week of instruction while receiving HHT services.

Based on the Findings of Fact #7, MSDE finds that the BCPS has not ensured that proper procedures were followed when determining the services the student would receive during the time that he was eligible for HHT services, in accordance with COMAR 13A.03.05.03. Therefore, this office finds that a violation occurred.

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.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.

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, 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.

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.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

MSDE requires BCPS to provide documentation by March 1, 2023, of the following:

- a. That the parents have received reports of the student's progress for each annual IEP goals since November 2021.
- b. That the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the delay in providing the parents with reports on the student's progress towards annual IEP goals, the speech language services not provided during the time the student was eligible for HHT services, and the determination that the student would receive less than the required amount of instruction while eligible for HHT services and developed 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 parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

Similarly Situated Students

MSDE requires the BCPS to provide documentation by April 30, 2023 that it has identified all students with disabilities under IDEA and were eligible for HHT services since March 2022 who received less than the required level of instruction during the time that they were eligible for HHT services, did not receive the services required by their IEPs or whose parents did not receive reports of progress towards achievement of annual IEP goals during the time that they were eligible for HHT services. For those students identified, the BCPS must ensure that an IEP team convenes and determines the amount and nature of compensatory services or other remedy to be provided to the student for the loss of services, and develops a plan for the provision of those services within one (1) year of the date of this Letter of Findings. If a student transfers to another school system prior to the completion of the provision of the remedy, the BCPS must coordinate with the public agency responsible for the education of the student in order to ensure that the remedy is provided.

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

³ The 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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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 Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMC:ra

c: Darryl Williams
Charlene Harris
Conya Bailey
[REDACTED]
Gerald Loiacono
Diane Eisenstadt
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