



May 9, 2023

Mr. Mark Martin
36 S. Charles Street, Suite 901
Baltimore, Maryland 21201

Ms. Alison Myers
Executive Director of Special Education
Baltimore County Public Schools
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #23-170

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 March 10, 2023, MSDE received a complaint from Mr. Mark Martin, 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) 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 the specialized instruction and services required by his Individualized Educational Program (IEP) since November 2022, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS has not followed proper procedures when responding to a request that the student receive home and hospital teaching (HHT) services, since November 2022, in accordance with COMAR 13A.05.01.10 and 13A.03.05.04A

BACKGROUND:

The student is seventeen years old and is identified as a student with a disability under the IDEA. He is currently assigned to the [REDACTED] a private separate special education school, by the BCPS. He has an IEP that requires the provision of special education instruction.

FINDINGS OF FACTS:

1. On November 22, 2022, the IEP team convened for the student to review and revise, as appropriate the student's IEP. During the meeting, the IEP team determined that the student would be provided

with 30 hours per week of specialized instruction outside of the general education setting. The IEP team further determined that the student would receive instruction in a "nonpublic school".

2. While there is some documentation that the BCPS has applied to nonpublic schools on the student's behalf, and that the student was provisionally accepted into a nonpublic school with a projected start date of April 24, 2023, there is no documentation to date that the student has received the educational services required by his IEP since November 2022.
3. There is no documentation that the student has applied for or received HHT services.

DISCUSSION/CONCLUSIONS:

Allegation #1

Based on Findings of Facts #1 and #2, MSDE finds that there is no documentation that the student was provided with the special education services required by his IEP, since November 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #2

Based on the Finding of Fact #3, MSDE finds that there is no documentation that the student applied for HHT services since November 2022, and that the BCPS was not therefore required to provide him with those services, in accordance with COMAR 13A.05.01.10 and 13A.03.05.04A. Therefore, this office does not find that a violation 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 noncompliance is corrected in a timely manner.¹ 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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

¹ 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.

² 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 1, 2023, that the student is receiving the services required by his IEP. MSDE further requires that the BCPS provide documentation by June 15, 2023, that the IEP team has convened for the student and determined the services needed to remediate the violations related to the lack of service provision. The BCPS must also develop a plan for the implementation of the services within one 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 the end of the 2022-2023 school year that it has identified all students with disabilities under IDEA, pending placement in a nonpublic school, who have not been provided with special education and related services in the placement required by the IEP³. For those students identified, the BCPS must ensure that an IEP team convenes and determine the next steps to ensure the student is placed in the placement required by the IEP and determine the amount and nature of compensatory services or other remedy to be provided to the student for the lack of implementation of the IEP, and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

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. 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

DC/gl

c:	Darryl L. Williams	Charlene Harris	Alison Barmat
	Conya Bailey	Krystal Adams	Diane Eisenstadt
	Jason Miller	Gerald Loiacono	

³ MSDE has required similar corrective action of the BCPS in State complaint investigation #23-160.