




Mohammed Choudhury
State Superintendent of Schools

May 26, 2023




Ms. Allison Myers
Baltimore County Public Schools
Jefferson Building, 4th Floor
105 W Chesapeake Avenue
Towson, Maryland 21204

RE: 
Reference: #23-187

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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 February 24, 2023, MSDE received a complaint from Ms. , hereafter, “the complainant,” on behalf of her daughter. 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 did not follow proper procedures to ensure that Home and Hospital Teaching (HHT) services were consistently provided to the student during the 2022-2023 school year, in accordance with 34 CFR §300.323 and COMAR 13A.05.01.10.
2. The BCPS has not ensured that the student has been provided with the special education instruction and related services required by the Individualized Education Program (IEP) during the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS has not ensured that the IEP includes present levels of academic achievement and functional performance in order to properly address the student's identified behavior needs since the start of the 2022-2023 school year, in accordance with 34 CFR §300.320.
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 the IEP goals during the 2022-2023 school year, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is 14 years old and is identified as a student with Multiple Disabilities (emotional disability, specific learning disability and other health impairment) under the IDEA. During the 2022-2023 school year, the student primarily received special education services through Home and Hospital Services. She is assigned to [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

ALLEGATION #1

PROVISION OF HOME AND HOSPITAL SERVICES

1. During the 2021-2022 school year, the student was eligible for Home and Hospital Teaching (HHT) services. On September 9, 2022, the IEP team met to amend the student's IEP to reflect the student's return to in-person learning from HHT. The student has displayed difficulty entering the school building and attended school for two days at that point during the 2022-2023 school year. The parent reported the student does not like to be around a lot of people and does not want to come to school, nor will she leave her room when it is time for school. The IEP team created a plan for the student to have a gradual entry plan for the first week of school. The IEP was amended to reflect additional support for the student, and special education service hours were amended to reflect in-person learning provided for her core classes outside of the general education setting.
2. The IEP requires that the student receive five hours a week of math instruction outside of the general education setting, seven and one half (7.5) hours of reading and English language arts instruction outside of the general education setting, three (3) hours and forty-five (45) minutes of instruction in science outside of the general education setting, three (3) hours and forty-five (45) minutes of instruction in social studies outside of the general education setting, and one (1) hour and thirty (30) minutes monthly of counseling services outside of the general education setting.
3. Following receipt of an application, the student was approved for HHT by the Office of Home and Hospital Teaching with a start date of September 21, 2022, and an end date of November 20, 2022. The student received HHT due to a verified emotional condition: Anxiety and Periumbilical Abdominal Pain. The IEP team recommended that the student receive ten hours a week of academic support in the core subject area with services not to exceed beyond 60 days, with an expiration date of November 20, 2022. Instruction was to be provided through one-to-one tutoring.
4. There is documentation that the student attended in-person school on September 30, 2022, November 1, 2022, and November 10, 2022.
5. On November 11, 2022, the IEP team met to review and revise, as appropriate, the student's IEP and discuss the provision of HHT. The team agreed that the student's reentry plan would consist of a gradual entry for the first week and the following week, and then would attend a full school day with support.
6. There is no documentation that HHT services were provided to the student during the time that she was eligible for HHT services from September 21, 2022, to November 20, 2022.

7. Following an additional application, the student was approved for HHT by the Office of BCPS HHT with a start date of November 12, 2022- January 11, 2023. There is no documentation that the IEP team met to determine appropriate services while the student continued receiving HHT services following the initial 60-day period due to her emotional condition.
8. There is documentation that the student attended school in-person on December 15, 2022.
9. On December 19, 2022, the IEP team met to review and revise, as appropriate, the student's IEP and discuss the student's attempt to return to in-person school as the student has been on HHT for more than the required 60 days. The student's anticipated return date was January 11, 2023. The IEP team created a plan for the student to have a gradual reentry plan for the first week. A staff member from HHT stated the student will receive compensatory hours of service to be made up at the end of the school year for the time that was missed at the beginning of the school year. The written summary of the meeting states "the hours on the student's IEP were amended to reflect her return to in-person learning"; however, the IEP reflects "the student will receive her special education services through Home and Hospital."
10. There is documentation that the student attended in-person school on December 21, 2022.
11. While there is documentation that the BCPS attempted to provide services to the student on ten different dates, there is no documentation that HHT services were consistently provided to the student from November 12, 2022- January 11, 2023.
12. There is documentation that the student attended in-person school on January 11, 2023, and January 19, 2023.
13. There is documentation that the student attended in-person school on February 10, 2023, and February 28, 2023.
14. Following an additional application, the student was approved for HHT by the Office of Home and Hospital Teaching with a start date of January 31, 2023, to April 1, 2023. There is no documentation that the IEP team met to determine appropriate services for the student while she continued receiving HHT services.
15. On March 2, 2023, the IEP team met to review and revise, as appropriate, the student's IEP and discuss the provision of HHT. The student struggles with difficulty with learning in addition to severe anxiety and chronic pain. The student's pain and anxiety has been very elevated in the school setting leading to school avoidance. The student was approved for eight hours a week of academic support in the core subject area and social workers will provide support virtually three times a week with services not to exceed beyond 60 days. Instruction was to be provided through one-to-one tutoring. A reentry plan was not created as requested by the HHT staff.
16. On March 13, 2023, the parent sent an email to members of the IEP team along with staff of HHT, informing the team that tutoring services have not started for her daughter and were "supposed to start on February 27, 2023". The parent also inquired about the location of services being the library, as "she did not approve of that." The parent stated the tutor called out sick the week prior and did not show up on her scheduled date the following week.

17. There is documentation that the student attended in-person school on March 17, 2023, to March 20, 2023, and March 27, 2023 through March 29, 2023.
18. On March 23, 2023, email correspondence was exchanged from the Home and Hospital Office, Educational Opportunity Office to the members of the school team to address the dates of approval for HHT. The email from the BCPS staff stated the student was approved for HHT on January 27, 2023, with a return date back to school after May 21, 2023. The email encouraged the team to work with the HHT social worker to help the student transition back to school as she approaches three years of being on HHT and the program is designed to be temporary.
19. There is documentation the student attended in-person school on May 8, 2023, and May 11, 2023, and May 12, 2023.
20. During the 2022-2023 school year the student was determined eligible for HHT services due to an emotional condition during the following dates:
 - September 21, 2022 to November 20, 2022;
 - November 12, 2022 to January 11, 2022; and
 - January 31, 2023 to April 1, 2023.

DISCUSSION/CONCLUSION:

If a student with a disability is unable to participate in their school of enrollment and is provided HHT because of a physical or emotional condition, consistent with COMAR 13A.03.05.04A, the IEP team must meet to review and revise the student's IEP.

The IEP team should convene as soon as possible to avoid a disruption in the provision of special education and related services to the student. According to COMAR 13A.03.05.03, HHT is required to begin no later than 10 school days following the local school system's receipt of: 1) notification that the student is unable to attend school, and 2) verification of the need for services. Once the local school system has received both requirements, the IEP team should be prepared to meet within 10 school days as well, so that HHT can begin timely and in accordance with the student's IEP. If the IEP team cannot meet within 10 school days, HHT may still begin so that the student has access to instruction. The IEP team should meet as soon as possible, however, because failure to implement a student's IEP as written raises concerns about the delivery of a free appropriate public education. (COMAR 13A.03.05.03D(4)).

Based on the Finding of Facts #1 to #21, MSDE finds the BCPS did not follow proper procedures to ensure that HHT services were consistently provided to the student during the 2022-2023 school year, in accordance with 34 CFR §300.323 and COMAR 13A.05.01.10. Therefore, this office finds that a violation occurred with respect to the allegation.

ADDITIONAL FINDINGS:

To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled. In addition, if a student receives HHT because of a physical or an emotional condition, consistent with COMAR 13A.03.05.04A, educational placement in the home may not exceed 60 consecutive school days (COMAR 13A.05.01.10C(5)(d)).

Based on Find of Facts #15 and #21, the student was placed in HHT for an emotional condition for more than 60 consecutive days and services were not determined by the IEP team when the student was found eligible for HHT services. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATION #2 and #4 PROVISION OF SPECIAL EDUCATION INSTRUCTION/ RELATED SERVICES
AND ADDRESS THE LACK OF PROGRESS TOWARD IEP GOALS**

21. The reports of the student's progress dated November 4, 2022, reflect that all of her goals were "not introduced" due to the fact that student was to return to in-person learning and only attended in-person school for two days during that marking period. However, the student returned to HHT on September 21, 2022, and did not receive a progress report during that time.
22. There is no documentation that the student received special education instruction and related services required by the revised IEP in order to receive HHT for marking period two.
23. The special education progress report from HHT dated March 17, 2023, reflects the student was "Making Progress" on her math IEP goal for the two sessions she received services prior to the due date of the report.
24. The special education progress report from HHT dated March 20, 2023, reflects the student "Not Making Sufficient Progress" toward her self-regulation goal. The student attended one out of six scheduled sessions while on HHT for the month of March 2023. The student was sick or refused to attend the sessions.
25. The special education progress report from HHT for the third marking period provided the student with "TBD" which indicates the "student has not had any sessions to engage with the academic content thus far (only one session out of 6 scheduled times and 4 excused absences for health/anxiety issues) –grades will be determined as future sessions occur for English, health, science, and American history."
26. There is no documentation the IEP team met to address the student's lack of progress during the 2022- 2023 school year.
27. There is documentation that the student attended her assigned school for 18 days during the 2022-2023 school year.

CONCLUSIONS:

**Allegation #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION
AND RELATED SERVICES**

Based on Findings of Facts #3, #6, #7 to #8, #15 to #17, and #22- #28, MSDE finds the BCPS has not ensured that the student has been provided with the special education instruction and related services required by the IEP during the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323. Notwithstanding that finding, MSDE notes that the student was eligible for HHT services for the majority of the 2022-2023 school year and that violations were found with regard to the provision of HHT services.

Allegation #4: ADDRESS THE LACK OF PROGRESS TOWARD IEP GOALS

Based on the Finding of Facts #27, MSDE finds 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 the IEP goals during the 2022-2023 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #3: IEP THAT ADDRESSES THE STUDENT'S NEEDS

28. On May 9, 2022, the IEP team convened as a part of the student's triennial evaluation process. The student was diagnosed by her psychiatrist at Kennedy Krieger Institute with major depressive disorder, other specified anxiety disorder, and periumbilical abdominal pain. It was determined that the student's diagnosis has "impacted her ability to appropriately engage in various functional activities including school, social and extracurricular activities, and physical activities." It was noted on the Eligibility Determination Report that the student did not receive a classroom observation for the educational assessment that was conducted on May 5, 2022, due to receiving services through HHT. When the student was asked to come to the school building to receive the reevaluation assessment, "the student was hesitant and resistant, cried, her body shook, and was visibly upset by the experience of entering the building." The team determined the student required support in the area of math and social-emotional behaviors. The IEP team found it appropriate to qualify the student under the category of Multiple Disabilities for emotional disability, specific learning disability and other health impairments.
29. On August 8, 2022, the student received a psychological assessment from BCPS. The assessment recommends the student continue to engage in the therapeutic treatments that are currently helping. It is also recommended that the student may benefit from contingency management, modeling, relaxation training, behavioral intervention, and cognitive behavioral therapy, and she would benefit from continued exposure to the school/classroom environment so that she may be integrated into the school environment when it is determined that she is ready.
30. The IEP at the start of the 2022- 2023 school year was created on June 3, 2022. It identifies the student's primary disability as a specific learning disability; however, the student was identified as a student with multiple disabilities on May 9, 2022. It requires the student to receive 6 hours a week while on HHT to address her needs in math and social worker services will be provided in the home 3 times monthly for 30 minutes. The present level of academic achievement and functional performance does not identify how the child's disability affects the child's involvement and progress in the general education curriculum, nor that the student has received HHT for almost three years.
31. The IEP team met on September 9, 2022, to amend the student's IEP to reflect the return to in-person learning. The IEP updated the student's current disability code to Multiple Disabilities (emotional disability and specific learning disability) and does not include other health impairments. The IEP requires the student to receive services in the home school. The present level of achievement and functional performance under social/ emotional, continues to not identify how the child's disability affects the child's involvement and progress in the general education curriculum, nor does it address the student's identified behavioral needs. The IEP team added additional support to help the student adjust to returning to school.

CONCLUSION:

Based on the Finding of Facts # 29 through #32, MSDE finds the BCPS has not ensured that the IEP includes present levels of academic achievement and functional performance in order to properly address the student's identified behavior needs since the start of the 2022-2023 school year, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred with respect to the 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.

Student Specific:

MSDE requires the BCPS to provide documentation by the end of the 2022- 2023 school year, that the IEP team has taken the following action:

- a. Determine the student's present levels of performance in her identified areas of need;
- b. Determine how the student's disability impacts her involvement and progress in the general education curriculum;
- c. Ensure the annual goals are aligned with the present levels of performance, and that the IEP has been revised, as appropriate;
- d. Consider the full continuum of placement options based on the student's inability to benefit from her educational program; and
- e. Create a plan for the student to return to school and receive instruction.

The IEP team must also convene determine the amount and nature of compensatory services or other remedy to redress the violations. The IEP team must 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 complainant is provided with written notice of the team's decisions.

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.

²MSDE 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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Similarly Situated Students

MSDE requires the BCPS to provide documentation by August 1, 2023, that it has identified all students with disabilities under IDEA who receive HHT with an emotional condition of more than 60 days. For those students identified, the BCPS must ensure that an IEP team convenes and ensure there is a plan to have them return to school and determines the amount and nature of compensatory services or other remedy to be provided to the student for the loss of services and develop 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 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

DMC/sj

c: Darryl L. Williams
Conya Bailey
Charlene Harris
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