



Mohammed Choudhury
State Superintendent of Schools

November 4, 2022

[REDACTED]

Allison Myers, Executive Director
Department of Special Education
Jefferson Building, 4th Floor
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #23-037

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 September 7, 2022, the MSDE received a complaint from Mr. [REDACTED] and Ms. [REDACTED] hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants 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.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that the reevaluation of the student during the 2021-2022 school year was completed within the required timelines, in accordance with 34 CFR §300.303 and COMAR 13A.05.01.06.
2. The BCPS did not provide the parents with a quarterly report on the student’s progress toward achieving the annual Individualized Education Program (IEP) goals since the start of the 2021-2022 school year, in accordance with 34 CFR §300.320.
3. The BCPS did not follow proper procedures to ensure that Home and Hospital Teaching (HHT) services were consistently provided to the student during the 2021-2022 school year, in accordance with 34 CFR §300.323 and COMAR 13A.05.01.10.

4. The BCPS has not ensured that the IEP team has addressed the parent's concerns regarding the provision of the student's IEP services, grades, schedule, and compensatory education hours during the 2021-2022 school year, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is currently fifteen (15) years old and is identified as a student with Other Health Impairment under the IDEA. She attends ██████████ School and has an IEP that requires the provision of special education instruction.

FINDINGS OF FACT:

1. The student's Individualized Education Program (IEP), amended on September 24, 2021, reflects the student's projected evaluation date was May 10, 2022. The student's most recent IEP evaluation was May 10, 2019.
2. The IEP Team Summary drafted after the May 2, 2022, IEP team meeting reflects the complainant participated by phone and gave verbal permission for a psychological and educational assessment to be completed. The IEP team reviewed the student's educational progress including "progress toward IEP goals." The team determined there was no data to reflect progress because the student has received inconsistent tutoring from HHT services. The complainant did not want to discuss the student's return to the school building. Additionally, the complainant stated "they have a schedule currently worked out with the tutors now and she doesn't want to interrupt the schedule now that it is finally in place." The school team suggested the student return to the school building for one class; and receive her HHT in the school building after participating in one class. The complainant and advocate did not "want to discuss the student's participation in school at ██████████ School."
3. The IEP Team Summary drafted after the September 29, 2022, IEP team meeting reflects that the IEP team convened and reviewed the student's psychological and educational assessments.
4. There is no documentation that the reevaluation of the student was completed by May 10, 2022.
5. The student's IEP amended on September 24, 2021, required that the complainants be provided with the report on the student's progress quarterly. There is no documentation of the report on the student's progress toward achieving the annual IEP math goals since the start of school year 2021-2022 until March 24, 2022.
6. There is documentation of the report on the student's progress toward achieving the annual IEP self-management goal for November 5, 2021, January 25, 2022, and April 1, 2022. However, there is no documentation that the special education progress report was provided to the complainants.
7. There is documentation of the student's special education progress report for math goals dated March 24, 2022. However, there is no documentation that the special education progress report was provided to the complainants.
8. The student's IEP dated May 2, 2022, required that the complainants be provided with the report on the student's progress quarterly. There is no documentation of the report on the student's progress toward achieving the annual IEP math goals for June 2022.

9. There is documentation of the report on the student's progress toward achieving the annual IEP self-management goal for June 16, 2022. However, there is no documentation that the report on the student's progress was provided to the complainants.
10. The IEP Team Summary drafted after the September 24, 2021, IEP team meeting reflects that the IEP team agreed the student would receive six hours of HHT services, "2 of which would be related to IEP services."
11. There is no documentation that the HHT service was reverified after sixty (60) days.
12. There is no documentation that the IEP team reconvened within sixty days of September 24, 2021, to discuss continuation of services or to review and revise the IEP.
13. The IEP Team Summary drafted after the March 21, 2022, IEP team meeting reflects that the IEP team determined there were "gaps in instruction based on availability of tutors through Home and Hospital" and "compensatory services have been accrued" during the time the student did not receive instruction. School staff noted it was not in the student's best interest to return to school full time, however, supported a gradual return to school. The student was "still assigned to HHT services". The complainant's advocate noted March 14, 2022, was the "student's first day back since the gap in tutors." The advocate did not agree that a proper HHT recommendation could be made by the current clinicians for a few months; and "with the amount of compensatory services owed", the HHT services should be extended until the end of the school year. The HHT social worker agreed the student was not ready to return to school, however, a plan should be developed for re-entry the following school year. She suggested as a "starting point" that the social work sessions occur at school. The IEP team agreed to continue with HHT services until the May 2, 2022, IEP team meeting.
14. There is no documentation that the HHT services were consistently provided during the 2021-2022 school year.
15. On October 7, 2021, the BCPS Home and Hospital Program emailed the complainants regarding HHT services and missed tutoring hours. The BCPS staff agreed to calculate the number of hours of compensatory time. There is no documentation that the compensatory time has been calculated.
16. On February 16, 2022, the BCPS HHT staff emailed the complainant and confirmed that a tutoring schedule had been established. The complainant responded that a limited schedule was discussed; specifically, she noted "there isn't enough time in the week given the tutor's schedule and ours to get the hours in". Additionally, the complainant expressed concern about the report of failing grades, and the student's ability to pass the ninth grade. The BCPS HHT staff further responded "there seems to be a need for communication with the school" and they would contact them to update them on "where things currently stand". The HHT staff stated "we are committed to making sure we continue to provide options to help the student move forward and that she not fail 9th grade." The complainant responded "She has to fail the grade. There is no possible way to make up a year of school in four months." The school team responded and proposed a meeting for February 28, 2022, to discuss a plan to move forward. The complainant responded "I will not meet without our advocate".
17. On February 18, 2022, the BCPS school social worker emailed the complainant to offer the student to receive her instruction and grades from HHT, but attend school to "sit in on the math class". The complainant responded to the BCPS school social worker with concerns about the student's grades

for classes she did not “take”, “inflated grades”, and failing grades due to lack of instruction. The complainant further indicated the student would not attend school in February after missing six months of “foundational work”. The BCPS Home and Hospital program responded with information regarding the student’s tutors and scheduling.

18. On March 2, 2022, the BCPS emailed the complainant requesting that she return the tutors' calls so the HHT service can resume.

CONCLUSIONS:

ALLEGATION #1: REEVALUATION PROCEDURES

Based on the Finding of Facts #1 to #4, the MSDE finds that the BCPS did not ensure that the reevaluation of the student during the 2021-2022 school year was completed within the required timelines, in accordance with 34 CFR §300.303 and COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #2: PROVISION OF PROGRESS REPORTS

Based on the Findings of Facts #5 to #9, the MSDE finds that the BCPS did not provide the parents with a quarterly report on the student’s progress toward achieving the annual Individualized Education Program (IEP) goals since the start of the 2021-2022 school year, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based upon Findings of Fact #2, the MSDE finds that the complainant participated in the May 2, 2022, IEP team meeting where the IEP team reviewed the student’s progress. Therefore, no further student specific corrective action is required for this allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

The BCPS must ensure the provision of written information about the student’s progress towards their IEP goals. (34 CFR §§300.101, .320, and .323).

Based on the Findings of Fact #5 and #8, the MSDE finds that the BCPS did not ensure the provision of written information about the student’s progress towards their annual math IEP goals since the start of school year 2021-2022 until March 24, 2022 and June 2022, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds that a violation occurred.

ALLEGATION #3: PROVISION OF HHT SERVICES

Based on the Findings of Facts #10 to #14, the MSDE finds that the BCPS did not follow proper procedures to ensure that Home and Hospital Teaching (HHT) services were consistently provided to the student during the 2021-2022 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 this allegation.

ALLEGATION #4: PARENTAL CONCERNS

Based on the Findings of Facts #2, #13, #15 to #18, the MSDE finds that the BCPS has ensured that the IEP team has addressed the parent’s concerns regarding the provision of the student’s IEP services, grades, and

schedule during the 2021-2022 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that no violation occurred with respect to this aspect of the allegation.

Based on the Findings of Fact #15, the MSDE finds that the BCPS has not ensured that the IEP team has addressed the parent's concerns regarding compensatory education during the 2021-2022 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this aspect of 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, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable time frames below to ensure that non-compliance 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 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 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:

The MSDE requires the BCPS to provide documentation by January 16, 2023, that the school system has taken the following actions:

- a. Provide the complainant with written information about the student's progress towards their annual math IEP goals since the start of school year 2021-2022 until March 24, 2022 and June 2022;
- b. Convene an IEP team meeting to review assessments, and determine continued eligibility. If the student continues to be eligible, review and revise the IEP, and determine an appropriate placement;
- c. The IEP team has determined the amount and nature of compensatory services to redress the lack of the provision of HHT services required by the student's IEP, and develop a plan for the provision of those services within one year of the date of this Letter of Findings; and

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, 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.

² 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.

- d. Convened an IEP team meeting to determine whether the delayed re-evaluation, and the lack of written progress reports violations indicated in this letter of finding had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy 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 BCPS must ensure that the parent is provided with 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.

School Based:

The MSDE requires the BCPS to provide documentation by February 1, 2023, identifying all students at [REDACTED] School for school years 2021-2022 and 2022-2023 who have not reverified their need to continue on HHT. The BCPS must convene an IEP meeting to determine if the student continues to qualify for HHT services and update the IEP as needed.

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. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Early Intervention/Special Education Services

MEF/tg

c: Darryl Williams
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