



May 5, 2023

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Mr. Philip A. Lynch  
Director of Special Education Services  
Montgomery County Public School  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE: [REDACTED]  
Reference: #23-168

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 March 6, 2023, MSDE received a complaint from Ms. Jaime Seaton, the “complainant,” on behalf of her client. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) 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 MCPS has not ensured that the student has received special education services required by the Individualized Education Program (IEP) while the student has been hospitalized since September 24, 2022, in accordance with 34 CFR §300.101 and COMAR 13A.03.05.03D.
2. The MCPS 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 .324.

**BACKGROUND:**

The student is 16 years old and is identified as a student with multiple disabilities (Emotional Disability and Autism) under the IDEA. He attends the “Bridge Program” within [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

## **FINDINGS OF FACTS**

1. The IEP in effect during the start of the 2022- 2023 school year, was developed on December 17, 2021. It requires support in the areas of Math Problem Solving, Social Interaction Skills, Self-management, and Behavioral - Social Emotional/Behavioral. The student requires two hours and thirty minutes of specialized instruction a week outside of the general education classroom, four hours and ten minutes of specialized instruction a week inside of the general education classroom, and one hour and thirty minutes of counseling services a month. The student's placement was the "Bridge Program", which will provide him support in mental health, social skills, problem solving skills, instruction in self-contained and inclusion classes to support his academic and social emotional needs.
2. From September 24, 2022, to December 14, 2022, the student was hospitalized at [REDACTED] due to severe, aggressive and violent outbursts along with posing an imminent threat of serious harm towards staff and students while at school.
3. On November 2, 2022, the IEP team met to review and revise the student's IEP. While the IEP team did review the student's supports and services, there is no documentation that the IEP team considered the services that the student could receive while hospitalized or that the student received educational services while receiving treatment.
4. On November 3, 2022, the parents submitted a request for Home and Hospital Services for 60 days. Services were arranged by the MCPS on November 9, 2022, for "for no more than 6 hours/week" through the Baltimore County Public Schools.
5. A progress note and letter of recommendation created on November 11, 2022, by staff at the student's hospital recommends that the student "requires placement in a residential treatment center where he will have ongoing access to mental health treatment and educational services. He would not benefit from Home in Hospital teaching or hybrid learning at home, which did not work well for him when virtual learning was used at the height of the COVID-19 pandemic. He requires in person instruction for his educational needs."
6. On December 2, 2022, the IEP team met to review and revise the IEP, as appropriate, and discuss the student's educational placement due to significant mental health decompensation resulting in an extended hospitalization. The IEP team reviewed previous assessments, including data from the student's Functional Behavior Assessments (FBA) and Behavioral Intervention Plan (BIP), anecdotal notes, teacher reports, and the most current documentation from his inpatient hospitalization. The IEP team determined that the student required an updated cognitive and behavioral assessments in order to determine whether the student met the criteria for an emotional disability.
7. During the meeting, the IEP team proposed referring the student to the "Central IEP Team" for a more "supportive educational setting" as he "needs more support than what the Bridge Program in a comprehensive high school can offer him socially and emotionally." The IEP team considered and rejected the current comprehensive high school placement with self-contained classes and special education support in the classes due to a "very serious incident", and the students' social/emotional needs; however, the team did not determine a new placement for the student. The team discussed a residential treatment center and noted, "MCPS does not make placements for residential treatment centers" and would submit a referral to the placement office to make a placement decision for day programs. The IEP team did not review the request for Home and Hospital Teaching services for the student or discuss the plan for his return to the educational setting.

8. While there is documentation that the student earned grades during the second marking period of the 2022-2023 school year, there is no documentation that the student received HHT services while admitted to the hospital.
9. On December 15, 2022, the student returned to his current placement for partial days from December 16, 2022, to January 18, 2023.
10. From January 19, 2023 to February 9, 2023, the student was again hospitalized due to a mental health crisis involving threats towards both his parents and the community.
11. On February 1, 2023, the IEP team met to complete a reevaluation of the student, determine placement, and revise the IEP as appropriate. The IEP team determined that the student continued to be eligible for special education and related services; however, there is no documentation of the team updating the student's IEP to reflect the most recent data or his disability classification. During the IEP meeting, the school team discussed the student's condition, and whether he was capable of receiving instruction or completing work provided to him. MCPS staff stated they would request input from the hospital staff on whether they feel it is reasonable and safe for the student to complete school packets and whether he would be allowed to use the materials required. The student's parents requested that instructional packets be modified as the student is allowed to use crayons. The school team agreed to continue with the current IEP and will "consider placement" once the student is determined "safe and stabilized and can access his education."
12. During the meeting, the parents shared that hospital staff have expressed the student is not stabilized enough to be in the community. The parents proposed a residential placement for the student. In response, the IEP team "deferred" a placement determination. The MCPS staff stated the student "needs treatment" and did not recommend residential placement at this time as they "can provide education for the student but not treatment."
13. The parents disagreed with the MCPS placement decision due to the student's inability to manage his emotions or self-regulate and stated that the student needs a therapeutic residential placement to access his education. The parents disagreed with MCPS based team deferring on making a decision regarding services and placements until the student is discharged.
14. On February 6, 2023, the parent contacted the school team via email asking for a copy of the "Release of Information" and again requested school work for the student while hospitalized. The parent provided a point of contact for the hospital staff member that would supervise the student receiving the work.
15. There is documentation that the student received work packets from his current school on March 17, 2023, March 29, 2023, and April 11, 2023, while at the hospital; however, the student refused to complete assignments.
16. There is documentation from the student's hospital that he is available for educational services for 40 minutes per day. The student is encouraged, but not required to complete work during his "down time."
17. The IEP team met on March 8, 2023, to review and revise, as appropriate, the student's IEP and discuss his placement. The IEP reviewed the student's formal and informal assessments, current staff reports/observations, and parent input. Although the MCPS proposed that the student requires a separate special education school program to make progress on his IEP goals as he has a "unique set of needs that impacts his behavior and learning", the student's IEP has not been updated to reflect this change.

18. During the IEP team meeting, the MCPS rejected the parents request for a residential placement. The IEP team determined that, “the goals and objectives in his IEP don't drive a residential school placement at this time” and that he needs a “residential treatment center”<sup>1</sup> to address his mental health needs. The parents disagreed with this determination and expressed concern that HHT is not a long term solution for the student and that if he were discharged from the hospital, placement in a separate day school would not be able to meet his educational needs. The IEP team agreed to reconvene to discuss which goals would be addressed during HHT.

## **CONCLUSIONS:**

### **Provision of Education Services**

Each public agency must make instructional services available to students, including students with disabilities, who are unable to attend the school of enrollment due to a physical or emotional condition (COMAR 13A.03.05.03). The need for HHT services is determined by verification that the student has a physical or emotional condition that prevents the student from participating in the student’s school of enrollment (COMAR 13A.03.05.04).

If a student with a disability is unable to participate in the student’s school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team must determine the instructional services to be provided to the student as long as the medical restrictions apply and develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10). The instructional services must begin as soon as possible, but not later than ten (10) school calendar days following the notification to the public agency of the inability of the student to attend the school of enrollment and receipt of the verification of the need for services (COMAR 13A.03.05.03).

In this case, while there is documentation that the IEP team discussed the student’s ability to receive educational services in February 2023, the IEP team did not discuss his need for services when initially hospitalized, determine the services that the student would receive while hospitalized after verification was received, and limited the services available to the student to a maximum of six hours per week.

Furthermore, there is no documentation that the student received HHT services while hospitalized. Based on the Findings of Facts #1 to #4, #7 to #8, #11, and #14- #16, MSDE finds that the MCPS has not ensured that the student received special education services required by the IEP while the student has been hospitalized since September 24, 2022, in accordance with 34 CFR §300.101 and COMAR 13A.03.05.03D. Therefore, this office finds that a violation occurred with respect to the allegation.

### **Determination of Educational Placement**

Each student’s educational placement must be made by the IEP team in conformity with the requirement that, to the maximum extent appropriate, students with disabilities, including those in public or private institutions or other care facilities, are educated with nondisabled students. This is the requirement to ensure that the IEP is implemented in the least restrictive environment (LRE). Each public agency must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities, including instruction in regular class and special classes. Placement in a residential setting is considered one of the most restrictive environments along the continuum of placements (34 CFR §§300.114 - .116 and COMAR 13A.05.01.10).

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<sup>1</sup> While it is unclear what the MCPS intended by this statement, MD Health Article §19-301 defines "Residential treatment center" as a psychiatric institution that provides campus-based intensive and extensive evaluation and treatment of children and adolescents with severe and chronic emotional disturbances who require a self-contained therapeutic, educational, and recreational program in a residential setting.

The removal of a student with a disability from the regular educational environment may occur only if the nature and severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved (34 CFR §300.114). In selecting the LRE, consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs. The placement must be made in conformity with the LRE requirements, must be based on the IEP, and must be as close as possible to the student's home. Unless the student requires some other arrangement, the student must be educated in the school that he or she would attend if not disabled (34 CFR §300.116).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. However, the SEA may not overturn an IEP team's decisions when proper procedures have been followed and there is data to support the team's decisions. The OSEP indicates that parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000; and Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

The IDEA requires that when a student's needs can not be met in a less restrictive setting, and placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child (34 CFR §300.104). In Maryland, "[i]f residential placement is necessitated by medical, social, or emotional problems that are segregable from the learning process, then the local education agency need not fund the residential placement" (Burke County Bd. of Educ. v. Denton, 895 F.2d 973, 980 (4th Cir.1990)).

In this case, the MCPS determined that the student's IEP did not "drive" placement in a residential facility and determined that his need for a residential placement was based on his mental health needs. The IEP team recognized that the student needed the support of a residential facility to address his mental health concerns, but did not determine whether the student could make educational progress without the supports of the residential program.

Furthermore, the IEP team did not determine the student's placement until March 8, 2023, and to date, has not updated the student's IEP to reflect the IEP team decision. Based on the Findings of Facts #5, #7, #11, #12 to #13, #17 to #18, MSDE finds the MCPS 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 .324. Therefore, this office finds that a violation occurred with respect to the allegation.

#### **ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and

functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §§300.101, .320, and .324).

If the IEP team determines that a re-evaluation is needed to ensure that all of the student's needs have been identified and addressed, the IEP team must review the existing data, and on the basis of that review and input from the parents, identify what additional data, if any, is needed to determine the student's eligibility and educational needs. If the IEP team determines that additional data is required, the public agency must ensure that results of assessment procedures are used by the IEP team in reviewing and as appropriate, revising the IEP within ninety (90) days (34 CFR §300.305 and COMAR 13A.05.01.06).

Based on the Findings of Fact #11, MSDE finds that the MCPS did not follow proper procedures when developing the student's IEP when it did not incorporate the decisions of the IEP team or evaluation determinations into the student's IEP following IEP team meetings convened for the student during the 2022-2023 school year. Therefore, this office finds that a violation has 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.<sup>2</sup> 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.<sup>3</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

Student specific:

MSDE requires the MCPS to provide documentation by June 15, 2023 of the following:

1. The IEP team has convened and determined the HHT services the student will receive based on his eligibility and ability to receive those services.
2. The IEP team has convened to consider the parent's proposal for a residential placement based on whether the student could make educational progress without the supports of the residential program.
3. The IEP team has determined the services or other remedy to be provided to the student to address the delay in determining the HHT services and educational placement of the student during the 2022-2023 school year.

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<sup>2</sup> 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.

<sup>3</sup> MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

**System-Based**

MSDE requires the MCPS to provide documentation by July 1, 2023 of the steps taken to ensure that IEP teams consider the needs of individual students when responding to proposals for residential placements and when determining the level of HHT services. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure compliance with the requirements.

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

DC/sj

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