



Mohammed Choudhury
State Superintendent of Schools

June 2, 2023



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

RE: [REDACTED]
Reference: #23-195

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 April 3, 2023, MSDE received a complaint from Ms. [REDACTED] the “complainant,” on behalf of her daughter, [REDACTED]. 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. MCPS did not ensure that the student’s Individualized Education Program (IEP) addressed her academic, social/emotional, and mental health needs since August 22, 2022, in accordance with 34 CFR §§300.101 and .324.
2. MCPS did not ensure that the student’s accommodations and supplementary aids and services were implemented since August 22, 2022, in accordance with 34 CFR §300.101.
3. MCPS did not ensure that the student’s educational placement was appropriate to meet her accelerated academic, social/emotional, and mental health needs since November 2022, in accordance with 34 CFR §§300.101 and .114.

4. MCPS did not follow proper procedures in providing the student with interim instructional services¹(IIS), in accordance with COMAR 13A.03.05.01.
5. MCPS did not convene an IEP team meeting to consider information the complainant provided to them following the student's discharge from hospitalization in December 2022, in accordance with COMAR 13a.05.01.08.

BACKGROUND:

The student is 11 years old and is identified as a student with an emotional disability under the IDEA. She is enrolled in [REDACTED] School, is currently receiving Interim Instructional Services in her home, and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS

ALLEGATIONS #1, #2, and #3

DEVELOPING AND IMPLEMENTING AN IEP THAT ADDRESSES THE STUDENT'S MENTAL HEALTH NEEDS, EDUCATIONAL PLACEMENT TO MEET ACCELERATED INSTRUCTIONAL AND MENTAL HEALTH NEEDS

1. Prior to the August 2022 IEP, the student was eligible under Section 504 based on an impairment of bipolar disorder. She was provided with supports pursuant to a 504 Plan developed for her to support her needs in the school setting. On August 22, 2022, the IEP team convened to develop an IEP for the student. The IEP identified needs for the student in the areas of Behavioral- Self Advocacy, Self-Concept, Behavioral- Self Management, Behavioral - Social Emotional/Behavioral, Behavioral- Social Interaction Skills. The IEP required that the student receive five hours of specialized instruction inside of the general education setting and 30 minutes weekly outside of the general education setting to address her social/emotional needs.
2. The student's IEP required that she be provided with the following supports to address her needs when her anxiety increases: directions clarified, headphones, small group, frequent breaks, reduce distractions, extended time, break down assignments, adult check in at the beginning/middle/end of the day to reflect on emotions, use of fidget, adult check in prior to assessments to reduce anxiety, access to school counselor to process her emotions, social skills training, home/school communication, opportunities to problem solve after an anxiety producing event, frequent teacher check-ins, visual cues, access to trusted adults, structured time for organization of materials, encourage student to ask for assistance, reinforce positive behavior, and use of a flash pass.
3. On October 25, 2022, the IEP team met to review and revise, as appropriate, the student's IEP. In order to "ensure student safety and to reflect increased need for support due to student anxiety and crisis referrals made by school staff," the IEP team determined that she would receive additional specialized instruction inside of the general education setting, increasing her time from thirty minutes per week to 15 hours and 25 minutes per week inside the general education classroom, and 30 minutes outside of the general education classroom. Services inside the general education classroom were to be provided by the general education teacher, instructional assistant, guidance counselor, or the special education teacher. Services outside of the general education setting were

¹ MCPS terms Home and Hospital Teaching (HHT) as Interim Instructional Services (IIS), with the exception of attendance recording.

- to be provided by the special education teacher. The team added additional adult support during English/Language Arts and mathematics to provide feedback, decrease anxiety, and to ensure safety. The team also developed a safety plan and determined that she would receive additional supplementary aids and supports including provide alternative ways to “show her growth and learning in math,” preview upcoming math lessons and assignments, a daily task list to reduce anxiety, and regular adult check-ins to address her feelings and use of coping skills.
4. On November 3, 2022, the IEP team met to discuss the student’s escalating needs. Based on “the rising and serious emotional needs of the student,” the IEP team determined that the student required a more restrictive placement. The team recommended that the student attend the Social Emotional Special Education Services (SESES) Program, located at [REDACTED] School. The team further recommended that she receive 22 hours and 30 minutes of special education services per week outside of the general education classroom from a special education teacher or instructional assistance and 30 minutes per week of social work services outside of the general education classroom from a school social worker. Transportation services were also recommended.
 5. There is documentation that on or around October 12, 2022, and October 26, 2022, the complainant questioned whether the student’s IEP was being implemented in the math class, stating the student would not be struggling if it were.
 6. While there is some documentation that some of the supplementary aids and services were provided for the student, there is not documentation that the student has consistently been provided with the supplementary aids and services, and instructional and testing accommodations required by her IEP.
 7. The student participates in the Center for Enriched Studies (CES) at [REDACTED] School. Students are either placed in the CES programs through a lottery process or receive accelerated and enriched programming in their home school classrooms.
 8. The student’s most recent academic assessments were completed in June 2022. Testing reflects average scores in mathematics, superior scores in letter/word identification and writing samples, average to high average scores in all other reading and writing subtests. The student’s district wide Measure of Academic Progress (MAP) scores for the 2020-2021 school year were above the district grade level mean for mathematics over three administrations, and above the district grade level mean for reading over two administrations. The student’s most recent psychological assessment was conducted in June 2022. The student scored in the “extremely high” range for verbal comprehension, and in the average range for visual spatial, fluid reasoning, working memory, and processing speed.
 9. The student participates in “compressed” mathematics, where the first part of the year is dedicated to fifth grade level content and the second part of the year is dedicated to sixth grade level content. There is documentation from October 2022, that the complainant considered removing the student from this class due to the increase in anxiety that this class caused. There is also documentation that the school staff did not agree that the student should be removed from this class.
 10. On November 3, 2022, the IEP team agreed that the student required a more restrictive placement in a regionalized program for students requiring social emotional supports. The program description states that the goals of the program include fostering “academic and social emotional growth within

our students” and empowering “students to reach their full potential.” While the complainant agreed with the change in placement, she disagreed with the assigned school and requested a different location for services.

11. There is documentation that the complainant visited the recommended program at the assigned school and stated that the student would not be attending as the program was not appropriate to meet her needs since many of the students demonstrated more externalizing behaviors. The complainant also shared concerns that there was a seclusion room at the school, which would be triggering to the student.²
12. The IEP met on April 24 and May 1, 2023, to update the student’s present levels of academic achievement and functional performance, add supplementary aids and services, and revise the student’s goals. During the IEP team meeting the team determined that the student’s needs could no longer be met in the regional program and recommended that the student receive services in a therapeutic day school setting. The MCPS agreed to reconvene the IEP team as a “Central IEP Team” to determine an appropriate educational placement for the student.
13. There is documentation that the MCPS delayed the “Central IEP team” to allow the IEP team at the student’s school to complete an “annual” review of the student’s IEP, although the student’s IEP has been reviewed continuously throughout the school year and an “annual” review of the student’s IEP is not due until August 2023.
14. There is no documentation that the central IEP team has convened to determine appropriate referrals for the student’s placement.

CONCLUSIONS:

Allegation #1: An IEP That Addresses the Student’s Needs

Based on Findings of Fact #1 to #5, the student’s IEP contains numerous supports to address her mental health needs. The student’s IEP was reviewed and revised as it became clear her needs became more significant. Accordingly, this office finds that the student’s IEP does address her academic, social/emotional and mental health needs since August 22, 2022, in accordance with 34 CFR §300.101.

Allegation #2: Implementation of Services, Supplementary Aids, and Accommodations

Based on the Findings of Fact #1 to #5, MCPS has not provided documentation that the student’s accommodations and supplementary aids and services were consistently implemented while the student was in school since August 22, 2022, in accordance with 34 CFR §§300.101 and .323. Accordingly, this office finds a violation with respect to this allegation.

Allegation #3: Determination of an Appropriate 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

² Although the complainant made this observation, there are no seclusion rooms in any public school in MCPS, in accordance with MD Code Ann., Education §7-1102(b).

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. (34 CFR §§300.114 - .116 and COMAR 13A.05.01.10).

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).

Based on Findings of Facts #7 through #10, the IEP team considered both the student's mental health and accelerated instruction requirements when making their educational placement recommendations. Students attending MCPS schools can receive enriched and accelerated instruction in their school of attendance, as well as social/emotional and behavioral supports. However, based on Findings of Facts #13 through #15, the MCPS practice of waiting for the IEP team at the student's school to complete an annual review prior to considering an appropriate placement for the student has resulted in a delay in providing the student with a placement that would enable the student to receive a Free Appropriate Public Education (FAPE). Accordingly, this office finds that the student's educational placement is not appropriate to meet her needs since November 2022, in accordance with 34 CFR §§300.101 and -114 and that a violation has occurred with respect to this allegation.

ALLEGATION #4:

PROVISION OF INTERIM INSTRUCTIONAL SERVICES

15. From the beginning of the 2022-2023 school year the student was absent for 61 days. After November 14, 2022, the student has not returned to school. The student has been marked as being on Home and Hospital since February 17, 2023.
16. There is documentation that on or around December 6, 2022, the complainant was asked whether she was requesting Interim Instructional Services (IIS) for the student while she was at home. There is documentation that the complainant refused the services on or around December 6, 2022, writing, "We used IIS last year after her hospitalization and found that it was not at all useful - she's fully capable of keeping up with her schoolwork without intermittent tutoring, and the tutors generally just sat there and watched her work. I am also taking leave from work and can support her learning at home (I am a former Maryland elementary school teacher)."
17. The student was hospitalized at Sheppard Pratt from November 29, 2022, through December 7, 2022. She was released into an intensive outpatient program following her hospitalization.
18. There is documentation that the student was provided work packets and/or had access to assignments on-line while the student was at home.
19. On or around February 24, 2023, the student applied for IIS and was approved at that time. There is documentation that MCPS was unable to locate an instructor for the student at the times of her availability for instruction. There is no documentation of an IEP team meeting to determine services for the student while she was on IIS. should an instructor be located.

20. There is no documentation that the student received IIS from February 24, 2023, through May 9, 2023.
21. On April 24, and May 1, 2023, the IEP team met and determined that the student would receive twelve hours per week of academic instruction while on IIS from May 9, 2023, through June 9, 2023, to include compensatory services to address the lapse during the time when IIS was initially approved following the application on February 24, 2023. The student would also receive 6 hours of IIS for the week of June 12 through June 16, 2023.
22. There is documentation that the student has been provided with IIS beginning on May 9, 2023.

CONCLUSIONS

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 due to an emotional condition is determined by verification from a certified school psychologist, a licensed psychologist, licensed psychiatric mental health nurse practitioner, or a licensed psychiatrist that the student has an 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).

Pursuant to MD Code Ann., Education §7-301(a-1)(1), a child between the ages of 5 and 18 years old must attend school, unless they meet a statutorily defined exception, including the need for home or hospital services. In this case, the student was absent for an extended period of time without educational services. While the student was hospitalized for some of that time, a parent is not permitted to reject all educational services in violation of the Maryland compulsory attendance requirements outlined in MD Code Ann., Education §7-301. Further, when the complainant ultimately did request IIS for the student, which was approved in February, the IEP team did not meet to determine appropriate services for the student. MCPS was unable to locate an instructor until May 2023, due to the student's availability to meet when MCPS instructors were available. Based on Findings of Fact #22 through #29, the MCPS did not follow proper procedures in providing the student with interim instructional services (IIS), in accordance with COMAR 13A.03.05.01.

Notwithstanding the violation, based on Finding of Fact #28 and #29, the IEP team determined compensatory services on April 24, and May 1, 2023, and the student has been receiving those services. No additional student-specific correction is required.

ALLEGATION #5:

CONSIDERATION OF THE STUDENT'S DISCHARGE REPORT BY THE IEP TEAM

23. There is documentation that MCPS requested the student's discharge report in December 2022. The report was not available at that time according to the complainant.

24. There is documentation that the IEP team considered the parent report, Sheppard Pratt discharge papers, therapist notes, crisis referrals, and teacher observations at the April 24, and May 1, 2023, IEP team meetings, in making the decision that a more restrictive setting in a separate special education day school was required.

CONCLUSION:

An IEP team is required to consider documents and information provided by the parent when making decisions regarding the provision of FAPE. (34 CFR §300.324) In this case, based on the Findings of Facts #23 and #24, the MCPS requested that the complainant provide the discharge report in December, and it was considered by the IEP team once available, in accordance with COMAR 13a.05.01.08. Therefore, this office does not find a violation 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.³ 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.⁴ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student specific:

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

1. The IEP team has convened and determined the student's appropriate placement in conformity with the determinations made at the IEP team meetings convened on April 24, 2023, and May 1, 2023. Once the IEP team determines the appropriate placement, and the student is assigned to a school, the IEP team must determine the compensatory services or other remedy required to address the delay in placing the student.

³ 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.

⁴ 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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2. The IEP team has determined whether there was a negative impact on the student's ability to benefit from the education program due to the lack of documentation of the consistent implementation of the student's supplementary aids and services, and instructional and testing accommodations from the start of the school year through November 14, 2023, when the student was attending school. 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 parents must be provided with prior written notice of these determinations.

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 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

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