

July 17, 2023

Ms. Jaime Seaton
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Rockville, Maryland 20850

Ms. Diana K. Wyles
Associate Superintendent
Office of Special Education
Montgomery County Public School
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: [REDACTED]
Reference: #23-233

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 May 18, 2023, MSDE received a complaint from Ms. Jaime Seaton, hereafter, the “complainant,” on behalf of her client, the above-referenced student. 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 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.
2. The MCPS has not ensured that the Individualized Education Program (IEP) identifies and addresses the student’s behavioral and social/emotional needs since November 2022, in accordance with 34 CFR §§300.320 and .324.
3. The MCPS has not ensured that the student has received the special education services required by the IEP while the student has been hospitalized since September 28, 2022, in accordance with 34 CFR §§300.101 and .323 and COMAR 13A.03.05.03D and 13A.05.01.10.

BACKGROUND:

The student is 13 years old and is identified as a student with Multiple Disabilities (Emotional Disability and a Specific Learning Disability) under the IDEA. He attends [REDACTED] 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 amended on June 13, 2022, with a projected annual review date of March 9, 2023. It requires support in the areas of reading comprehension, written language, math problem solving, self-management, and behavioral - social emotional/behavioral. The student requires three hours and twenty minutes of specialized instruction a week inside of the general education classroom, and fifty minutes of specialized instruction a week outside of the general education classroom. The student had one self-contained resource class and received co-taught or supported courses in the general education classroom for reading, math, science, and social studies, with self-contained services in "Resource."
2. From September 29, 2022, to October 13, 2022, the student was hospitalized at [REDACTED] due to aggressive behavior and violence towards his family.
3. On October 14, 2022, while the student was hospitalized, the IEP team met to review and revise, as appropriate, the student's IEP. During the IEP team meeting the school staff requested documentation from the hospital and permission to contact the student's private mental health providers. The parents stated that no such documentation was available at that time and did not provide consent for the MCPS staff to contact the student's private mental health providers.
4. During the IEP team meeting, the parents proposed a reevaluation of the student and that he be provided with a more restrictive placement. The family proposed a reevaluation of the student to determine if he met the qualifications as a student with an emotional disability. The IEP team declined to reevaluate the student because the student was evaluated at the end of June 2022. The school team also refused to move the student to a more restrictive placement as the educational data available showed that the student was "able to access instruction, complete assignments with current support, projected to earned "A's, B's, and C's" (as of September 16, 2022), was making progress toward his IEP goals, making consistent academic growth and had limited disciplinary data."
5. The IEP team updated the present level of performance to reflect the student's progress from the beginning of the 2022-2023 year through September 28, 2022. The IEP reflects that the student's social/emotional/behavioral performance is "below the age expectations" and affects him as he uses technology inappropriately, frequently socializes, calls out, and is distracted by others but responds to redirection, requires reminders to initiate tasks in a timely manner, and needs several breaks to stay on task. He requires reminders to keep his hands to himself and to stay in his seat.
6. The IEP team determined that the student requires supplementary aids and services to help address his social/emotional/behavioral needs including: access to breaks or flash pass, strategies to initiate and sustain attention, frequent eye contact/ proximity control, preferential seating. It further reflects that the student has a goal in the area of behavior self-management: "Given visual or verbal reminders, organizational supports, preferential seating, and frequent check-ins, the student will initiate and follow through with classroom tasks and maintain attention during instruction." The student also has a social emotional/behavioral goal: "Given a flash pass and reminders to use strategies like taking deep breaths or counting to 100, the student will monitor his behavior and maintain self-control as measured by teacher observation three out of four times."
7. The IEP team shared with the family that Interim Instructional Services (IIS)¹ can be available to students who are under a physician's care due to seeking medical treatment. The IEP team proposed an intake meeting once the student returned to school.

¹ IIS is the MCPS term for Home and Hospital Teaching services.

8. On October 19, 2022, the student's attorney submitted the student's records from [REDACTED] indicating a diagnosis of conduct disorder and Bi-polar with "psychotic features." She informed the school team of an "incoming letter" that indicated the student "will need to be committed due to mental health issues, however the waitlist is six months to a year." The student's attorney requested that the IEP team meet to consider this information.
9. On October 20, 2022, the student's attorney submitted the student's "Certificate of Need" received from the student's physician. The correspondence indicated the physician's belief that due to the student's behaviors and safety concerns in the community, the student needed residential treatment or a more restrictive environment.
10. On October 25, 2023, the student returned to school and was suspended for theft on the same day.
11. From October 26, 2023, to December 30, 2023, the student attended school during which time the student did not receive a behavioral referral.
12. On December 30, 2022, the student was admitted to [REDACTED]
13. On January 1, 2023, the parent provided the school with documentation related to the student's hospitalization that noted there was not a known date that the student would be released.
14. On January 5, 2023, the student's attorney provided the school team with documentation from the student's discharge from [REDACTED] as well as a private neuropsychological evaluation and a classroom observation completed for the student. She informed the school team that the student was admitted to in-patient care again for "similar issues" and did not have a discharge date.
15. On January 12, 2023, the IEP team met to review and revise the student's IEP, as appropriate, and complete a reevaluation of the student. The team agreed to postpone the discussion until January 19, 2023. The IEP requested a doctor's note for the students' absences as well as an update from the Local Care Team meeting (LCT) meeting held on January 11, 2023.
16. On January 18, 2023, the complainant provided the school staff with proposed edits for the IEP meeting on the following day and shared that the student's medical providers recommended that the student be placed in a residential treatment Center (RTC) for the student as he has been deemed "unsafe for community activity or intervention."
17. On January 19, 2023, the IEP team met to review and revise the IEP, as appropriate, and complete a reevaluation of the student. The IEP team reviewed the private neuropsychological assessment, teacher report, and determined that the student continued to be eligible for special education as a student with a classification of Multiple Disabilities (emotional disability and a specific learning disability). The IEP team proposed to "table the family's recommendations/suggestions" to the IEP draft for the student's annual IEP review until February 14, 2023.
18. On February 3, 2022, the parents submitted a request for IIS for 60 days. Services were arranged by the MCPS, for "no more than 6 hours/week" through the Baltimore County Public Schools.
19. On February 7, 2023, a member from MCPS IIS team communicated via email with an MCPS staff that she received the IIS application for the student as well as spoke with the parent. She explained that the "application was not necessary at this time as the student is hospitalized at [REDACTED] and the MCPS IIS procedure is MCPS will reimburse Baltimore County Public Schools for six hours of

- instruction per week when the student is hospitalized. When the student returns home and if he cannot attend school, then a new IIS application will be necessary.”
20. There is no documentation the IEP team met 10 days after the approval of IIS services to determine what goals and services would be provided to the student while hospitalized.
 21. There is no documentation the IEP team convened to update the IEP prior to the projected annual review date of March 9, 2023.
 22. On March 10, 2023, the school inquired about the student’s attendance and was informed by the student’s attorney that the student is still hospitalized and was approved for a voluntary placement agreement (VPA) but was in “overstay status” until a RTC was found.
 23. On April 11, 2023, the school team proposed an IEP meeting date of May 9, 2023. In response, the student’s attorney requested that representatives from the “Central IEP Team” attend the meeting. She also informed the school staff that the student was approved for a VPA with the Department of Health and Human Services (DHHS) due to his unsafe behaviors in the community. The MCPS staff informed the student’s attorney that the IEP team needs to convene first to consider changes to the student’s services and placement after which they can refer the student to the Central IEP Team for further placement determinations.
 24. On May 9, 2023, the IEP team met to review and revise the student’s IEP, as appropriate. During the meeting the IEP team requested updated information in writing from [REDACTED] related to the student and requested a release of authorization to speak with the student’s current providers. The IEP team reviewed the student’s progress report from IIS. Data from the progress report was used to update the student’s present levels of academic achievement and functional performance statement; however, the IEP team proposed to reconvene the meeting due to the need for additional data in order to develop the student’s IEP goals. The IEP team proposed inclusion classes and self- contained classes for the student in the general education setting. There is no documentation that the IEP team considered the parent’s input to the draft IEP during the IEP team meeting.
 25. During the meeting, the parents shared that the student is currently a safety concern and disagreed with the proposed class setting. The family shared their concerns for the lack of information provided while the student is in IIS and did not agree that additional data was needed to update the student’s IEP goals. The parents proposed referring the student to the “Central IEP Team” to discuss placement.
 26. There is no documentation to date that the MCPS has reconvened an IEP team meeting to complete the review and revision of the IEP or considered additional information from the student’s IIS providers.
 27. There is documentation the progress report was provided to the parents for quarter one and two on November 16, 2023, and January 31, 2023, in which it reflects the student was “making sufficient progress to meet goals.”
 28. The reports on the student’s progress from the IIS program contain data to support the conclusion that the student was making sufficient progress toward achievement of the goals in the area of reading comprehension and math problem solving during the third and fourth quarters of the 2022-

2023 school year, and they were provided to the parents' attorney on April 17, 2023, and June 15, 2023.

CONCLUSIONS:

Allegation #1: 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).

The IDEA requires that when a student's needs cannot 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 complainant alleges that the MCPS did not ensure that the student's placement was appropriate as the student needed a more restrictive environment due to aggressive behaviors in the community. The IEP team, utilizing information from when the student was attending school, determined that the student did not exhibit these behaviors in an educational setting.

Based on the Findings of Facts #2 to #4, #7 to #9, #11 to #16, and #22 to #26, the MCPS did follow proper procedures when determining the student's educational placement for the 2022-2023 school year by considering the student's least restrictive placement on a continuum of placements while using the information available to the IEP team, in accordance with 34 CFR §§300.114 - .116 and .324. Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #2: 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).

The IEP team did not 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. Based on the Findings of Facts #2, #7, and #18- #20, the MCPS has not ensured that the student received the special education services required by the IEP while the student has been hospitalized since September 28, 2022, in accordance with 34 CFR §§300.101 and .323 and COMAR 13A.03.05.03D and 13A.05.01.10. Therefore, this office does find that a violation occurred with respect to the allegation.

Allegation #3: Developing an IEP That Addresses the Student’s Behavioral Needs

Based on the Findings of Facts #14- #17, and #21- #26, MSDE finds that the MCPS has not ensured that the IEP identifies and addresses the student’s behavioral and social/emotional needs since November 2022, in accordance with 34 CFR §§300.320 and .324 when it delayed the review of the available assessment data available for the student, did not consider information from the hospital, proposals made by the parent to the student’s IEP, and did not ensure that information was collected from the student’s HHT providers to ensure that the team developed the student’s IEP with all available information. 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.² 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.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Based

MSDE requires the MCPS to provide documentation by September 15, 2023, that the IEP team has convened to complete the following:

- 1) Determined the amount and nature of services the student will receive if he continues to receive IIS services during hospitalization.
- 2) Completed the development of the student’s IEP utilizing information from the parents and the students IIS service providers to ensure that the IEP addresses the student’s behavioral needs, including a determination of the placement required to do so.
- 3) Determined compensatory services or other remedies to redress the violations regarding the delay in

² 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.

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

convening the IEP team to determine IIS services and the lack of addressing the student's behavior needs in the IEP. MCPS must develop a plan for the provision of those services within a year of the date of this Letter of Findings.

System-Based

MSDE requires that the MCPS provide documentation by September 1, 2023, of the steps taken to ensure that the decisions regarding IIS services for students are made in a timely manner by the IEP team, based on the individual needs of the student, and that information regarding students receiving IIS is shared with IEP teams in a consistent and timely manner.

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: Monifa B. McKnight
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