

January 5, 2024

Ms. Annie Carver, Esquire  
Staff Attorney, Project HEAL  
716 North Broadway, Office 104  
Baltimore, Maryland 21201

Ms. Chris Wittle  
Director of Special Education  
Carroll County Public Schools  
125 North Court Street  
Westminster, Maryland 21157

RE: [REDACTED]  
Reference: #24- 069

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 November 8, 2023, MSDE received a complaint from Ms. Annie Carver, hereafter, “the complainant”, on behalf of her client. In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) 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 CCPS did not ensure that the student was provided with the specialized instruction, related services, and supports as required by Individualized Education Program (IEP) since the November 2022<sup>1</sup>, including Extended School Year (ESY), in accordance with 34 CFR §§ 300.101 and 323.
2. The CCPS did not ensure that the student’s IEP addressed his social- emotional and attendance needs since November 2022, in accordance with 34 CFR §300.324.
3. The CCPS did not follow proper procedures to ensure that Home and Hospital Teaching (HHT) services were consistently provided to the student since November 2022, in accordance with 34 CFR §300.323 and COMAR 13A.05.01.10.

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<sup>1</sup> The complainant must allege a violation that occurred not more than one (1) year prior to the date that MSDE received the complaint.

**BACKGROUND:**

The student is 16 years old and is identified as a student with Autism under the IDEA. He attends ██████████ School. The student has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. On September 30, 2022, CCPS received an application from the parent for Home and Hospital Teaching (HHT) due to an emotional condition (anxiety) that caused the student to resist attending school. The student exhibited behaviors, including reluctance to leave home, heightened sensitivity to intrusions, and displays of obsessive-compulsive behaviors. These issues contributed to a history of lack of attendance in the school building since the winter of 2020.
2. The HHT application was approved by CCPS on October 31, 2022, with services starting from November 9, 2022, to January 6, 2023. A back-to-school return date was scheduled for January 9, 2023.
3. On December 2, 2022, the IEP team convened to review and revise the student's IEP, discuss Extended School Year (ESY), and Home and Hospital Services (HHT). The team examined past progress reports, IEP notes, parent input, ABA Therapist input, school psychologist input/notes, and formal assessment reports. The IEP team determined that the student would receive thirty minutes a week of specialized instruction outside the general education setting. This instruction would address his goal in the area of reading comprehension, taking into consideration his high interest in sports and current events. This instruction would be provided by the homebound instructor while the student is receiving HHT.
4. The IEP team proposed the removal of his additional goals in speech and language, math problem solving, independent living, written language, social emotional/behavioral, physical education, supplementary aids and services, and testing accommodations while he was receiving HHT. The team also proposed to discontinue the student's Behavior Intervention Plan (BIP), as he would receive ABA services from his private provider (private provider) while he was on HHT. The team determined that they would reinstitute his IEP and all his goals and services when the student returned to school.
5. There is no documentation that the IEP team developed a plan for returning the student to a school-based program; however, the IEP team agreed to meet back in 60 days. The team did not discuss adding counseling services for the student while on HHT.
6. On December 14, 2022, the parents received confirmation that the student's HHT has been extended until February 10, 2023, following a recertification and recommendation from the student's medical provider.
7. On January 23, 2023, the student received passing grades for his instruction received through HHT for the second marking period.
8. On February 7, 2023, the parents received confirmation that the student's HHT has been extended until April 5, 2023, following a recertification and recommendation from the student's medical provider.

9. On March 1, 2023, the IEP team met to review and revise the student's IEP, as appropriate. During the meeting, in an effort to have the student return to the school building, the IEP team proposed the student attend in-person ESY services to help him become acclimated with in-person learning, as he has not participated in school instruction for several years. The IEP team proposed adding a social emotional/behavioral goal to his IEP that would be addressed during ESY. The IEP team also proposed to increase specialized instruction on the student's IEP in the area of math, as the student was successfully engaging in virtual home and hospital instruction. The IEP team proposed three 30 minute sessions of ESY during the last two weeks of the summer session to assist the student in transitioning back into the school setting.
10. On May 22, 2023, the IEP team met to update the annual IEP, discuss educational placement and the student's eligibility to participate in the alternate state assessments and alternate academic achievement standards. Due to the student being on HHT during the 2022-2023 school year, the IEP team used data from the student's past IEP, school records, minimal home and hospital reports (due to cancellations by the parent), the HHT notes, past IEP progress reports, parent input, and limited staff input as the student has not been present in school for the IEP team to have updated information. The IEP team proposed the student return to in- person instruction for the 2023- 2024 school year after being on HHT. The IEP team completed the Appendix A and determined that the student should participate in the alternate state assessment, continue learning the alternate academic achievement standards, and should pursue earning a Maryland Certificate of Program Completion. As a plan to help the student return to school, the IEP team proposed to add an "Emergency Evacuation Plan" to the student's IEP so that he would maintain close proximity to staff during emergency evacuations to ensure he was safe and to reduce his anxiety. The IEP team proposed to not update the student's BIP at that time, but would meet, "outside of an IEP meeting, to revise the BIP once the student returned to school and became familiar with the school setting, routines, and expectations."
11. The updated IEP reflects the student would receive one hour and thirty minutes per week of speech and language services outside the general education setting, 20 hours and 40 minutes of specialized instruction outside the general education setting per week, 30 minutes of counseling outside the general education settings per week and one hour 20 minutes of adaptive physical education weekly outside the general education setting for nine weeks of to address his needs identified on the IEP. The IEP team proposed specialized transportation to reduce the sensory stimulation and anxiety on a crowded bus.
12. The IEP reflects the student's social-emotional goal as follows: "[The student] will be able to enter and spend 30 minutes in [the school] three times a week for the last two weeks of Extended School Year (ESY)."
13. The IEP reflects the student's second social-emotional goal as follows: "Given direct instruction on feeling identification and taught coping strategies, during real or made-up situations, [the student] will identify his emotional state or the emotional state of others, the cause or trigger for the emotional state, and one strategy he could use to regulate his emotions on 3 out of 4 occasions."
14. On March 24, 2023, the parents received confirmation that the student's HHT has been extended until June 7, 2023, following a recertification and recommendation from the student's medical provider.
15. On April 12, 2023, the student received passing grades for his instruction received through HHT for marking period three.

16. On June 2, 2023, the student received failing grades for his instruction received through HHT for marking period four due to inconsistent attendance of the student.
17. On July 27, 2022, the CCPS provided the parent with a letter stating the student would not receive ESY services for summer of 2022 per the parent's request.
18. During the summer of 2023, there is documentation of communication between the parent and the school staff, generating ideas to assist the student in preparing for entering the building at the start of the 2023-2024 school year. This included the creation of an introduction video for him to watch, private tours of the school building while no students were present, ability to enter the school building through a separate entrance and a personal email from his teacher providing guidance on "what he can do in class."
19. On September 5, 2023, there is documentation of the parent attempting to have the student attend school but due to his anxiety, the student would not attend.
20. On September 22, 2023, the IEP team met to address the parent's concerns. The IEP team discussed and refused the student receiving a medical withdrawal and continuation in HHT. The IEP team determined that the student requires in- person instruction and needs to be in school to receive services in order to get services through the Autism Waiver. During the meeting, the IEP team determined that the student requires all stakeholders to "work together" in order for the student to attend in- person learning. The school psychologist requested permission to communicate with the student's private psychologist, and the school's Pupil Personnel Worker (PPW) determined a referral to the Local Care Team was appropriate. In an attempt to help the student acclimate to return to school and become more familiar with in-person learning, the IEP team agreed for the student to meet with the special education teacher virtually in "short increments."
21. On September 29, 2023, the parents received documentation from the school's PPW, expressing concern about the student's attendance. The documentation states that if the student does not attend school, he will be "withdrawn" from CCPS on October 13, 2023.
22. On October 13, 2023, the parents received documentation from the school's PPW, expressing that an extension has been granted per the request of the parent's counsel until the IEP team meets on October 24, 2023.
23. On October 24, 2023, the IEP team convened to follow up on the September 22, 2023, meeting and discuss a transition plan for the student's return to in-person learning. During the meeting, the IEP team proposed a collaboration between CCPS ABA therapists and the student's private ABA therapist to support the student's transition to in-person instruction by November 30, 2023.
24. During the meeting, the CCPS PPW agreed to make a new referral to the Local Care Team for comprehensive support from local agencies to help support the family at home, as the parent had previously denied the referral. The CCPS PPW also agreed to discuss educational options as the student requires 15 hours of Special Education services per week for Autism Waiver eligibility.
25. The IEP proposed a detailed transition plan for the student's in-person attendance by November 30, 2023, under the condition that the student would be withdrawn from CCPS if not attending school by that date.

26. The transition plan outlined weekly tasks for the student to become familiar with and acclimated with attending school.
27. Although the IEP team updated the student's IEP on September 29, 2023, and created a transition plan for the student to reenter the school building on October 24, 2023, the IEP does not reflect a social emotional goal that helps the student acclimate in a new environment, re- enter and stay in the school building past the "last two weeks of ESY after being out of school for several years,"
28. The report of the student's progress in the area of social emotional dated November 3, 2023, reflects: "Not making sufficient progress to meet goal", "Due to the [student] not attending school this marking period."
29. There is documentation that the student is currently enrolled in CCPS and has attended school nine days for a "portion of the day" since the creation of the transition plan.
30. There is documentation, the student did not receive the required hours for HHT during the 2022- 2023 school year due to the lack of a HHT teacher.
31. There is documentation of the parent canceling the student's services when the student was having a "bad day."

#### **CONCLUSIONS:**

#### **ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION, SUPPORTS, AND RELATED SERVICES**

Pursuant to COMAR 13A.03.05.03D(2), CCPS was required to provide the student with a minimum of 6 hours of instruction per week. If the student requires home and hospital instruction, the IEP team must: meet to review and revise the IEP, determine the instructional services to be provided, and develop a plan for the return of the student to the school-based program (COMAR 13A.05.01.10C(5)). In this case, the IEP team did not plan to provide the student with the minimum instructional services required by the regulations, nor was the student consistently provided with the 30 minutes of instruction that was included on his IEP. The team did not discuss the student's need for counseling services while on HHT or discuss the need for counseling until May 2023. The team also suspended implementation of the majority of the student's goals without any basis.

Based on Findings of Facts #7, #10, #17, #28, MSDE finds that the CCPS did not ensure that the student was provided with the specialized instruction, related services, and support as required by IEP since November 2022, in accordance with 34 CFR §§ 300.101 and 323. Therefore, this office finds that a violation occurred with respect to this allegation.

#### **ALLEGATION #2: AN IEP THAT ADDRESS THE STUDENT'S EMOTIONAL AND ATTENDANCE NEEDS**

The team did not discuss the student's need for counseling services while on HHT or discuss the need for counseling until May 2023. There are two goals that address the student's social/emotional needs, both were written in May 2023, when the attempt was made to transition the student back to school after a full year of HHT. There were no attempts by CCPS to transition the student from HHT or to address his social/emotional needs prior to this time.

Based on Findings of Facts #9- #13, #25-#28, MSDE finds that the CCPS did not ensure that the student's IEP addressed his social- emotional and attendance needs since November 2022, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #3: PROVISION OF HOME AND HOSPITAL SERVICES**

The IEP team did not provide the minimum instructional services required by state regulation while he was on HHT (COMAR 13A.03.05.03D(2)). The team did not provide the 30 minutes of instruction that was included on his IEP with fidelity due in part to a lack of instructor.

Based on Findings of Facts #1-6, #8- #10, #14-16, #20, and #30- #31, MSDE finds that the CCPS did not follow proper procedures to ensure that HHT services were consistently provided to the student since November 2022, 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.

**ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

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 the HHT regulation, 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. (COMAR 13A.03.05.03D(4)). 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. Educational placement in the home, for a student with an emotional condition, may not exceed 60 consecutive school days. (COMAR 13A.05.01.10).

Based on Find of Facts #1-#3, #6, #8, and #14, MSDE finds that the student was placed in HHT for an emotional condition for more than 60 consecutive days and the IEP did not update and/or add additional services to the IEP to help the student reenter school when the student was found eligible for HHT services for an entire school year. Therefore, this office finds that a violation occurred with respect to the allegation.

**ADDITIONAL CONCERN**

MSDE has significant concerns regarding the discussions about withdrawing the student from school while he is below compulsory school attendance age whose nonattendance is due to their disability, and while the parent continues to request special education services from CCPS. Rather than address this student's increasing disability related needs and providing a FAPE, the CCPS proposed deadlines to withdraw the student. This is unacceptable for any student, much less one where there is a parent who is working with the school system to find strategies to assist their child in attending school.

Pursuant to the Maryland Student Records System Manual (2020), students under the compulsory school attendance age may only be withdrawn from school under very limited circumstances. There are no provisions for withdrawing students under the age of compulsory school attendance for nonattendance when the parents continue to seek special education services from the school district.

### **CORRECTIVE ACTIONS/TIMELINES:**

The IDEA requires that State complaint procedures include 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 CCPS to provide documentation by the April 30, 2024, that the IEP team has taken the following action:

- a. Determine the student's present levels of performance in his identified areas of need;
- b. Determine how the student's disability impacts his involvement and progress in the alternate academic achievement setting;
- 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 his educational program; and
- e. Create, implement, and revise a plan as necessary for the student to return to school full time and receive instruction pursuant to his IEP.

The IEP team must also convene to determine the amount and nature of compensatory services or other remedy to redress the lack of HHT during his approved times, the lack of an appropriate IEP, the lack of specialized instruction and related services while on HHT, the lack of a transition plan to acclimate the student prior to May of 2023. 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 CCPS must ensure that the complainant is provided with written notice of the team's decisions.

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<sup>2</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

<sup>3</sup> 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.

### **School-Based**

MSDE requires the CCPS to provide documentation by March 31, 2024, of the steps it has taken to ensure that the staff at [REDACTED] School properly implements the requirements for HHT services under the IDEA and State law. These steps must include staff development, as well as tools developed to monitor the action steps, a monitoring schedule and provision of the completed monitoring tool to MSDE by April 20, 2024. The documentation must include a description of how the CCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations outlined in this Letter of Findings do not recur.

### **Similarly Situated Students**

MSDE requires the CCPS to determine whether there are other students with emotional conditions who received special education services, and who have received home and hospital services for over sixty (60) days, in violation of COMAR 13A.05.01.10(C)(5)(d) during the 2022-2023 school year. If there are other similarly situated students identified, CCPS must:

1. Provide MSDE the re-entry plans for these students;
2. Provide documentation of the provision of social emotional supports, or consideration of such supports while on HHT;
3. Provide documentation by June 15, 2024, that they have convened an IEP team meeting to determine whether the extended HHT services, lack of a timely re-entry plan, or lack of appropriate social emotional supports while on HHT, 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; and
4. MSDE also requires CCPS to determine whether there are other similarly situated students with IEPs under IDEA, under compulsory attendance age who have been withdrawn for nonattendance, when the failure to attend is due to the student's disability, and consider the services being provided, whether they are designed to assist the student in re-entering the school setting and provide the student with a FAPE. If there are other similarly situated students, CCPS must convene an IEP team meeting for those students, determine appropriate compensatory services or other remedy for their lapse in services, and develop a plan for the re-entry of those students and the provision of FAPE and compensatory services within a year of the date of this Letter of Findings.

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,

Antoine L. Hickman, Ed.D.  
Assistant State Superintendent  
Division of Early Intervention/Special Education Services

ALH/sj

c: Ms. Cynthia McCabe, Superintendent, CCPS  
Mr. Chris Wittle, Director of Special Education, CCPS  
Mr. Wayne Whalen, Supervisor of Special Education Data and Compliance, CCPS  
[REDACTED]  
Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Ms. Paige Bradford, Section Chief, Specialized Instruction, MSDE  
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Ms. Diane Eisenstadt, Special Education Compliance Specialist  
Ms. Stephanie James, Complaint Investigator, MSDE