

August 22, 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

Gerald R. Platt, M.Ed.  
Superintendent/Director of Education  
Maryland Department of Health  
Healthcare System  
605 South Chapel Gate Lane  
Baltimore, Maryland 21229

RE: [REDACTED]  
Reference: #24-130

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services (DEI/SES) has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report on the final results of the investigation.

**ALLEGATIONS:**

On January 23, 2024, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) and the Maryland Department of Health (MDH) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student. On March 7, 2024, an extension letter was issued to the complainant due to exceptional circumstances and was required in order to ensure a thorough investigation into all significant matters.

MSDE investigated the following allegations:

1. The MDH did not follow proper procedures to ensure that Home and Hospital Teaching (HHT) services were consistently provided to the student since June 2023, in accordance with 34 CFR § 300.323 and COMAR 13A.05.01.10.
2. The MDH did not ensure that the Individualized Education Program (IEP) team convened to review the student’s IEP before January 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR § 300.324.
3. The MDH did not develop and implement an IEP that addresses the student’s identified needs since January 2023, in accordance with 34 CFR §§ 300.101 and .324.
4. The MDH has not ensured that the parent was provided with quarterly progress reports toward achieving the annual IEP goals since the start of January 2023, in accordance with 34 CFR § 300.320.

5. The MDH has not ensured that the student's IEP was reviewed and revised, to address her lack of expected progress toward achieving the IEP goals since January 2023, in accordance with 34 CFR §300.324.

### **BACKGROUND:**

The student is 21 years old and is identified as a student with Multiple Disabilities under the IDEA. The student was placed at [REDACTED] ([REDACTED]) Program where the education program is provided by the MDH and has an IEP that requires the provision of special education instruction and related services.

### **FINDINGS OF FACTS:**

1. In November 2023, the student was transferred to the [REDACTED] [REDACTED]
2. On March 19, 2024, MSDE received the following email communication from Mr. Gerald Platt, Superintendent/Director of Education of the Maryland Department of Health (MDH): "As communicated to MSDE previously, The Maryland Department of Health (MDH) is unable to hold IEP meetings, issue progress reports, or issue prior written notice to parents. The MDH's inability to provide these documents should not be viewed as a refusal to provide these documents. In response to your request, the [REDACTED] is providing the student's most recent IEP, obtained from Montgomery County Public Schools, and documentation of the repeated requests made by MDH to obtain instructional services for this student and documentation of the same attempts made by [REDACTED] in their effort to provide FAPE as the jurisdictional LEA where the facility is located per COMAR 13A.03.05.03 and state statute."
3. Under State law and regulation, the MDH is a public agency.
4. There is no documentation that the MDH has consistently provided the student with FAPE since August 2023.
5. There is no documentation that the MDH ensured that the IEP team convened to review the student's IEP before January 2023.
6. There is no documentation that the MDH developed and implemented an IEP that addresses the student's identified needs since January 2023.
7. There is no documentation that the MDH has not ensured that the parent was provided with quarterly progress reports toward achieving the annual IEP goals since the start of January 2023.
8. There is no documentation that the MDH ensured that the student's IEP was reviewed and revised, to address their lack of expected progress toward achieving the IEP goals since January 2023.

## **DISCUSSION AND CONCLUSIONS:**

Under Part B of the IDEA, each public agency is responsible for the provision of a free appropriate public education (FAPE) for students with disabilities from three years old through the end of the school year in which the student turns 21 years old. (34 CFR § 300.101). A public agency includes the State education agency, local education agencies, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. (34 CFR § 300.33).

In the State of Maryland, the political subdivisions that act as public agencies include the MDH, the Juvenile Services Education Program, the Maryland School for the Deaf, the Maryland Department of Labor, and the Department of Public Safety and Correctional Services. (Md. Code, Education, § 8-412(a)(7)(i); COMAR 13A.05.01.03B(59) and 13A.05.01.02A). While these political subdivisions do not operate like local education agencies, they retain the responsibility to fully implement the requirements of the IDEA, including development and implementation of a student's IEP and the provision of FAPE.

Therefore, when the State places a student with an IEP at a facility operated by the MDH, MDH is responsible for the education of the student. This is consistent with the findings of MSDE in Letters of Findings [# 12-091](#) (issued July 20, 2012), [# 12-101](#) (issued August 24, 2012), and [# 21-091](#) (issued June 23, 2021).

### **ALLEGATION #1                      PROVISION OF HOME AND HOSPITAL SERVICES**

Home and Hospital Teaching (HHT) services are temporary instructional services, provided by the student's local school system, for students in medical or emotional crisis who are unable to participate in their school of enrollment for a limited period of time. See COMAR 13A.03.05.03. If a student is found eligible for HHT services, the IEP team must convene to review and revise the student's IEP and determine the instructional services to be provided to the student. COMAR 13A.05.01.10C(5)(a)-(b).

The regulations governing HHT services outline the responsibilities of the local school system. As the MDH is not a local school system, it is not bound by the general HHT regulations. Therefore, MSDE finds that the MDH did not violate Home and Hospital Teaching (HHT) regulations in accordance with 13A.03.05, as these regulations are not applicable.

However, the MDH is required to follow the procedures under the IDEA to determine a student's educational services in light of their disability and unique circumstances. If the student's disability precludes them from participating in a full-day educational program, then the IEP team is responsible for developing an appropriate IEP to address their needs. For further discussion, see Allegation #3.

### **ALLEGATION #2                      ANNUAL REVIEW**

Based on the Finding of Fact #5, MSDE finds that the MDH did not ensure that the IEP team convened to review the student's IEP before January 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, this office finds a violation occurred concerning this allegation.

**ALLEGATION #3**                      **AN IEP THAT ADDRESSES THE STUDENT’S IDENTIFIED NEEDS**

When developing an IEP for a child with a disability, an IEP team must consider: the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. 34 CFR 300.324(a)(1). MSDE recognizes that students committed to MDH facilities may have different or more significant needs from students enrolled in their local education agency. The IEP team must take these needs into consideration when developing the individual student’s educational programming. For example, if a student committed to an MDH facility is unable to attend a full day educational program due to their physical or emotional condition, then the IEP team is responsible for developing an appropriate IEP for the student, including modified day programming.

Based on the Findings of Fact #1, #2, and #6, MSDE finds that the MDH did not develop and implement an IEP that addresses the student’s identified needs since January 2023, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds a violation occurred concerning this allegation.

**ALLEGATION #4**                      **PROVISION OF PROGRESS REPORT**

Based on the Findings of Fact #2 and #7, MSDE finds that the MDH has not ensured that the parent was provided with quarterly progress reports toward achieving the annual IEP goals since the start of January 2023, in accordance with 34 CFR §300.320. Therefore, this office finds a violation occurred concerning this allegation.

**ALLEGATION #5**                      **ADDRESSING THE LACK OF EXPECTED PROGRESS**

Based on the Findings of Fact #2 and #8, MSDE finds that the MDH has not ensured that the student’s IEP was reviewed and revised, to address her lack of expected progress toward achieving the IEP goals since January 2023, in accordance with 34 CFR §300.324. Therefore, this office finds a violation occurred concerning this allegation.

**CORRECTIVE ACTIONS AND 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>1</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.

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<sup>1</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, 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.

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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

### **Student-Specific**

MSDE requires the MDH to provide documentation by October 1, 2024, that the MDH has convened an IEP team meeting to determine the amount and nature of compensatory services or other remedy to redress the violations of the lack of FAPE and improper procedures for the implementation of HHT services and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The MDH must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

### **System-Based**

MSDE requires the MDH to provide documentation that ██████████ has procedures in effect to ensure that students with disabilities are identified, evaluated, and provided with a FAPE. MSDE requires the MDH to provide documentation by November 1, 2024, of the steps taken to ensure that the violation does not reoccur:

- a. Develop policy to ensure students with IEPs, are provided with FAPE; and
- b. Implement proper procedures for students who are unable to participate in a full day of school; and
- c. Identify similarly situated students under the care of MDH and hold IEP team settings to determine if compensatory services are required to ensure FAPE from August 2023; and
- d. Provide MSDE with a monitoring report including documentation from all students with IEPs in ██████████ facilities reflecting implementation of FAPE and progress reporting. Monitoring reports should be sent to MSDE by January 31, 2025.

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.

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<sup>2</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.

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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 and Special Education Services

ALH/sj

c: Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Stephanie James, Complaint Investigator, MSDE  
Nicole Green, Compliance Specialist, MSDE