

August 30, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Trinell Bowman
Associate Superintendent-Special Education
Prince George's County Public Schools
John Carroll Administration Building
1400 Nalley Terrace
Hyattsville, Maryland 20785

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

RE: [REDACTED]
Reference: # 24-139

Dear Parties:

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

ALLEGATION:

On January 31, 2024, MSDE received a complaint from [REDACTED], hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Prince George's County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

After further investigation and communication, MSDE determined that the responsibility to provide a free appropriate public education (FAPE) rested with the Maryland Department of Health (MDH) during the timeframe in question.

On March 11, 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.

On March 18, 2024, an amended letter of initiation was issued to the complainant. The amended letter reflected MSDE was investigating the allegation that the MDH has not ensured that the student receive a FAPE since August 2023, in accordance with 34 CFR §§ 300.2 and .323., and COMAR 13A.05.01.09.

BACKGROUND:

The student is 20 years old and identified as a student with a [REDACTED] under the IDEA. The student was placed at the [REDACTED] 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 FACT:

1. In August 2023, the student was transferred to MDH [REDACTED] from the Jessup Correctional Institution in Maryland.
2. On March 22, 2024, MSDE received the following email communication from Gerald Platt, Education Director, MDH: "I am following up on your request for information related to the [student] complaint. As communicated to MSDE previously, the MDH is unable to hold IEP meetings, issue progress reports, or issue prior written notice to parents as it is considered a non-educational public agency according to state statute. 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] [REDACTED] is providing the student's most recent IEP, obtained from Prince George's County Public Schools, the signed HHT application, and documentation of the requests made by MDH to obtain additional information from Prince George's County Public Schools so that instructional services for this student could be initiated via Washington County Public Schools (WCPS). After meeting with the representatives from WCPS included in this email, they shared that they are very cognizant of WCPS' responsibility to provide instructional services and FAPE for students who are currently residing at [REDACTED]. They have been providing services for other students for many years at this facility as the jurisdictional LEA where the facility is located per COMAR 13A.03.05.03 and state statute. The MDH and WCPS have and continues to maintain a strong and collaborative relationship. Breakdowns occur, however, when attempting to collect documentation and information from the students' home LEAs, as was the case for [student]. Fortunately, I have since been able to identify a singular point of contact in Prince George's County Public Schools Central Office who has agreed to address all future student inquiries moving forward."
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.

CONCLUSION AND DISCUSSION:

Under Part B of the IDEA, each public agency is responsible for the provision of a 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 Maryland Department of Health, 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 a FAPE.

Therefore, when the State places a student with an IEP at a facility operated by the Maryland Department of Health (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).

Based on the Finding of Fact #1, MSDE finds that the PGCPs was not required to implement the student's IEP since August 2023. Therefore, MSDE finds that a violation did not occur concerning this allegation.

Based on the Findings of Fact #1 through #4, MSDE finds that the MDH has not ensured that the student received a FAPE since August 2023, in accordance with 34 CFR §§ 300.2 and .323., and COMAR 13A.05.01.09. Therefore, this office finds that a violation occurred concerning the 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.¹ 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.

¹ 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.

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.² Ms. Green can be reached at (410) 767-7770 or by email at 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 remedies to redress the violation of the lack of FAPE 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 [REDACTED] 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 a FAPE;
- b. Implement proper procedures for students who are unable to participate in a full day of school;
- c. Identify similarly situated students under the care of the MDH and hold IEP team meetings to determine if compensatory services are required to ensure a FAPE from August 2023; and
- d. Provide MSDE with a monitoring report including documentation from all students with IEPs in [REDACTED] 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 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.

² MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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,

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

ALH/ra

c: Millard House II, Superintendent, PGCP
Lois Jones Smith, Compliance Liaison, PGCP
Keith Marston, Coordinator Special Education Compliance, PGCP
Darnell Henderson, General Counsel, PGCP
William Fields, Associate General Counsel, PGCP
[REDACTED], Principal, [REDACTED]
[REDACTED] Chief Executive Officer, [REDACTED]
Eleanor Dayhoff, Assistant Attorney General, Office of the General Counsel
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicole Green, Compliance Specialist, MSDE
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