

May 21, 2024

AMENDED ON MAY 31, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Kim Waller
Supervisor of Special Education
Dorchester Board of Education
700 Glasgow Street
Cambridge, Maryland 21613

RE: [REDACTED]
Reference: #24-177

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 of the final results of the investigation.

ALLEGATIONS:

On March 22, 2024, MSDE received a complaint from Ms. [REDACTED], hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Dorchester County Public Schools (DCPS) 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 DCPS did not follow proper procedures when identifying and conducting an initial evaluation to determine if the student is a student with a disability requiring special education and related services since March 2023, in accordance with 34 CFR §§300.301, 304 - 306.
2. The DCPS did not follow proper procedures when disciplinarily removing the student from school since April 2023, in accordance with 34 CFR §300.530, COMAR 13A.08.02, and COMAR 13A.08.03.
3. The DCPS did ensure that the student's parents were afforded an opportunity to attend and participate in the August 9, 2023, Individualized Education Program (IEP) team meeting, in accordance with 34 CFR §300.322.
4. The DCPS did not ensure that accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the August 9, 2023, IEP team meeting were provided at least five business days before each scheduled meeting, in accordance with COMAR 13A.05.01.07D(3).

5. The DCPS did not provide Prior Written Notice (PWN) of the IEP team's decisions in March 2023, May 14, 2023, and June 5, 2023, in accordance with 34 CFR §300.503. Specifically, the complainant alleges the PWN did not address:
 - a. The decisions concerning evaluating the student made at the March 2023 IEP team meeting;
 - b. The request made by the complainant to evaluate the student during the May 14, 2023, IEP team meeting; and
 - c. The decision not to include data from the student's private provider at the June 5, 2023, IEP team meeting.

6. The DCPS did not follow proper procedures to ensure that Home and Hospital Teaching (HHT) services were provided to the student when school staff received verification from the complainant on January 24, 2024, that she was unable to attend school, in accordance with COMAR 13A.05.01.10(D).

BACKGROUND:

The student is 14 years old and is a student with an Other Health Impairment (OHI). She attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

CONCLUSIONS:

ALLEGATION #1: EVALUATION PROCEDURES

In its written response, the DCPS acknowledges that a violation occurred with respect to allegation #1. Specifically, the DCPS acknowledged that they did not follow proper procedures by failing to respond to the parent's concerns and request for an initial evaluation in June 2023.

DCPS proposes to provide professional development to all administrators and special education staff regarding responses to parent requests and timelines. Additionally, DCPS will provide professional development to ensure the IEP teams provide and accurately analyze data that is used to determine that an evaluation is not required.

MSDE concurs and appreciates the DCPS' acknowledgment that a violation occurred with respect to the allegation.

ALLEGATION #4: PROVISION OF IEP DOCUMENTS FIVE DAYS PRIOR TO IEP MEETING

In its written response, the DCPS acknowledges that a violation occurred with respect to allegation #4. Specifically, the DCPS acknowledges that they did not ensure that accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the August 9, 2023, IEP team meeting was provided at least five business days before each scheduled meeting.

A meeting was held with the staff responsible for providing documents to parents, and the staff is currently in compliance. Additionally, DCPS proposes to review the requirement with all administrators and special education staff in the 2023-2024 school year.

MSDE concurs and appreciates the DCPS' acknowledgment that a violation occurred with respect to the allegation.

ALLEGATION #5: PROVISION OF PRIOR WRITTEN NOTICE

In its written response, the DCPS acknowledges that a violation occurred with respect to allegation #5. The DCPS acknowledged that, the PWN did not include data that was reviewed as part of the team's decisions:

- a. The decisions concerning evaluating the student made at the March 2023 IEP team meeting;
- b. The request made by the complainant to evaluate the student during the May 14, 2023, IEP team meeting; and
- c. The decision not to include data from the student's private provider at the June 5, 2023, IEP team meeting.

DCPS provided feedback to staff who developed the PWN regarding how team decisions should be documented and what would be included within the PWN. PWNs created by the DCPS school staff that were involved with the documentation of the meetings will be reviewed and edited after each new PWN is developed for the remainder of the 2023-2024 school year and into the 2024-2025 school year. Additionally, DCPS will provide professional development for special education staff at the beginning of the 2024-2025 school year to ensure proper development of PWNs.

MSDE concurs and appreciates the DCPS' acknowledgment that a violation occurred with respect to the allegation.

ALLEGATION #6: HOME AND HOSPITAL TEACHING

In its written response, the DCPS acknowledges that a violation occurred with respect to allegation #6. Specifically, the DCPS did not follow proper procedures to ensure that HHT services were provided to the student when school staff received verification from the complainant on January 24, 2024, that she was unable to attend school.

DCPS has determined compensatory services are warranted as a result of the delay in starting HHT services. The complainant agreed to begin services on April 23, 2024. Additionally, DCPS proposes to establish a system to track when there is a delay with securing a service provider and when a service provider has been assigned. The new procedures will be implemented at the beginning of the 2024-2025 school year.

MSDE concurs with the DCPS' findings and proposed corrective action and appreciates the school system's efforts to resolve the matter prior to the filing of the State complaint. Therefore, no further corrective action is required.

ALLEGATION #2: PROPER PROCEDURES DISCIPLINARY REMOVALS

FINDINGS OF FACT:

- 1. There is no documentation that the student received a disciplinary removal from the educational setting since April 2023.

CONCLUSION:

Based on the Findings of Fact #1, MSDE finds the student has not been disciplinarily removed from school since April 2023, in accordance with 34 CFR §300.530, COMAR 13A.08.02, and COMAR 13A.08.03. Therefore, this office finds that violation has not occurred concerning this allegation.

ALLEGATION #3: PARENT PARTICIPATION

FINDINGS OF FACTS:

2. On July 27, 2023, an IEP Meeting Notice, the Habilitative Services Document/Receipt and Parental Rights Document and Receipt was sent home with the student in preparation for an IEP team meeting on August 9, 2023.
3. On August 7, 2023, DCPS staff called the complainant in response to the complainant's request to change the meeting date. The DCPS staff informed the complainant that she can participate by phone or via Microsoft Teams.
4. On August 8, 2023, DCPS staff called the complainant to confirm participation in the IEP team meeting on August 9, 2023. A message was left for the complainant informing her that the IEP documents were available in the front office for pick up.
5. On August 9, 2023, a member of the IEP team contacted the complainant for the purpose of joining the IEP team meeting. The DCPS staff left a message for the complainant, informing her that the IEP team is preparing to begin the meeting.
6. The PWN developed following the IEP team meeting on August 9, 2023, reflects the IEP team proposed:
 - the student was not eligible for special education services based on the psychological and academic assessments, and the student's attendance concerns;
 - updated her 504 plan using the current assessments; and
 - the IEP team will review assessments with the parent if requested.
7. On September 11, 2023, the complainant contacted the DCPS concerned that the August 9, 2023, IEP team meeting convened without her participation.
8. On September 22, 2023, the IEP team reconvened for the purpose of re-determining the student's eligibility. The PWN reflects that the IEP team determined that the student was eligible for special education services instruction as a student with an OHI.

CONCLUSION:

Based on the Findings of Facts #2 through #8, MSDE finds, the DCPS did not ensure that the student's parents were afforded an opportunity to attend and participate in the August 9, 2023, IEP team meeting, in accordance with 34 CFR §300.322. Therefore, this office finds that a violation has occurred concerning this allegation.

Notwithstanding this violation, the IEP team reconvened on September 22, 2023, with the complainant present for the same purpose. Therefore, no additional corrective action is required.

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.^[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.

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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.^[2] Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student-based

MSDE requires the DCPS to provide documentation by August 1, 2024, that the IEP team has:

- a. Corrected the student record to include the following information from meetings that occurred on March 2023, May 14, 2023, and June 5, 2023: the decisions concerning evaluating the student made at the March 2023 IEP team meeting; the request made by the complainant to evaluate the student during the May 14, 2023, IEP team meeting; and the decision not to include data from the student's private provider at the June 5, 2023, IEP team meeting; and
- b. Provided compensatory services to address the delay in identifying the student as one who qualifies for special education instruction and services under the IDEA; and determine the amount and nature of compensatory services or other remedy to redress the develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The DCPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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.

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.

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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 and Special Education Services

ALH/ra

c: **Dr. Jymil Thompson, Interim Superintendent, DCPS**
Kim Waller Supervisor Special Education, DCPS
[REDACTED], Principal, [REDACTED] School, DCPS
[REDACTED], Principal, [REDACTED] School, DCPS
Alison Barmat, Chief, Family Support and Dispute Resolution Branch, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Tracy Givens, Section Chief, Dispute Resolution MSDE
Rabiatu Akinlolu, Complaint Investigator, MSDE