

November 20, 2024

Revised December 5, 2024

[REDACTED]
[REDACTED]
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RE: [REDACTED]
Reference: #25-055

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 September 3, 2024, MSDE received a complaint from [REDACTED] and [REDACTED], hereafter, “the complainants,” on behalf of the above-referenced student. In that correspondence, the complainants alleged that the Montgomery County Public Schools (MCPS) and Washington County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The MCPS and the WCPS did not follow proper procedures when conducting an educational reevaluation of the student since April 25, 2024, in accordance with 34 CFR §§ 300.303-.306.
2. The MCPS and the WCPS did not follow proper procedures when determining the amount and nature of special education services required while the student was hospitalized since September 2023, in accordance with COMAR13A.05.01.10C(5)(a)-(b).
3. The MCPS and the WCPS did not ensure that the student received special education services required by the IEP since September 2023, in accordance with 34 CFR § 300.101 and COMAR 13A.03.05.03D.

BACKGROUND:

The student is 18 years old and is identified as a student with multiple disabilities under the IDEA. He is enrolled in [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. On February 9, 2023, the student was hospitalized at [REDACTED]. There is documentation that the MCPS agreed to provide the student with IIS from February 9, 2023, to April 30, 2024.
2. On July 19, 2023, the MCPS' IEP team convened to review and revise the student's IEP and discuss the MSDE State Complaint #23-168 Letter of Findings. While the prior written notice (PWN) generated following the IEP team meeting reflects that the student was placed on Interim Instructional Services (IIS) based on the student's eligibility and ability to participate in a school setting.

The IEP team proposed "action number three" which reflects the "provision of compensatory services from January 18, 2023, through the end of the school year (21 weeks). This time frame was identified because prior to January 2023 [the student] was hospitalized and not permitted or available to receive any type of instruction or educational services. From January 2023 through the end of the school year, [the student] was available for 40 minutes per day for instruction. The team felt that based on [the student's] availability for instruction through IIS, 40 hours of compensatory services was appropriate to make up for the time that IIS was not provided."

3. The student's IEP in effect in September 2023, was developed on December 2, 2022, and has an annual review date of December 3, 2023. The IEP requires the provision of:
 - four hours and ten-minutes daily of special education instruction outside the general education classroom and one-hour and 40 minutes of special education instruction inside the general education classroom; and
 - 1 hour and 30 minutes monthly of counseling services outside the general education classroom.

The IEP also reflects that the student requires a nonpublic placement and that the Least Restrictive Environment (LRE) as "during the referral process and until a new educational placement is identified, are specialized instruction and supports available to [the student] through the [REDACTED] Services."

The IEP does not reflect the amount and nature of which IIS services will be provided to the student.

4. On November 13, 2023, the MCPS IEP team convened to review and revise the IEP and discuss educational placement. The PWN generated following this IEP team meeting reflects that the IEP team determined that the student required special education in a nonpublic residential school setting. The PWN further reflects that referrals were made to nonpublic residential school placements, and until another placement was identified, the student would receive services at [REDACTED]. The IEP team refused the parent's request for psychological and educational assessments because the assessments would delay the referral process and the team was concerned that the assessments would not yield accurate results because of the student's lack of a "stabilized school setting."

The PWN reflects that “the school-based team agreed to reach out to the IIS office to request further information on his work completion and if there are additional assignments that can be worked on when not directly with an IIS provider.”

5. The November 13, 2023, IEP and has an annual review date of November 11, 2024. The IEP requires the provision of:
 - four hours and ten-minutes daily of special education instruction outside the general education classroom and one-hour and 40 minutes of special education instruction inside the general education classroom; and
 - 1 hour and 30 minutes monthly of counseling services outside the general education classroom.

The IEP reflects the student’s disability as impacting his involvement in the general education curriculum as a student “with multiple disabilities (Emotional Disability and Autism). He has difficulty with impulsivity and with emotional regulation/frustration tolerance. His emotional disability impacts him in the areas of aggression management, frustration tolerance, work completion, and interactions with his peers. He is also diagnosed with Disruptive Mood Dysregulation Disorder as well as autism spectrum disorder and attention deficit hyperactivity disorder which impacts his availability for instruction, and ability to build and maintain peer interactions. His emotional dysregulation results in unpredictable aggressive outbursts which make him unsafe for him to be in a comprehensive school environment.”

The IEP reflects the Least Restrictive Environment (LRE) as “during the referral process and until a new educational placement is identified, specialized instruction and supports remain available to [the student] through the [redacted] Services.” It further reflects that the student will be inside the general education classroom for 12 hours and 30 minutes per week (40%- 79%) and outside of General Education classroom for 21 hours and 15 minutes per week.

The IEP does not reflect the amount and nature of which IIS services will be provided to the student.

6. On January 16, 2024, the MCPS’ IEP team convened to review and revise the IEP and discuss educational placement. The PWN generated following this IEP team meeting reflects that the IEP team determined that the student required a nonpublic residential school placement to implement his IEP. The PWN further reflects that referrals were made to nonpublic residential school placements, and until another placement is identified the student would receive services at [redacted].
7. On March 1, 2024, MCPS submitted an application for enrollment to IIS.
8. On March 13, 2024, there is documentation that the student was admitted to [redacted] located in Washington County, which was facilitated by the Maryland Department of Health (MDH) and was receiving services in the residential facility’s day school, funded by the MCPS. The WCPS had assumed responsibility for the provision of services as the student was in an out-of-country placement.
9. On March 20, 2024, the MCPS’ IEP team convened to review continued implementation of IIS. The PWN generated following the IEP team meeting reflects that the IEP team agreed that the MCPS’ counsel would talk to the complainant to determine the next steps in the IIS implementation process due to new information provided by the family related to placement at a residential facility. The IEP team also determined that they should postpone amending the student’s IEP until after the conversation with the complainant. The PWN reflects that the IEP also determined that IIS services would be two hours per week of instruction for “2 Yr.

Algebra 2D.” The student would receive math packets through IIS due to the inability to receive Wi-Fi at the residential facility or in-person instruction. The math packets would be provided by MCPS’ IIS offices.

10. On April 11, 2024, the WCPS’ IEP team convened to review and revise the student’s IEP. The PWN generated following the meeting reflects that the IEP team rejected any public-school options because the student would need to leave the residential facility to access those options, and he requires instruction in the outside general education setting. He was not medically cleared to leave the residential facility. The IEP team determined that the student’s educational programming will be provided in a virtual and/or packet platform with instruction provided by the residential facility’s day schoolteacher with a combination of instructional level work integrated with the accredited work from the residential facility day school. The teacher had a schedule that provides 3.5 hours of instructional services each day. MCPS continued to search for a residential program and the IEP would remain in the draft form with an LRE of residential school.

The PWN further reflected that the IEP team determined to defer discussing the parents’ request for updated education and neuropsychological assessments due to the student being out of school 18 months. The IEP team was not prepared to discuss the request and make informed decisions.

There is documentation that the student’s annual review date was November 12, 2024.

11. On April 25, 2024, the WCPS’ IEP team convened to review and revise the student’s IEP. The PWN generated following the meeting reflects that the IEP team did not agree to conduct a neuropsychological evaluation and educational assessment. The IEP team had concerns that neuropsychological testing results would impact the student’s educational programming options. The IEP team had concerns that an educational assessment would yield invalid results due to the student’s emotional and behavioral concerns but did agree under certain conditions to attempt to conduct an educational evaluation. Those conditions included the student being emotionally and behaviorally stable, the testing must be completed with a male staff member in a secure environment, and testing would occur in the afternoon. It was further reflected that the IEP team reviewed the student’s psychological assessment completed in 2023.
12. On April 25, 2024, a Notice and Consent for Assessment document was generated for an educational assessment. It reflected that based on the determination of the IEP team on April 25, 2024, the IEP team needed additional information to determine the student’s present levels of academic achievement and functional performance needs. The IEP team recommended assessing the student in the areas of academic performance, including reading, mathematics, and written language.
13. On July 10, 2024, the WCPS’ IEP team convened to review and revise the student’s IEP. The PWN generated following the meeting reflects that the IEP team determined the educational assessments to be invalid and needed to be repeated with further attempts to gather data and information. It is further reflected that the student was receiving his education from the residential facility’s day schoolteacher through virtual access and from the residential facility program teacher. It is further reflected that the student’s behaviors have prohibited him from attending the residential facility’s day program, or to be assessed with fidelity. The IEP team agreed that there was not enough information to move forward with adjusting or updating the student’s IEP.

The PWN further reflected that MCPS has been unable to secure the student a placement in the required residential educational placement. The student has remained a resident of MCPS who was admitted to a residential facility within the WCPS. Prior to the student’s admittance at the residential facility, the student resided in a hospital for one and half years and received interim educational services.

The IEP team agreed that the student should attend school in person as soon as possible at the residential facility's day school.

14. On July 10, 2024, a Notice and Consent for Assessment document was generated for a new educational assessment. It reflects that based on the determination of the IEP team on July 10, 2024, the IEP team needs to attempt to conduct educational assessments again. The IEP team will evaluate the student in the areas of academic performance including reading, mathematics, and written language. There is no documentation that the parents signed the Notice and Consent for Assessment.
15. There is no documentation that MCPS consistently provided special education services under IIS from September 2023 to March 13, 2024. Nor is there documentation of the provision of special education services as required by the IEP from September 2023 to March 13, 2024.

There is no documentation that the IEP team determined the amount of IIS services while the student remained hospitalized at [REDACTED], or that the student's IEP team met to recertify eligibility for IIS services or developed a re-entry plan.

There is no documentation that the MCPS has secured a nonpublic residential school for the student.

16. There is no documentation that WCPS consistently provided special education services under IIS, nor as required by the student's IEP since March 14, 2024.

There is no documentation that the IEP team determined the amount of IIS services while the student remained hospitalized at [REDACTED], or that the student's IEP team met to recertify eligibility for IIS services or developed a re-entry plan.

There is no documentation that the WCPS has secured a nonpublic residential school for the student.

DISCUSSIONS AND CONCLUSIONS:

The student resides in Montgomery County and is enrolled in MCPS. On March 13, 2024, the student was admitted to [REDACTED] located in Washington County, which was facilitated by the MDH. The education of students placed by the State or a court in an out-of-county living arrangements is governed by Md. Code, Education § 4-122. Under the law, the county in which the parent or guardian of the child resides is the "financially responsible county". The "service providing local education agency" is the local education agency for the county where a child in an out-of-county living arrangement is placed. Thus, in this case, on March 13, 2024, the WCPS assumed responsibility for the provision of services to the student as the service providing local education agency, while the MCPS remained the financially responsible county.

Allegation #1 Proper Procedures for Conducting a Reevaluation of the Student

The complainant alleges that the WCPS violated evaluation procedures when they required the parent to provide written consent for assessments ordered at the July 10, 2024, IEP team meeting when the parent previously provided consent for assessment in April 2024.

On April 11, 2024, the WCPS IEP team discussed the parents' request for updated education and neuropsychological assessments. On April 25, 2024, the WCPS IEP team had concerns that an educational assessment would yield invalid results due to the student's emotional and behavioral concerns but did agree under certain conditions to attempt to conduct an educational evaluation. The parents' consented to the assessments, and the assessments were completed. On July 10, 2024, the WCPS IEP team determined the educational assessments to be invalid and needed to be repeated with further attempts to gather data and information. On July 10, 2024, the WCPS required the parents to provide written consent to conduct the educational assessments again. The parents refused to sign the July 10, 2024, Notice and Consent for Assessment, because the parents felt that the consent provided in April 2024 satisfied the consent requirement.

Neither federal nor State law expressly states when consent for evaluation ends or expires. However, MSDE recognizes that part of the purpose of informed consent is to provide the parent with "all information relevant to the activity for which consent is sought". (34 CFR § 300.9). In this case, the consent provided in April was to conduct assessments, which the IEP team did. When the IEP team agreed to conduct new assessments due to the validity issues identified with the completed assessments, it proposed to undertake a new activity. As such, the school-based IEP team appropriately sought new consent from the parents.

Based on the Findings of Fact #8 through #14, MSDE finds that the WCPS followed proper procedures when conducting an educational reevaluation of the student since April 25, 2024, in accordance with 34 CFR §§ 300.303-.306. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #2 Proper Procedures when Determining IIS

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 review and revise the student's IEP and 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.05.01.10C(5)). When the period of treatment or convalescence ends, the IEP team must review and revise the IEP and determine the appropriate placement in the LRE (COMAR 13A.05.01.10C(5)).

In this case, the student was hospitalized from February 9, 2023, to March 13, 2024. There is documentation that the MCPS agreed to provide the student with IIS from February 9, 2023, to April 30, 2024. There is no documentation to demonstrate that the student's IEP was amended to reflect the requirement of IIS, the re-certification for the provision of IIS services, or the re-entry plan.

Based on the Findings of Fact #1 through #15, MSDE finds that the MCPS did not follow proper procedures when determining the amount and nature of special education services required while the student was hospitalized from September 2023 to March 13, 2024, in accordance with COMAR13A.05.01.10C(5)(a)-(b). Therefore, this office finds a violation occurred concerning this aspect of the allegation.

Based on the Findings of Fact #10, #14, and #16, MSDE finds that the WCPS did not follow proper procedures when determining the amount and nature of special education services required while the student was hospitalized since March 13, 2024, in accordance with COMAR13A.05.01.10C(5)(a)-(b). Therefore, this office finds a violation occurred concerning this aspect of the allegation.

Allegation #3 Provision of Special Education Services

In this case, the student’s parents reside in Montgomery County and the student was enrolled in the MCPS until admittance at the residential facility facilitated by the MDH. The MDH facilitated admittance to the residential facility is located in Washington County, triggering WCPS’ obligation to provide education services. The MCPS was the financially responsible county during the out-of-county placement by the MDH.

Based on the Findings of Fact #3 through #6, #9, and #15, MSDE finds that the MCPS did not ensure that the student received special education services required by the IEP from September 2023 to March 13, 2024, in accordance with 34 CFR § 300.101 and COMAR 13A.03.05.03D. Therefore, this office finds a violation occurred concerning the allegation.

Based on the Findings of Fact #3 through #6, #11, and #16, MSDE finds that the WCPS did not ensure that the student received special education services required by the IEP since March 14, 2024, in accordance with 34 CFR § 300.101 and COMAR 13A.03.05.03D. Therefore, this office finds a violation occurred concerning the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

Placement

In this case, the student’s IEP requires the student be placed in a nonpublic residential school setting. While there is documentation that the MCPS has considered and contacted nonpublic residential schools, they have not secured a placement or amended the student’s IEP to reflect what placement can be provided by MCPS. Nor is there evidence that WCPS, which was the service providing local education agency after March 13, 2024, sought and obtained a nonpublic residential school for the student.

Based on the Findings of Fact #3 through #6, #9 and #15, MSDE finds that neither the MCPS nor the WCPS has provided the student with special education and related services in the placement required by the IEP since September 2023, in accordance with 34 CFR §§ 300.114, and .116. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS AND 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 the 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, 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.

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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 MCPS and WCPS to provide documentation, by January 17, 2025, that the IEP team has taken the following action:

- a. Convened an IEP team meeting to determine the student's current educational needs. Review and revise the IEP as appropriate;
- b. Provided the student with consistent special education instruction as required by the IEP;
- c. Convened an IEP team meeting to determine whether the violation related to the implementation of the special education instruction had a negative impact on the student's ability to benefit from the education program, if there is a negative impact, determine the amount and nature of compensatory services or other remedy to redress the violation;
- d. Developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

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

School-Based

MSDE requires the MCPS to provide documentation by January 17, 2025, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for determining appropriate services and documenting them on a student's IEP, developing a reentry plan, the requirements for the implementation provision of the special education instruction, and ensuring proper placement under the IDEA. These steps must include staff development, as well as tools developed to monitor compliance.

MSDE requires the WCPS to provide documentation by January 17, 2025, of the steps it has taken to ensure that the **WCPS staff** properly implements the requirements for determining appropriate services and documenting them on a student's IEP, developing a reentry plan, the requirements for the implementation provision of the special education instruction, and ensuring proper placement under the IDEA. These steps must include staff development, as well as tools developed to monitor compliance.

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 why the

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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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/sd

c: Dr. Thomas Taylor, Superintendent, MCPS
Peggy Pugh, Chief Academic Officer, MCPS
Diana K. Wyles, Associate Superintendent, MCPS
Gerald Loiacono, Supervision, Resolution and Compliance Unit, MCPS
Maritza Macias, Paralegal, MCPS
Dr. David Sovine, Superintendent, WCPS
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Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
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