



Mohammed Choudhury
State Superintendent of Schools

April 11, 2023



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

RE: [REDACTED]
Reference: #23-148

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 February 15, 2023, the 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 Dorchester County Public Schools (DCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The DCPS did not ensure that proper procedures were followed when determining the student's Home and Hospital Teaching (HHT) services since the start of the 2022-2023 school year, in accordance with COMAR 13A.03.05.03 and 13A.05.01.10.
2. The DCPS has not ensured proper procedures were followed when determining the student's educational placement since January 2023, in accordance with 34 CFR §§300.114 -.116 and .321.
3. The DCPS has not ensured that the Individualized Education Program (IEP) team addressed parental concerns regarding the student’s mental health and placement needs, since January 2023, in accordance with 34 CFR §§300.324.
4. The DCPS has not ensured that the student has been consistently provided with specialized instruction as required by the IEP since January 2023, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is seventeen years old and is identified as a student with an Other Health Impairment under the IDEA. She is enrolled at [REDACTED] School and has an IEP that requires the provision of specialized instruction and related services.

FINDINGS OF FACTS:

1. There is documentation that the DCPS received an application from the complainant for Home and Hospital Teaching due to an emotional condition on October 6, 2022. The application was approved by DCPS staff on the same day.
2. On October 10, 2022, the IEP team met to determine the student's educational placement. The IEP team reviewed the parent report, teacher report, physician's recommendation, progress on IEP goals, grades and attendance from the 2021-2022 school year. The IEP team determined the student would receive six hours per week of "homebound instruction" for sixty days. The student's IEP goals for math calculation and problem solving and social/emotional behavior would be addressed by the homebound instructor.
3. While the IEP team completed a "Home & Hospital Student Action Plan for Re-entry to School Setting" form on October 10, 2022, the IEP team agreed to "reconvene prior to the expiration of the homebound instruction order to determine a re-entry plan back into the general education setting". The re-entry plan adopted on this date anticipated the student re-entry date of December 5, 2022. The plan required a team meeting on November 21, 2022, and consultation with the parent and physician prior to November 21, 2022.
4. There is documentation that the DCPS staff contacted the parent on November 11, 2022, to confirm participation in the November 21, 2022, IEP team meeting. There is no documentation of a consultation with the parent regarding the student's re-entry plan prior to November 21, 2022.
5. There is documentation that the DCPS psychologist left messages for the student's private psychologist on November 17 and 18, 2022. There is no documentation of a consultation with the physician regarding the student's re-entry plan prior to November 21, 2022.
6. On November 21, 2022, the IEP team met to discuss the student's re-entry to school. The IEP team noted that the student's HHT eligibility was expiring, but that a new application was pending. The IEP team agreed that the new application would be reviewed by the IEP team once received.
7. On December 2, 2022, the IEP team convened to review and revise the student's IEP, as appropriate, including the student's educational placement, and review the student's home and hospital instruction. The IEP team agreed to update the student's goals in the area of math calculation and problem solving, and self-management. Upon review of the updated physician's recommendation, the IEP team determined the student should continue with home and hospital instruction. The IEP team revised the re-entry plan with an anticipated return date of January 27, 2023. The plan required a team meeting on January 18, 2023, consultation with the parent prior to January 18, 2023, and consultation with the student's physician on December 7, 14, 19, 2022 and January 4, 9, and 16, 2023. The team agreed to reconvene on January 18, 2023, to review the student's re-entry plan and determine next steps for educational programming.

15. The student's IEP dated December 2, 2022, requires six hours of specialized instruction outside of the general education setting per week until January 27, 2023, while the student was receiving home and hospital instruction. From January 27, 2023, to the present, the student's IEP requires that she receive twenty nine hours and thirty minutes of specialized instruction outside of the general education setting per week.
16. There is documentation that the student received specialized instruction from January 4, 2023, to March 24, 2023, as required by the IEP.

CONCLUSIONS:

ALLEGATION #1: HOME AND HOSPITAL PROCEDURES

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.05.01.10(C)(5)(b)). 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.05.01.10(C)(5)(c)).

Educational placement in the home for a student with an emotional condition may not exceed sixty (60) consecutive school days (COMAR 13A.05.01.10(C)(5)(d)).

Based upon the Findings of Facts #1 to 11, MSDE finds that the DCPS did not ensure that proper procedures were followed when determining the student's HHT services since the start of the 2022-2023 school year, in accordance with COMAR 13A.03.05.03 and 13A.05.01.10. DCPS failed to develop, implement, and monitor an appropriate re-entry plan that would enable the student to return to the school-based program. In addition, the DCPS extended the sixty (60) day limitation for a student with an emotional condition on home and hospital instruction for an additional sixty (60) days, in violation of COMAR without stating an exception, and with essentially the same re-entry plan that was ineffective in returning the student to school during the prior session. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #2: PLACEMENT DECISION

Based on Findings of Facts #12 and #13, MSDE finds that the DCPS has ensured proper procedures were followed when determining the student's educational placement since January 2023, in accordance with 34 CFR §§300.114 -.116 and .321. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #3: PARENTAL CONCERNS

Based on Findings of Facts #12 and #13, MSDE finds that the DCPS has ensured that the IEP team addressed parental concerns regarding the student's mental health and placement needs, since January 2023, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #4: PROVISION OF SPECIALIZED INSTRUCTION

Based on Findings of Facts #14 to #16, MSDE finds that the DCPS has ensured that the student has been consistently provided with specialized instruction as required by the IEP since January 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/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 non-compliance is corrected in a timely manner. 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

Student Specific:

MSDE requires the DCPS to provide documentation by May 1, 2023, that they have convened an IEP team meeting to determine whether the HHT services violation outlined in this Letter of Findings 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.

The DCPS must ensure that the parent is provided with 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 DCPS to provide documentation by May 1, 2023, 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 June 1, 2023. The documentation must include a description of how the DCPS 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 required the DCPS 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, DCPS must:

1. Provide MSDE the re-entry plans for these students;
2. Provide documentation by June 15, 2023, that they have convened an IEP team meeting to determine whether the HHT services violation 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.

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. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMC/tg

c: W. David Bromwell, Jr.
Alison Barmat
Gerald Loiacono
Tracy Givens