




Mohammed Choudhury
State Superintendent of Schools

January 17, 2023




Ms. Terri Savage
Executive Director of Special Education
Howard County Public School System
10910 Clarksville Pike
Ellicott City, Maryland 21042

RE: 
Reference: #23-095

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 November 17, 2022, MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Howard County Public School System (HCPSS) 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 HCPSS did not develop an Individualized Education Program (IEP) that addresses the student’s identified math needs since August 9, 2022, in accordance with 34 CFR §§ 300.101 and .324.
2. The HCPSS has not ensured that the IEP team addressed the parent’s concerns regarding the drafted IEP math goals not meeting state grade-level standards for the grade in which the student is enrolled since August 9, 2022, in accordance with 34 CFR § 300.324(a)(ii).

BACKGROUND:

The student is eight years old and, since July 15, 2022, is identified as a student with a Specific Learning Disability under the IDEA. She attends  School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. On July 15, 2022, the IEP team met to conduct an initial evaluation of the student to determine if he was eligible as a student with a disability under the IDEA. The evaluation was initiated based on the parent and teacher's concerns regarding the student's progress in math and reading.
2. The IEP team reviewed the June 4, 2022, educational assessment conducted for the student at the July 15, 2022, meeting. The assessment indicated that the student was in the "low" range of achievement for a student of her age with a standard score of 74. On the "Applied Problems test", the student's performance was in the "very low range" of achievement when compared to her same aged peers. On the Calculations test, the student performed in the "low average range" of achievement when compared to her same-aged peers.
3. At the July 15, 2022, meeting, a June 6, 2022, psychological assessment conducted for the student was also reviewed. The psychological assessment included the "Feifer Assessment of Mathematics (FAM)" conducted to evaluate the student's mathematic skills. The student's total score on the FAM fell within the "below-average range" indicating that the student "struggles with her basic understanding of numbers sense and the relationship between numbers" and "demonstrates difficulty when counting objects, verbally responding to simple addition and subtraction problems, and answering addition problems that require subtraction". The author of the psychological assessment recommended that the student receive "highly structured, sequential problem for teaching basic math skills" and that, "before new skills are introduced, the student should have full mastery of prerequisite skills."
4. Based on a review of the assessment data, the student's educational record, and parental and teacher input, the IEP team determined that the student is eligible under the IDEA as a student with a specific learning disability. The IEP team noted that the student had needs in the areas of math calculation, math problem solving, and articulation.
5. There is documentation that the complainant was invited to an IEP team meeting on August 9, 2022, to develop the student's initial IEP. On the day prior to the scheduled meeting, the complainant sent information she wanted the team to consider and add to the IEP. The school team was unable to review the information in the short timeframe due to the length of the information and requested additional time to "write an IEP that [the complainant] felt meets the student's needs and addresses the action items requested."
6. On September 9, 2022 and October 7, 2022, the IEP team convened to develop the student's initial IEP, consistent with the data from formal assessments, teacher input, and the previously completed Number Readiness Assessment, which looks at the mastery of 2nd-grade curriculum standards.
7. Based on the data from the student's evaluation, the IEP team determined that the student's identified math needs are in the area of visual working memory and digit working memory.
8. The school-based members of the team reviewed the student's present level of performance and proposed IEP goals that included 2nd-grade standards.

9. The math calculation IEP goal proposed by the IEP team states:

“By October 2023, given access to math visuals and tools (i.e., manipulatives, 120 chart, visual supports), the student will solve a mixed set of 5 given math problems involving addition and subtraction within 1,000 with 80% accuracy over 4 out of 5 occasions as measured by special education data.”
10. The Math Reasoning IEP goal proposed by the IEP team states:

“By October 2023, given access to math tools/visuals (120 chart, base 10 blocks, counting cubes, drawings, etc.) and 2 verbal/visual prompts, the student will solve a set of 5-word problems involving addition and subtraction with 80% accuracy on 2 out of 3 occasions as measured by special education data collection.”
11. The school-based members of the team shared that IEP goals and objectives were created due to the gaps the student has in her 1st and 2nd-grade skills, and specialized instruction is required to fill in the gaps and help her access the 3rd-grade curriculum/standards. The school-based team further explained that the IEP would be based on second grade standards and not third grade standards because the student had not yet mastered second grade skills.
12. The complainant disagreed with the determination and told the team that the “student’s IEP can include deficit areas, but 3rd-grade learning objectives should also be included with data collected to ensure the student is mastering the skills.” The complainant reported her concern that “multiplication is highly impacted by working memory and therefore the student would need a third-grade goal and objectives in this goal area.”
13. A school-based member of the IEP team stated that, “the objectives are based on what skills she has right now. This objective is a second-grade objective/skill because the student has not yet mastered that set of second-grade skills.” The team agreed to change goal #1, objective #1 to include 2 digits by 2 digits with and without regrouping and objective #4 to include 3 digits by 3 digits with and without regrouping within 1000.
14. The school team expressed that the student would receive instruction on multiplication and division first through general education, and the special educator would target the missing gaps, as their role is to “fill in the missing gaps of skills that the student has in order to access the 3rd-grade curriculum.” The school team stated, “they will not put a third-grade objective on the IEP because the student has not yet received that first instruction on these skills.” It is stated that there is no data at that time to support the IEP objective proposed by the parent because the student has not been taught that skill yet and that is their “final offer.”
15. The school team informed the complainant if there is a disagreement, guidance could be found in the parental rights booklet.
16. There is documentation that the student is able to add and subtract up to 2 numbers.
17. The Maryland College and Career Ready Standards for Mathematics for students in Grade 3 includes:

3.NBT: Fluently add and subtract within 1000 using strategies and algorithms based on place value, properties of operations, and/or the relationship between addition and subtraction.

18. The student's IEP includes math goals aligned with 3rd grade standards targeted by the team to address the student's priority need areas and gaps in essential skills.

DISCUSSION/CONCLUSIONS:

Allegation #1

DEVELOPMENT OF THE IEP

If a student is performing significantly below grade level, the IEP team should determine annual goals that are ambitious but achievable for that student. While annual goals need not necessarily result in the student attaining grade level proficiency within the year covered by the IEP, the goals should be sufficiently ambitious to help close or reduce the achievement gap. The IEP team must also, when appropriate, consider goals that target critical age/grade appropriate skills essential to facilitate student independence and enable them to access and participate in grade level instructional and social activities, and make progress toward achieving grade-level standards.

The IEP goal(s) should be aligned to academic content standards of grade level enrollment, and/or academic content standards from earlier in the learning progressions, and/or align to age/grade appropriate functional skills impacted by the disability and interfere with, prevent, or affect communication and interpersonal interactions, participation in school and learning activities, and independence in school and potential post-school settings. Priority is given to skills that support the achievement of multiple standards and/or the student's access to grade level content in multiple areas.

The student should receive instruction, including supports according to his or her IEP, on all grade level standards, but the IEP goals should reflect skills that the IEP team identifies as essential and require specially designed instruction to learn. The IEP goals focus instruction and progress monitoring on the critical skills that will enable the student to meet grade level standards. The standards themselves are not the IEP goal. MSDE Technical Assistance Bulletin 19-01: Improving Outcomes for Students with Disabilities Curriculum, Instruction and Assessment.

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. (34 CFR § 300.324).

Based on the Finding of Facts #1- #18, MSDE finds that the HCPSS did develop an IEP that addresses the student's identified math needs since August 9, 2022, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2

ADDRESSING PARENT CONCERN

Based on the Findings of Facts #12- #15, MSDE finds that the HCPSS has ensured that the IEP team addressed the parent's concerns regarding the IEP math goals not meeting state grade-level standards for the grade in which the student is enrolled, in accordance with 34 CFR § 300.324(a)(ii). The team listened to the parent's concerns, documented their disagreement, and made adjustments when there was agreement. Therefore, this office finds that a violation did not occur with respect to the allegation.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

At the beginning of each school year, each eligible student enrolled in the jurisdiction must have an IEP in effect. 34 CFR § 300.323 (a). Further, each public agency must ensure that following an initial eligibility determination, a meeting to develop an IEP for a child is conducted within 30 days of the determination that the child needs special education and related services. 34 CFR § 300.323 (c).

In this case, the student's initial IEP was not finalized until October 7, 2022. The first meeting to develop the IEP was not convened until September 8, 2022, 55 days following the initial eligibility determination.

Based on Findings of Facts #1, #5, and #6, MSDE finds that while the HCPSS attempted to meet to develop the student's initial IEP within the requisite timelines, they did not ensure that the IEP team met to develop an initial IEP for a student with a disability within 30 days of the initial evaluation, in accordance with 34 CFR § 300.323(c) and COMAR 13a.05.01.08.

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 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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student Specific:

MSDE requires the HCPSS to provide documentation by March 31, 2023, that the IEP team has convened and determined whether the violation related to the delayed initial IEP meeting 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 HCPSS must ensure that the parents are provided with written notice of the team's decisions. The

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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parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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,

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

DMC/sj

c: Michael Martirano
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