

March 28, 2024

[REDACTED]
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Dr. Terrell Savage
Executive Director of Special Education
10910 Clarksville Pike
Ellicott City, Maryland 21042

RE: [REDACTED]
Reference: #24-136

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 January 29, 2024, MSDE received a complaint from Mr. [REDACTED] and Ms. [REDACTED], hereafter, “the complainants”, on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Howard County Public Schools 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 has not ensured that the Individualized Education Program (IEP) was reasonably calculated to address the student’s identified reading needs since January 29, 2023, in accordance with 34 CFR §§300.101, .320, and .324.
2. The HCPSS has not ensured that the student’s progress towards achievement of her annual IEP goals, specifically her reading fluency goals, were measured as required by the IEP since January 2023, in accordance with 34 CFR §§300.101, .320 and .324.
3. The HCPSS did not ensure that the parent was provided with accessible copies of each document the IEP team planned to discuss at the August 22, 2023, October 12, 2023, and November 16, 2023, IEP team meetings at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.

4. The HCPSS did not provide the parents with a copy of the IEP document within five business days after the IEP team meetings on August 22, 2023, October 12, 2023, and November 16, 2023, in accordance with COMAR 13A.05.01.07.
5. The HCPSS did not provide the parent with proper prior written notice of the team's decision made at the IEP team meeting on June 8, 2023, August 22, 2023, October 12, 2023, November 16, 2023, in accordance with 34 CFR §300.503.
6. The HCPSS did not ensure that proper procedures were followed when responding to a request to inspect and review the student's educational record since September 11, 2023, in accordance with 34 CFR §300.613.

BACKGROUND:

The student is nine years old and is identified as a student with a Specific Learning Disability (SLD) under the IDEA. She attends [REDACTED] and has an IEP that requires the provision of specialized instruction and related services.

Allegation #1:

Reasonably Calculated IEP

FINDINGS OF FACT:

1. The student's IEP in effect on January 29, 2023, was developed on July 20, 2022, and identifies basic reading skills as an area of need. The present level of academic achievement and functional performance (PLAAFP) for reading foundational skills reflects that the student is reading on grade level, but she struggles with phonemic awareness with letter sounds and nonsense words and decoding. The student's strengths include sight words and reading fluency. The IEP requires specialized instruction and supports to assist the student with improving her reading skills.

The student's annual reading foundational skills goal states, "When reading at her instructional level [the student] will read words containing short vowels with digraphs, beginning blends, inflectional endings, long vowels, and r-controlled vowels in isolation and/or in text with 80% accuracy within 2 trials, as measured by data collection sheets, by March 2023."

The progress reported on March 31, 2023, towards the achievement of the reading foundational skills goal reflects the student is making sufficient progress to meet the goal.

2. The student's IEP developed on April 20, 2023, identifies basic reading skills as an area of need. The reading foundational skill PLAAFP was not updated from the July 20, 2022, IEP. The IEP requires specialized instruction and support to assist the student with improving her skills in this area.

The student's annual reading foundational skills goal was continued from the July 20, 2022, IEP.

The progress reported on June 14, 2023, towards the achievement of the reading foundational skill goal reflects that the student achieved the goal.

3. The student's IEP developed on August 22, 2023, identifies basic reading skills as an area of need. The reading foundational skill PLAAFP reflects that the student passed her end of the year reading benchmark on a first grade level. The student is able to read long vowel digraph words with 87% accuracy, words with vowel teams with 90% accuracy, words with r-controlled vowels with 85% accuracy, and the student's fluency of phonics-based passages ranges from 81 to 120 "cwpm." The student struggles with encoding, specifically using the correct sound for a particular word. The IEP requires specialized instruction and a multisensory reading intervention.

The student's annual reading foundational skills goal states that "Using a multisensory evidence-based Structured Literacy intervention, [the student] will decode pseudo and real words with one and then up to two syllable words with 90% accuracy on 4 out of 5 trials, as measured by data collection sheets, by June 2024."

4. The student's IEP developed on October 12, 2023, identifies basic reading skills as an area of need. The reading foundational skill PLAAFP reflects that the student's reading fluency is above benchmark for first grade; at benchmark for second grade; and below benchmark for third grade. The IEP requires specialized instruction and a multisensory reading intervention. The IEP further requires that the student be moved to a specified area when reading independently.

The student's annual reading foundational skills goal states that "Using a multisensory evidence-based Structured Literacy intervention, [the student] will decode pseudo and real words with one and then up to two syllable words with 90% accuracy on 4 out of 5 trials, as measured by data collection sheets, by June 2024." A fifth objective was added to address fluency.

The progress reported on October 31, 2023, and January 25, 2024, towards the achievement of the reading foundational skills goal reflects the student is making sufficient progress to meet the goal.

July 22, 2022 IEP Team Meeting

5. On July 22, 2022, the IEP team convened to develop the student's IEP and an Emergency Learning Continuity Plan. The PWN generated after the IEP team meeting reflects that the complainants' shared concerns and updated information regarding the student's social emotional status. The IEP team agreed to update the student's social/emotional PLAAFP to reflect the student's needs. The IEP team discussed the impact of the student's DIBELS scores on the development of the IEP. The IEP team determined the student requires 30 minutes per day of specially designed instruction inside and outside of the general education setting for reading and writing.

April 23, 2023 IEP Team Meeting

6. On April 23, 2023, the IEP team convened to determine the student's Extended School Year (ESY) eligibility and discuss home-school communication. The PWN generated after the IEP team meeting reflects that the complainants' requested an updated Comprehensive Test of Phonological Processing 2 (CTOPP-2) and Behavior Rating Inventory of Executive Function (BRIEF) rating scale. The HCPSS psychologist shared that the assessments are part of a formal Psychological Assessment and a parent consent form will be provided in order to proceed with this request. The IEP team reviewed the results of the Qualitative Reading Inventory (QRI). The HCPSS shared that the student performed at instructional level when reading second and third grade

passages. The IEP team determined that the student required two additional response accommodations for instruction and testing, and added additional supplementary aids and services to address homework concerns, checking for understanding, and home-school communication system. The IEP team determined the student did not qualify for ESY services.

August 22, 2023 IEP Team Meeting

7. On August 22, 2023, the IEP team convened at the complainants' request to address parental concerns. The PWN generated after the IEP team meeting reflects that the complainants shared information from the student's private tutor and inquired about the general educator as a provider of specialized instruction. The complainants' advocate requested that the IEP team add a reading fluency goal to the student's IEP and use the Orton-Gillingham "Plus" as the student's reading intervention. The HCPSS staff explained that the general educator will provide support in the event the special educator is absent, the student's reading intervention will change from Systematic Instruction in Phonological Awareness, Phonics and Site Words (SIPPS) to Institute of Multisensory Education (IMSE)¹, and the HCPSS special educator will collect data to determine if the student requires a reading fluency goal. The HCPSS staff shared the current results of the reading intervention indicating the student is on grade level. The IEP team agreed to update the reading foundational skill's PLAAFP to reflect current information and clarified the IEP as to the time and manner of the student's reading intervention. The IEP team also agreed to update the student's reading goal to reflect the suggestions by the complainant's advocate and perform an Assistive Technology (AT) trial to determine if speech-to-text would benefit the student.

October 12, 2023 IEP Team Meeting

8. On October 12, 2023, the IEP team convened to intermittently review the student's IEP. The PWN generated after the IEP team meeting reflects that the complainants requested a text to audio book tool so the student can hear the words as she reads, inquired as to how the student is assessed on the IMSE reading intervention, requested a less distracting location for the student to read independently, and expressed concerns about the information included in the home-school communication. The IEP team agreed to add a less distracting reading location for independent reading to the student's supplementary aids and services, to update the fluency data in the student's reading foundational skill's PLAAFP, and to add a reading fluency goal that multiple sources will be used to monitor the student's fluency progress. The IEP team further agreed that the student did not require AT services. The HCPSS staff discussed the data for monitoring the student's progress in reading and described the various ways it will be reported to the complainants. The IEP team determined the student requires specially designed instruction for 30 minutes a day in the general education setting for writing, 15 minutes, 3 times a week out of the general education setting for fluency, and 30 minutes per day out of the general education setting to address decoding and encoding goals/objectives.

¹ IMSE is an Orton-Gillingham based program that teaches students to read using a multi-sensory approach.

9. There is no documentation that a reading fluency goal was added to the student's IEP.²

November 16, 2023 IEP Team Meeting

10. On November 16, 2023, the IEP team convened to intermittently review the student's IEP. The PWN generated after the IEP team meeting reflects that the complainants requested that the student's PLAAFP be updated to reflect that the student is not on grade level. They inquired as to how the reading fluency data is obtained and if the reading fluency objective should be changed to reflect the scoring of the data. The complainants also expressed concerns about the recent scores surrounding the student's reading comprehension. The HCPSS staff explained the manner in which the reading data is obtained, and it does not impact the reading fluency objective as written. They further explained that the PLAAFP would not be updated at this time because the quarterly progress accurately reflects the student's progress towards achieving the goals. The HCPSS special educator explained the impact of the student's reading skills on her comprehension. The IEP is prioritizing decoding, encoding, and fluency and growth in those areas, which will positively impact the student's comprehension. The HCPSS staff reviewed the results of the AT trial data. The data reflects that the student performed better when handwriting her assignments than when using speech to text technology. The HCPSS IEP team members agreed to consult the general educators for any deficits in the student's writing performance to determine if additional support is needed.

DISCUSSION/CONCLUSION:

The HCPSS' IEP team is required to develop a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability. (34 CFR §300.320) In this case, on October 12, 2023, the IEP team agreed to add a reading fluency goal to the student's IEP to address fluency concerns. The IEP reflects that a reading fluency objective was added to the student's existing decoding goal, however, no annual reading fluency goal was added.

Based upon the Findings of Fact #1, to #10, MSDE finds that the HCPSS has not ensured that the IEP was reasonably calculated to address the student's identified reading needs since January 29, 2023, in accordance with 34 CFR §§300.101, .320, and .324. Therefore, this office finds that a violation occurred concerning the allegation.

Allegation #2:

Progress Measurement

FINDINGS OF FACT:

11. There is documentation that the progress reported on January 20, March 31, and June 14, 2023, towards the achievement of the reading foundational skills goal, was measured as required by the IEP.

² The student's October 12, 2023, IEP reflects that a reading fluency objective was added to the student's reading foundational skills goal. However, an objective is not measured for annual progress.

12. There is documentation that the progress reported on October 31, 2023, towards the achievement of the reading foundational skills goal, was not measured as required by the IEP. Specifically, the progress reported does not reflect the requisite number of trials.
13. There is documentation that the progress reported on January 25, 2024, towards the achievement of the reading foundational skills goal, was not measured as required by the IEP. Specifically, the progress reported does not reflect the requisite number of trials. The progress was reported using the goal objectives, and there is no documentation of progress reported for the reading fluency objective.

CONCLUSIONS:

Based upon the Finding of Fact #11, MSDE finds that the HCPSS has ensured that the student's progress towards achievement of her annual IEP goals, specifically her reading fluency goals, were measured as required by the IEP from January to June 2023, in accordance with 34 CFR §§300.101, .320 and .324. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Based upon the Findings of Fact #12 and #13, MSDE finds that the HCPSS has not ensured that the student's progress towards achievement of her annual IEP goals, specifically her reading fluency goals, were measured consistently with the requisite number of trials as required by the IEP on October 31, 2023, and January 25, 2024, in accordance with 34 CFR §§300.101, .320 and .324. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

Allegations #3, 4, and 5:

Provision of IEP Team Meeting Documents and the IEP, Provision of Prior Written Notice

FINDING OF FACT:

14. In its written response, the HCPSS acknowledges that the complainants did not receive IEP documents before or after IEP team meetings and prior written notice of the IEP team's decisions on June 8, 2023, August 22, 2023, October 12, 2023, and November 16, 2023, as required by IDEA and COMAR.

CONCLUSIONS:

Allegations #3 and #4

Based upon the Finding of Fact #14, MSDE finds that the HCPSS did not ensure that the parent was provided with accessible copies of each document the IEP team planned to discuss at the August 22, 2023, October 12, 2023, and November 16, 2023, IEP team meetings at least five business days before the scheduled meeting, and a copy of the IEP document within five business days after the IEP team meetings on August 22, 2023, October 12, 2023, and November 16, 2023, in accordance with COMAR 13A.05.01.07. MSDE concurs with the HCPSS' conclusions and appreciates the school system's response to the investigation.

Allegation #5

Based upon the Finding of Fact #14, MSDE finds that the HCPSS did not provide the parent with proper prior written notice of the team's decision made at the IEP team meeting on June 8, 2023, August 22, 2023, October 12, 2023, and November 16, 2023, in accordance with 34 CFR §300.503. MSDE concurs with the HCPSS' conclusions and appreciates the school system's response to the investigation.

Allegation #6:

Request for Records

FINDINGS OF FACT:

15. On September 14 and 19, 2023, the complainants emailed the HCPSS staff and requested a copy of the student's instructional data.
16. On September 28, 2023, the complainants emailed the HCPSS staff to inquire about the September 14, and 19, 2023, requests for instructional data. The email reflects the complainants had not received a response to the requests.
17. On October 5, 2023, the HCPSS staff emailed the complainants indicating that the "data associated with IEP goals are shared quarterly via Progress Reports. I will be happy to share data at that time." There is documentation that the October 31, 2023, progress report included instructional data.
18. There is documentation that the HCPSS provided the student's "data summary" on October 15, 2023, to the complainant.
19. On November 3, 2023, the complainants emailed the HCPSS staff and requested a copy of the student's educational record, a copy of all data collected towards the student's IEP goals for the 2023-2024 school year, which includes actual data collection sheets from each reading session, copies of the IMSE placement assessments, IMSE instructional material, and any summaries provided prior to the IEP team meeting.
20. On November 13, 2023, the HCPSS staff emailed the complainants. The email reflects that the HCPSS received the complainant's request for the student's educational records in preparation for the November 16, 2023, IEP team meeting. The HCPSS staff advised they had 45 days to fulfill the request. The HCPSS staff shared that the IMSE instructional materials could not be copied or photographed due to copyright laws. The email reflects that on November 15, from 11:30-12:30, the complainants could review the IMSE instructional materials and the student's educational records and data.
21. There is documentation that the complainant reviewed the student's educational records on November 15, 2023.

CONCLUSION:

Based upon the Findings of Fact #15 to #21, MSDE finds that the HCPSS did ensure that proper procedures were followed when responding to a request to inspect and review the student’s educational record since September 11, 2023, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation did not occur concerning the allegation.

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 non-compliance is corrected in a timely manner.³ 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.

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 Alison Barmat, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.⁴ Ms. Barmat can be reached at (410) 767-7770 or by email at Alison.Barmat@maryland.gov.

Student-Specific

MSDE requires the HCPSS to provide documentation by July 1, 2024, that the school system has convened an IEP team meeting to develop a reading fluency goal and determine if the failure to develop a reasonably calculated IEP that includes a reading fluency goal, appropriate measurement of the student’s progress, provision of IEP documents before and after the IEP team meeting, and the provision of prior written notice had a negative impact on the student’s ability to benefit from the education program. If the IEP 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 one year of the date of this Letter of Findings.

The HCPSS 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.

³ 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.

⁴ MSDE will notify the public agency’s Director of Special Education of any corrective action that has not been completed within the established timeframe.

School-Based

By July 1, 2024, the HCPSS must provide documentation of the steps it has taken to ensure that the ██████████ ██████████ staff properly implements the requirements for the development of IEPs, proper measurement of progress towards the student's annual IEP goals, provision of IEP meeting documents before and after IEP team meetings, and the provision of prior written notice 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 (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/tg

c: Bill Barnes, Acting Superintendent, HCPSS
Kelly Russo, Coordinator of Special Education Compliance and Dispute Resolution, HCPSS
██████████, Principal, HCPSS
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Dr. Paige Bradford, Programmatic Support and Technical Assistance, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE