

August 14, 2024



Ms. Janice Yetter  
Director of Special Education  
Howard County Public School System  
10910 Clarksville Pike  
Ellicott City, Maryland 21042

RE: [REDACTED]  
Reference: #24-270

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 June 13, 2024, MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of 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) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The HCPSS did not ensure that the IDEA evaluation was conducted within the required timeline since June 13, 2023, in accordance with 34 CFR §§ 300.301-.311 and COMAR 13A.05.01.06.
2. The HCPSS did not follow proper procedures in determining that the student would participate in the Alternative Maryland School Assessment Program and pursue a Certificate of Program Completion since October 4, 2023, in accordance with 34 CFR § 300.320 and COMAR 13A.03.02.09.
3. The HCPSS did not ensure that the student’s parent was afforded an opportunity to attend and participate in the Individualized Education Program (IEP) team meeting, specifically scheduling the IEP team meeting for a mutually agreed upon date and time on October 4, 2023, in accordance with 34 CFR § 300.322 and COMAR 13A.05.01.07.
4. The HCPSS did not provide the parent with prior written notice (PWN) of the decision to implement the student’s initial IEP, to have the student participate in the Alternative Maryland School Assessment Program, and to provide Extended School Year (ESY) services since October 4, 2023, in accordance with 34 CFR § 300.503 and COMAR 13A.05.01.12.

5. The HCPSS did not provide the student's parent with an interpreter in the parent's native language at the IEP team meetings held since October 4, 2023, in accordance with 34 CFR § 300.503 and COMAR 13A.05.01.12.
6. The HCPSS did not provide the student's parent with the PWN of the IEP team's decisions in the parent's native language from the IEP team meetings held since October 4, 2023, in accordance with 34 CFR § 300.503 and COMAR 13A.05.01.12.
7. The HCPSS did not provide a copy of the IEP document in the parent's native language within thirty days after the request was made on February 22, 2024, in accordance with 34 CFR § 300.29 and COMAR 13A.05.01.07.

**BACKGROUND:**

The student is eight years old and is identified as a student with an Intellectual Disability (ID) under the IDEA. She attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACT:**

1. On February 15, 2023, the IEP team convened to review the out-of-state student records and develop and determine "comparable services". There is documentation that an interpreter was present at this meeting.
2. On March 8, 2023, the IEP team convened to discuss assessments, updated hearing documentation, and the Least Restrictive Environment (LRE). The IEP Team Meeting Report generated following this meeting reflects that the IEP team agreed to an initial IEP referral and to conduct assessments in the following areas: reading skills, reading comprehension, reading fluency, math calculation, math reasoning, written expression, psychological, speech-language, Occupational Therapy (OT), and Functional Behavior Assessment (FBA).

There is documentation that an interpreter was present at this IEP team meeting.

On June 13, 2023, the IEP team convened to review assessment results (hearing assessments, OT, speech-language, FBA and Behavior Intervention Plan (BIP), and educational assessment), complete the evaluation process, and determine eligibility for special education and related services. The IEP Team Meeting Report generated following this meeting reflects that the student was found eligible for an IEP under ID.

There is documentation that an interpreter was present at this IEP team meeting.

3. A Notice of an IEP Team Meeting was generated for a continuation IEP team meeting scheduled for June 27, 2023. There is no documentation that this IEP team meeting convened.
4. There is documentation of a Notice of an IEP Team Meeting scheduled for September 13, 2023, and that the parent canceled the meeting.

5. There is documentation of an email between HCPSS staff on September 25, 2023, reflecting that the parent received the Notice of an IEP Team Meeting scheduled for October 4, 2023, and that she was unable to attend the scheduled IEP team meeting. The email further reports the parent's available dates and times to meet.
6. There is documentation of a Notice of an IEP Team Meeting scheduled for October 3, 2023, and that the parent canceled the meeting. There is no documentation that a Notice of an IEP Team Meeting Notice was generated or provided to the parent for October 4, 2023.
7. There is documentation from a partial meeting transcript embedded in the January 29, 2024, IEP that reflects the HCPSS' IEP team met on October 4, 2023, without the parent in attendance. There is no documentation that the HCPSS generated an IEP Team Meeting Report following this meeting.
8. On October 10, 2023, the IEP team convened at the parent's request to review the "new IEP". The audio recording from this IEP team meeting reflects that per "HCPSS standards... three attempts to contact the parent...on the 3<sup>rd</sup> attempt, we need to hold the IEP team meeting. We had the meeting and now we are here to review the meeting. The IEP was still in draft format, any changes that need to be made can still be made, but the IEP has not been finalized."

The IEP Team Meeting Report generated following this meeting reflects that the IEP team discussed the consideration of the student's participation in district and statewide assessments, the draft Present Levels of Academic Achievement and Functional Performance (PLAAFP), and the review of special considerations and accommodations (including speech-language services, assistive technology, behavior intervention, and services for students with limited English proficiency), instructional and testing accommodations, presentation accommodations, timing accommodations, supplementary aids, services and program modifications, Extended School Year (ESY) services, annual goals and objectives, services (including special education services, Occupational Therapy (OT) and speech-language), and the Least Restrictive Environment (LRE). It is further reflected that the parent was in attendance for this IEP team meeting.

The Team Meeting Report reflects that the IEP team agreed with the services:

- 22.5 hours weekly of special education instruction outside the general education classroom;
- 10 hours weekly of special education instruction inside the general education classroom setting with non-disabled peers for related arts, lunch and recess;
- One session, 20 minutes weekly of OT;
- Two sessions, 30 minutes weekly of speech-language services; and
- 20 hours per week of special education instruction during ESY.

The IEP team discussed and agreed to the LRE placement being in the Academic Life Skills (ALS) classroom, after considering inside general education setting less than 40%.

The Team Meeting Report further reflects that the parent requested a translated copy of the IEP discussed at this meeting. There is documentation that an interpreter was present at this meeting. There is no documentation of the provision of PWN for this meeting.

9. On December 12, 2023, the IEP team convened to develop and approve the "initial IEP". The IEP Team Meeting Report generated following this IEP team meeting reflects that the IEP team reviewed data, information provided by the parent, and teacher/staff feedback and reports, including the discussion of Appendix A.

There is documentation that an interpreter was present at this IEP team meeting. There is no documentation of the provision of the PWN for this meeting.

10. On December 19, 2023, the IEP team convened to develop and approve the "initial IEP". The IEP Team Meeting Report generated following this IEP team meeting reflects that the IEP team reviewed data, information provided by the parent, and teacher/staff feedback and reports, including information regarding a "diploma versus a certificate."

The Parental Consent Form generated at this IEP team meeting reflects that the IEP team proposed to instruct the student using alternate standards that do not provide credit towards a Maryland High School Diploma and to assess the student with the alternate education assessments aligned with the State's alternative standards. The Parental Consent Form further reflects that the parent had until January 17, 2024, to respond to the proposal.

There is documentation that an interpreter was present at this IEP team meeting. There is no documentation of the provision of the PWN for this meeting.

11. On January 29, 2024, the complainant emailed the HCPSS. The email reflects that the Parent Consent Form generated on December 19, 2023, was pre-checked as agreed, indicating that the team and parent agreed to the student being placed on the Alternative Assessment. The email further reflects that the parent did not agree and wanted the student to stay on the diploma track. There is no documentation that this form was signed by the parent.

12. On January 30, 2024, the IEP team reconvened to develop and approve an initial IEP. The IEP Team Meeting Report generated following this meeting reflects that the parent shared that she does not consent to the student being placed on the certificate track and wants the student to seek a Maryland State High School diploma. The IEP team considered the student's participation in the Maryland Statewide assessments and determined that the student will participate in the Maryland Comprehensive Assessment Program (MCAP) and is pursuing a Maryland High School Diploma. The IEP team reviewed the PLAAFPs, the special considerations and accommodations including the Behavior Intervention Plan (BIP), instructional and testing accommodations, supplementary aids, services and program modification, ESY, special education services, related services, and LRE.

The IEP Team determined that the student qualifies for ESY. It is further reflected that the IEP team considered and accepted inside general education setting 40- 79% as the student's LRE.

There is documentation that an interpreter was present at this IEP team meeting. There is no documentation of the provision of the PWN for this meeting.

The IEP developed on January 30, 2024, reflects that "staffing issues" caused a delay in the initial evaluation.

The IEP further reflects that Appendix A was completed to consider the student eligible for participation in the Alternate Assessments and that the IEP team answered "agree" to all the required items. As part of Appendix A, the IEP further reflects that an evaluation review of cognitive/adaptive ability was conducted, including a cognitive ability, educational, and adaptive skills assessment. It is reflected that the:

- "decision was based on multiple pieces of evidence that, when taken together, demonstrated that the Maryland Alternate Assessments are appropriate for this

student; that his/her academic instruction will be based on alternate academic achievement standards...; that the additional considerations... were not used to make this decision; and that any additional implications of this decision were discussed thoroughly, including that participating in the Maryland Alternate Assessments will not qualify a student for a regular high school diploma. 34 CFR § 300.160.d;”

- “As documented through the eligibility criteria and additional criteria listed above, it has been determined that the student is being instructed with modified grade-level content standards that do not represent grade-level content. Therefore, the student may not earn proficient scores on the general assessments, even with the provision of accommodations;”
- “The IEP Team agreed that the student met all criteria listed on this eligibility tool; therefore, the IEP Team determined the student eligible to participate in the alternate assessments and/or alternate instructional standards;” and
- “The historical data (current and longitudinal across multiple settings) justifies the IEP team’s decision for the student to participate in the alternate assessments and/or alternate instructional standards.”

The IEP reflects that the student will participate in the MCAP Assessments for grades 3 through 8. While the IEP reflects that the parent was explained the graduation requirements, the IEP does not reflect a Projected Category of Exit. The IEP further reflects a Plan for Participation in Instruction Using Alternative Standards, and that the IEP team determined that the student qualifies to be instructed and assessed using alternate standards, which, if continued, will result in not earning credits toward a Maryland High School Diploma. The IEP reflects that the parent does not consent to the student being instructed or assessed using alternate standards.

The IEP reflects that the parent requested a translated copy of the completed IEP.

13. On February 22, 2024, HCPSS staff emailed the parent sharing that a finalized copy of the IEP would be provided and a translated copy for their records.
14. On May 21, 2024, the translated IEP was provided to the parent.
15. There is no documentation that the parent was provided with the PWNs of the IEP team's decisions in the parent’s native language from the IEP team meetings during the 2023- 2024 school year.

## **DISCUSSIONS AND CONCLUSIONS:**

### **ALLEGATION #1**

### **IDEA EVALUATION CONDUCTED WITHIN REQUIRED TIMELINE**

The IEP team shall complete an initial evaluation of a student within sixty days of parental consent for assessments (34 CFR § 300.301 and COMAR 13A.05.01.06(A)). If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child within thirty days of the determination in accordance with §§ 300.320 through 300.324 (34 CFR §300.306 and COMAR 13A.05.01.08A(1)).

In this case the IEP team agreed to conduct an initial evaluation of the student on March 8, 2023; the IEP team determined the student eligible for special education services on June 13, 2023. On January 30, 2024, the IEP team developed the student’s IEP.

Based upon the Finding of Facts #1 through #13, MSDE finds that the HCPSS did not ensure that the IDEA evaluation was conducted within the required timeline since June 13, 2023, in accordance with 34 CFR §§ 300.301-.311 and COMAR 13A.05.01.06 and .08A(1). Therefore, this office finds a violation occurred concerning the allegation.

**ALLEGATION #2** **PROPER PROCEDURES IN DETERMINING STUDENT PARTICIPATION IN THE ALTERNATIVE MARYLAND SCHOOL ASSESSMENT PROGRAM AND PURSUE A CERTIFICATE OF PROGRAM COMPLETION**

In this case, the IEP team completed the components of Appendix A, which is used when considering an alternative education framework. While the IEP team found the student eligible to participate in the Alternative Maryland School Assessment program, the decision was not incorporated into the IEP because the parent did not provide consent. The student's current IEP reflects the student is pursuing a Maryland high school diploma.

Based upon the Findings of Fact #8 through #12, MSDE finds that the HCPSS did follow proper procedures in determining that the student would participate in the Alternative Maryland School Assessment Program and pursue a Certificate of Program Completion since October 4, 2023, in accordance with 34 CFR §300.320 and COMAR 13A.03.02.09. Therefore, this office does not find a violation occurred concerning the allegation.

**ALLEGATION #3** **PARENT ATTENDANCE AND PARTICIPATION IN AN IEP TEAM MEETING**

The public agency is required to take steps to ensure a parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings, including notifying the parent of the meeting early enough to ensure that the parent will have an opportunity to attend and scheduling the meeting at a mutually convenient time and place. If the parent cannot attend an IEP team meeting, the public agency must use other methods to ensure participation, including by individual or conference telephone calls (34 CFR § 300.322).

In this case, there is documentation that the IEP team attempted to hold IEP team meetings on June 27, 2023, September 13, 2023, and October 3, 2023, and that the parent had to cancel. The third IEP team meeting notice for an IEP team meeting scheduled on October 3, 2024, provided to the parent did not include the language that after the third attempt to schedule an IEP team meeting, the IEP team would move forward without the parent. There is documentation that the IEP team met on October 4, 2024, without the parent in attendance. There is no documentation that a Notice for an IEP team meeting was provided to the parent for the October 4, 2024, meeting.

Based upon the Findings of Fact #6 through #8, MSDE finds that the HCPSS did not ensure that the student's parent was afforded an opportunity to attend and participate in the IEP team meeting on October 4, 2023, in accordance with 34 CFR § 300.322 and COMAR 13A.05.01.07. Therefore, this office finds a violation occurred concerning the allegation.

Notwithstanding, the parent was able to participate in the October 12, 2023, IEP team meeting where the IEP team decisions were reviewed. Therefore, there is no student specific corrective action required.

**ALLEGATION #4** **PROVISION OF PWN**

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a

description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision, a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR § 300.503).

Based upon the Findings of Fact #8 through #11, and #13, MSDE finds that the HCPSS was required to provide the parent with PWN of the decision to implement the student's initial IEP and obtain consent to do so, since October 4, 2023, in accordance with 34 CFR § 300.503 and COMAR 13A.05.01.12. Therefore, this office finds a violation occurred concerning this aspect of the allegation.

Based upon the Findings of Fact #8 through #11, and #13, MSDE finds that the HCPSS did not provide the parent with PWN of the decision to have the student participate in the Alternative Maryland School Assessment Program, and to provide Extended School Year (ESY) services since October 4, 2023, in accordance with COMAR 13A.05.01.12 and 34 CFR § 300.503. Therefore, this office finds a violation occurred concerning this aspect of the allegation.

**ALLEGATION #5 PROVISION OF AN INTERPRETER AT THE IEP TEAM MEETINGS**

Based upon the Findings of Fact #8 through #10, and #12, MSDE finds that the HCPSS did provide the student's parent with an interpreter in the parent's native language at the IEP team meetings held since October 4, 2023, in accordance with COMAR 13A.05.01.12 and 34 CFR § 300.503. Therefore, this office does not find a violation occurred concerning the allegation.

**ALLEGATION #6 PROVISION OF THE PWN IN THE PARENT'S NATIVE LANGUAGE**

The public agency must provide the PWN written in language understandable to the general public and be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so (34 CFR §300.503(c)).

Based upon the Finding of Fact #16, MSDE finds that the HCPSS did not provide the student's parent with the PWN of the IEP team's decisions in the parent's native language from the IEP team meetings held since October 4, 2023, in accordance with COMAR 13A.05.01.12 and 34 CFR§300.503. Therefore, this office finds a violation occurred concerning the allegation.

**ALLEGATION #7 PROVISION OF THE IEP IN THE PARENT'S NATIVE LANGUAGE**

Maryland law requires that the completed IEP be translated into the parent's native language. If the native language spoken by the parents is spoken by more than one percent appropriate school personnel must provide the parents with the translated document within thirty calendar days after the date of the request. (MSDE Technical Assistance Bulletin 17-04: *Translations/Native Language/Multilingual Learners* (revised April 2023)).

Based upon the Findings of Fact #13 and #14, MSDE finds that the HCPSS did not provide a copy of the IEP document in the parent's native language within thirty days after the request was made on January 30, 2024, in accordance with 34 CFR § 300.29 and COMAR 13A.05.01.07. Therefore, a violation occurred concerning this allegation.

Notwithstanding the violation, based upon Finding of Fact #15, MSDE finds that the HCPSS did provide a copy of the IEP document in the parent's native language on May 21, 2024. Therefore, no further student-specific corrective action is required concerning this violation.

### **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.<sup>1</sup> 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 Ms. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

### **Student Specific**

MSDE requires the HCPSS to provide documentation by October 11, 2024, that the parents have been provided with the PWNs in their native language from October 4, and 10, 2023, December 12, and 19, 2023, and January 30, 2024, IEP team meetings.

In addition, MSDE requires the HCPSS to provide documentation by October 11, 2024, that the IEP team has completed the following:

- Determined the student's present levels of functioning and performance;
- Determined the compensatory services or other remedy needed to redress the evaluation timeline violation; and
- Determined whether the violation related to parent attendance and participation in an IEP team meeting, provision of PWN, and the provision of IEPs and PWNs in the parent's native language 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 remedies 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 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.

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<sup>1</sup> 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.

<sup>2</sup> 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

MSDE requires the HCPSS to provide documentation by October 11, 2024, of the steps it has taken to ensure that the staff at [REDACTED] properly ensures that IDEA evaluations are conducted within the required timelines, ensuring that student's parents are afforded the opportunity to attend and participate in the IEP team meetings, implements the requirements for generating and providing PWNs, and providing IEPs and PWNs in the parent's native languages. The documentation must include a description of how the HCPSS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 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/sd

c: Bill Barnes, Acting Superintendent, HCPSS  
Kelly Russo, Coordinator of Special Education Compliance and Dispute Resolution, HCPSS  
[REDACTED], Principal, [REDACTED], HCPSS  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Nicole Green, Compliance Specialist, MSDE  
Sarah Denney, Complaint Investigator, Dispute Resolution, MSDE