

September 10, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Janice Yetter
Director of Special Education
Howard County Public Schools
10910 Clarksville Pike
Ellicott City, MD 21042

RE: [REDACTED]
Reference: #24-286

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention 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 24, 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 student has consistently been provided with the special education instruction, accommodations, supports, and related services required by the Individualized Education Program (IEP) since June 2023, in accordance with 34 CFR §§ 300.101 and .323.
2. The HCPSS did not provide prior written notice (PWN) of the IEP team's decisions from the IEP team meetings held since June 2023, in accordance with 34 CFR § 300.503.
3. The HCPSS did not ensure that proper procedures were followed when determining the student's need for Extended School Year (ESY) services since June 2023, in accordance with 34 CFR § 300.106 and COMAR 13A.05.01.08.

BACKGROUND:

The student is 10 years old and is identified as a student with Multiple Disabilities under the IDEA. He attends [REDACTED] and has an IEP that requires special education instruction and related services.

ALLEGATION #1 and #3

**PROVISION OF SPECIAL EDUCATION INSTRUCTION,
ACCOMMODATIONS, SUPPORTS, AND RELATED
SERVICES, AND ESY DETERMINATION**

FINDINGS OF FACT:

1. The IEP, in effect in June 2023, was developed on February 23, 2023. The IEP requires seven hours and thirty minutes per week of special education classroom instruction inside of the general education classroom, provided by the special education and general education teachers, and instructional assistant. The IEP requires ten hours per week of special education instruction outside the general education classroom, provided by the special education teacher and instructional assistant. The IEP requires six (6) thirty-minute sessions per month of speech-language services outside of the general education setting, provided by a speech language pathologist and a speech language assistant. The IEP requires one (1) thirty-minute session per week of occupational therapy (OT) outside of the general education classroom provided by an occupational therapist and certified occupational therapy assistant.

The IEP requires the following instructional and assessment accommodations: human reader/human signer for English Language Arts (ELA); human reader - including manual control of item audio and repeat item audio (ACCESS Only); ELA/literacy selected response human scribe; mathematics, science, and government response human scribe; ELA/literacy response human scribe; monitor test response; and extended time (2X).

The IEP requires supplementary aids, services, program modifications, and supports:

- Other as needed - allow use of a pacing board to help with repeating words in sentences (i.e., to focus and slow down speech) during speech therapy activities and as needed in the classroom setting; utilization of tongue depressors, lollipops, cheerios, etc. to assist with oral motor awareness; and
- Daily - have student repeat and/or paraphrase information; provide appropriate processing time for verbal responses; allow use of manipulatives; allow use of organizational aids; check for understanding; frequent and/or immediate feedback; limit amount to be copied from board; provide proofreading checklist; use of word bank to reinforce vocabulary and/or when extended writing is required; using multi-sensory practices when teaching new words, concepts and/or reading foundational skills; provide alternative ways for students to demonstrate learning; break down assignments into smaller units; use pictures to support reading passages whenever possible; strategies to initiate and sustain attention; adult support; adaptive equipment; preferential seating; and Speech language Pathologist (SLP) student support service.

The IEP requires ESY services. During ESY, the IEP requires five hours of special education instruction outside the general education classroom, provided by the special education teacher and instructional assistant. The IEP also requires one (1) thirty-minute session per month of speech-language, outside of the general education setting, provided by a speech language pathologist and speech language assistant.

2. On July 6, 2023, the IEP was amended to require specialized transportation as a related service. The IEP reflects "parent was in agreement for [the student] to receive specialized transportation only for ESY 2023."

3. On July 18, 2023, the IEP team convened to discuss specialized transportation for the 2023-2024 school year. The PWN developed after the IEP team meeting reflects the complainant confirmed in an email that the student will not be using the specialized transportation services during the 2023-2024 school year. However, they will use the specialized transportation services during ESY if he qualifies for having ESY 2023 services.
4. On February 22, 2024, the IEP team convened for the student's annual review meeting. The IEP developed continues to require the same instructional and assessment accessibility features; instructional and assessment accommodations; occupational therapy as a related service, speech- language therapy as a related service; and special education instruction inside and outside of the general education classroom.

The IEP team added an additional daily supplementary support of “breaks (i.e. get a drink of water, short walk) in between class if needed, to help with better focus for completing tasks.”

The IEP continued to require ESY services and reflects “if parents decide for [the student] to participate in ESY services, he is eligible for specialized transportation just for ESY.”

5. On March 14, 2024, the IEP team convened to continue the February 22, 2024, IEP team meeting. The PWN reflects the purpose of the meeting was to discuss the student’s eligibility for ESY services. The “parents were in agreement that [the student] would benefit from an on going learning throughout the summer . . . however, they wanted some time to make the decision for agreeing for ESY 2024, as they felt [the student] may benefit from a one-on-one learning rather than going through the ESY process. They have requested for some time to make their decision and once they decide they would let the team know.”
6. On March 14, 2024, the ESY Information Form was completed. The form reflects the team discussed interventions, delivery of service, and related service including transportation. The form reflects the student requires special education transportation. The form also reflects the parents rejected ESY services.
7. On April 18, 2024, and May 27, 2024, the complainant emailed HCPSS sharing that the family is declining ESY for summer 2024.
8. There is documentation that the student was provided with special education instruction, during ESY 2023, as required by the IEP.
9. While there is some documentation that the student was provided consistently, speech-language services, supplementary aids, and services during ESY 2023, there is no documentation that services were consistently provided as required by the IEP.
10. There is documentation that the student was provided with special education instruction as required by the IEP during the 2023-2024 school year.
11. There is documentation of the provision of speech-language services as required by the IEP 2023 - 2024 school year except on: December 6, 2023, February 20, 2024, and February 28, 2024.
12. There is documentation of the provision of accommodations and OT since June 2023, as required by the IEP.

13. On August 22, 2024, the IEP team convened for the purpose of holding the reevaluation planning meeting, review existing information and, if appropriate, determine the need for assessment(s). During the meeting, the school staff shared that a record review was completed in preparation for the meeting. The school staff reported “3-sessions from the 2023-2024 school year that were not completed due to absences.” The team proposed “to complete or make up these 3-sessions during the month of September (2024). Parent(s) provided verbal consent and agreed that would be okay.”

CONCLUSIONS AND DISCUSSION:

Provision of Special Education Instruction and Supplementary Aids, Services, Program Modifications and Supports

Based on the Findings of Fact #1, and #9, MSDE finds that the HCPSS did not ensure that the student was consistently provided supplementary aids, services, program modifications, and supports, as required by the IEP during ESY 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this aspect of the allegation.

Based on the Findings of Fact #1, #4, and #10, MSDE finds that the HCPSS did ensure that the student was consistently provided with special education instruction, and supplementary aids, services, program modifications, and supports as required by the IEP since the beginning of the 2023 - 2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Provision of Accommodations

Based on the Findings of Fact #1, #4, and #12, MSDE finds that the HCPSS did ensure that the student was consistently provided with accommodations, as required by the IEP during the 2023 - 2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Provision of OT Services

Based on the Findings of Fact #1, #4, and #12, MSDE finds that the HCPSS did ensure that the student was consistently provided with the occupational therapy services as a related service as required by the IEP since June 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Provision of Speech-Language Services

Based on the Findings of Fact #1, #4, and #9, MSDE finds that the HCPSS did not ensure that the student was provided with the speech-language as a related service during ESY 2023 as required by the IEP, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this aspect of the allegation.

Based on the Findings of Fact #1, #4, and #11, MSDE finds that the HCPSS has not ensured that the student has been provided with the speech-language as a related services as required by the IEP during the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this aspect of the allegation.

Notwithstanding, based on the Finding of Fact #13, on August 22, 2024 the IEP team proposed to remedy missed speech – language services, from that occurred during the 2023-2024 school year. Therefore, no additional corrective action is warranted.

ESY

ESY services are a component of a free appropriate public education (FAPE). Some students will need individualized services provided beyond the regular school calendar to enable them to maintain skills on specific goals and objectives and assist them in progressing on those goals within the IEP cycle. ESY services are necessary when the benefits a child with a disability gain during the regular school calendar will be significantly jeopardized if the child is not provided with an educational program during regular school breaks. All students with IEPs must be considered for eligibility for ESY services to receive a FAPE. (34 CFR § 300.106; COMAR 13A.05.01.09A(2)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is provided with a FAPE.

When determining whether ESY services are required for the provision of FAPE, the IEP team must consider whether the student's IEP includes annual goals related to critical life skills, whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time, the student's degree of progress toward mastery of the annual IEP goals related to critical life skills, the presence of emerging skills or breakthrough opportunities, interfering behaviors, the nature and severity of the disability, and special circumstances. (COMAR 13A.05.01.08B(2)(b)).

After considering the required factors, the IEP team must decide whether the benefits that a student received from the education program during the regular school year will be significantly jeopardized if the student is not provided with ESY services. (COMAR 13A.05.01.08B(2)(c)). The school system must provide written notice to the parent of the team's decisions regarding the student's need for ESY services. This includes informing the parent of the decisions and providing the parent with an explanation of the bases for the decisions. (34 CFR § 300.503(b)).

Based on the Findings of Fact #1, through #7, MSDE finds that the HCPSS did ensure that proper procedures were followed when determining the student's need for ESY services since June 2023, in accordance with 34 CFR § 300.106 and COMAR 13A.05.01.08. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #2 PROVISION OF THE PWN

FINDINGS OF FACT:

12. There is documentation that the PWNs developed on July 6, 2023, July 18, 2023, February 22, 2024, and March 14, 2024, included: 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.

DISCUSSION AND CONCLUSION:

Provision of the 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 on the Finding of Fact #12, MSDE finds the HCPSS did provide prior written notice (PWN) of the IEP team's decisions from the IEP team meetings held since June 2023, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation did not occur concerning the allegation.

CORRECTIVE ACTIONS AND 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. 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-Based

MSDE requires the HCPSS to provide documentation by November 1, 2024, that the IEP team has taken the following action:

- a. Convened an IEP team meeting to determine whether the violation related to the provision of supplementary aids and services, and missed speech and language services, had a negative impact

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.

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.

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. The IEP team must develop a plan for implementing these services within one year of this Letter of Findings.

HCPSS must ensure that the parents are provided with written notice of the team's decisions. The 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 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 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/ra

c: Bill Barnes, Acting Superintendent, HCPSS
Dr. Terrell Savage, Chief, Teaching and Learning, HCPSS
Kelly Russo, Coordinator of Special Education Compliance and Dispute Resolution, HCPSS
[REDACTED], Principal, [REDACTED], 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
Rabiatu Akinlolu, Complaint Investigator, MSDE
Nicole Green, Compliance Specialist, MSDE