


October 21, 2024




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

Re: 
Reference: #25-041

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 August 22, 2024, MSDE received a complaint from , 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) and related requirements concerning the above-referenced student.

MSDE investigated the following allegations:

1. The HCPSS did not follow proper procedures in responding to a request for an Independent Educational Evaluation (IEE) that was made following the IDEA evaluation, since August 2023, in accordance with 34 CFR § 300.502 and COMAR 13A.05.01.14.
2. The HCPSS did not provide prior written notice (PWN) of the Individualized Education Program (IEP) team's decisions from the IEP team meetings held since August 2023, in accordance with 34 CFR § 300.503.
3. The HCPSS did not follow proper procedures when conducting an IDEA evaluation, since January 2024, in accordance with 34 CFR §§ 300.111, .301 - .311, and COMAR 13A.05.01.06.
4. The HCPSS did not provide a copy of the IEP document within five business days after the IEP team meetings held since February 26, 2024, in accordance with COMAR 13A.05.01.07.
5. The HCPSS has not developed and implemented an IEP that addresses the student’s identified academic needs since February 26, 2024, in accordance with 34 CFR §§ 300.101 and .324.

6. The HCPSS has not followed proper procedures when responding to a request to amend the student's education record, since June 2024, in accordance with 34 CFR § 300.618.

BACKGROUND:

The student is eight years old and is identified as a student with Other Health Impairment (OHI) under the IDEA. The student attends [REDACTED] school and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1

REQUEST FOR AN IEE

FINDING OF FACT:

1. On August 7, 2023, the complainants requested an IEE. On September 13, 2023, the HCPSS provided a written response approving the IEE.

DISCUSSION AND CONCLUSION:

Parents of a student with a disability have the right to obtain one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. When a parent requests an IEE at public expense, the public agency must provide a written response either approving or denying the request within 30 days of the date the request is made. If the request is approved, the public agency must advise the parent of the process for arranging the evaluation at public expense; however, if it is denied, the public agency must file a due process complaint within 30 days of the denial. (34 CFR § 300.502 and COMAR 13A.05.01.14).

Based on Finding of Fact #1, MSDE finds that the HCPSS did not follow proper timeline procedures in its response to the IEE request that was made following the IDEA evaluation, in accordance with 34 CFR § 300.502 and COMAR 13A.05.01.14. Therefore, this office finds that a violation occurred concerning the allegation.

Notwithstanding, based on Finding of Fact #1, MSDE finds that the HCPSS responded to the complainant's August 7, 2023, request for an IEE, on September 13, 2023. Therefore, no additional corrective action is warranted.

ALLEGATION #2

PROVISION OF PWN

FINDINGS OF FACT:

2. There is documentation that the PWNs generated following the IEP team meetings held on February 1, 2024, April 29, 2024, and September 4, 2024, were provided to the complainant.
3. There is no documentation that the June 12, 2024, PWN was provided to the complainant.

DISCUSSION AND CONCLUSION:

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 Findings of Fact #2 and #16, MSDE finds that the HCPSS, did provide PWN of the IEP team's decisions from the IEP team meetings held on February 1, 2024, April 29, 2024, and September 4, 2024, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Based on Finding of Fact #3, MSDE finds that the HCPSS, did not provide the PWN of the IEP team's decisions from the IEP team meeting held on June 12, 2024, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

ALLEGATION #3

EVALUATION PROCEDURES

FINDINGS OF FACT:

4. On January 11, 2024, the IEP team convened to review private assessments for the purpose of determining eligibility. The PWN generated following the meeting reflects the IEP team reviewed an education assessment and a psychological assessment. The PWN also reflects that the eligibility decision would be made at the next meeting.
5. On January 26, 2024, the IEP team reconvened to continue reviewing the private assessments for the purpose of determining eligibility. The PWN generated following the meeting reflects no decisions were made, and a continuation meeting was required.
6. On February 1, 2024, the IEP team reconvened to complete the evaluation process. The PWN generated following the meeting reflects that the IEP team considered whether the student was eligible under emotional disability (ED), specific learning disability (SLD), autism, and multiple disabilities (MD), but the team found the student did not qualify for ED, SLD, autism, or MD. The team also considered other health impairment (OHI) due to attention-deficit/hyperactivity disorder (ADHD) and found that the student qualifies for OHI (ADHD).

CONCLUSION:

Based on Findings of Fact # 4 through #6, MSDE finds that the HCPSS did follow proper procedures when conducting an IDEA evaluation, since January 2024, in accordance with 34 CFR §§ 300.111, .301 - .311, and COMAR 13A.05.01.06. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #4 and #5

**PROVISION OF IEP FIVE DAYS AFTER IEP MEETING AND
DEVELOPMENT AND IMPLEMENTATION OF THE IEP**

FINDINGS OF FACT:

7. On February 26, 2024, the IEP team convened to develop the student's initial IEP. The PWN reflects the IEP team reviewed district and statewide assessments, present levels of academic achievement and functional performance (PLAAFP), special considerations and accommodations, supplementary aids, and services and program modifications. The PWN reflects the IEP team agreed to reconvene to develop the IEP.
8. On March 8, 2024, the IEP team reconvened to continue developing the student's initial IEP. The PWN reflects the IEP team reviewed the proposed: instructional and testing accessibility features, timing accommodations, supplementary aids, services, and program modifications, and annual goals and objectives. The PWN reflects the IEP team required a continuation meeting to finish presenting the visual/fine motor goal area, and the remaining pages of the IEP.
9. On April 5, 2024, the IEP team reconvened to continue developing the student's initial IEP. The PWN reflects the IEP team reviewed the proposed: annual goals and objectives, special education services, and related services.
10. On April 29, 2024, the IEP team reconvened to continue developing the student's initial IEP. The PWN reflects the IEP team reviewed the proposed: instructional and testing accommodations, supplementary aids and services, annual goals and objectives, services, related services, and least restrictive environment (LRE).
11. The IEP developed on April 29, 2024, reflects the following areas that are impacted by the disability: reading fluency skills, fine motor, and social/interaction. The IEP includes PLAAFP and goals. The IEP reflects parental input from the complainant was incorporated into the IEP.

The IEP requires assistive technology (AT) device and services, instructional and assessment accessibility features and supplementary aids, services, programs modifications and supports.

The IEP requires four hours and ten minutes per week of instruction inside the general education setting to be provided by the special education teacher, general education teacher and/or instructional assistant. The IEP requires 50 minutes per week outside of the general education setting to be provided by the special education teacher, general education teacher and/or instructional assistant.

The IEP requires 40 minutes per month of occupational therapy as a related service outside of the general education setting to be provided by the occupational therapist and/or certified occupational therapist. The IEP requires one hour per month of psychological services outside of the general education setting.

The IEP reflects the least restrictive environment (LRE) is inside the general education setting more than 80%.

12. There is documentation that the HCPSS provided the complainant with a copy of the IEP on May 2, 2024.
13. On May 21, 2024, the complainant provided written consent to implement the IEP.
14. On June 12, 2024, the IEP team convened to address parental concerns. The PWN generated following this meeting reflects the complainant expressed concerns about the student's speech needs. The school-based staff expressed the student does not have communication/language needs that impact access to the curriculum. The school-based staff declined to conduct a speech assessment.

The PWN also reflects the school-based team proposed compensatory services as a result of the delay with implementation of the IEP. The HCPSS offered the following compensatory services: Classroom Instruction Fine Motor for six hours, Social Interaction Skills for seven hours and thirty minutes, and Reading Fluency for two hours and thirty minutes.

CONCLUSIONS:

Provision of IEP

Based on Findings of Fact #7 through #12, MSDE finds that the IEP was not completed until April 29, 2024. MSDE finds that the HCPSS did provide the IEP to the complainant within five days of the IEP meeting on April 29, 2024, in accordance with COMAR 13A.05.01.07. Therefore, MSDE finds that a violation did not occur concerning the allegation.

Developed and Implement IEP¹

Based on Findings of Fact #7 through #11 and #14, MSDE finds that the HCPSS has developed an IEP that addresses the student's identified academic needs since February 26, 2024, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Based on Findings of Fact #6 and #11, MSDE finds that the HCPSS has not developed the IEP within 30 days of completion of the student's evaluation. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

Based on Finding of Fact #14, MSDE finds that the HCPSS has not implemented the student's IEP developed on April 29, 2024. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

¹ On September 20, 2024, the complaint informed MSDE that the student did not receive home – school communication from May 22, 2024, through the end of the 2023-2024 school year. The complainant also raised concerns on September 20, 2024, that the student is not receiving daily check in as required by the IEP. The IEP reflects "access to trusted adult, as needed." This service is to be provided by the special education teacher, general education teacher, and/or instructional assistant.

ALLEGATION #6

RESPONSE TO REQUEST TO AMEND

FINDING OF FACT:

15. On September 26, 2024, the complainant emailed questions and a request to amend the PWN developed on September 24, 2024, to the school-based staff. On September 27, 2024, the school-based staff responded to the complainant's questions and request to amend the PWN. The email reflects that the amended PWN was attached to the email.

CONCLUSION:

Based on Finding of Fact #15, MSDE finds that the HCPSS has followed proper procedures when responding to a request to amend the student's education record, since June 2024, in accordance with 34 CFR § 300.618. Therefore, this office finds that a violation did not occur concerning the allegation.

CORRECTIVE ACTIONS AND TIMELINE:

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.² 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.³ Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student-Specific

MSDE requires the HCPSS to provide documentation by November 1, 2024, that the IEP team has provided the complainant with the PWN developed on June 12, 2024.

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.

² 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.

³ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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 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/ra

- c: Bill Barnes, Acting Superintendent, HCPSS
Ms. Kelly Russo, Coordinator of Special Education Compliance and Dispute Resolution, HCPSS
[REDACTED], Principal, [REDACTED], HCPSS
[REDACTED], Principal, [REDACTED], HCPSS
Dr. Paige Bradford, Chief, Specialized Instruction, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Alison Barmat, Chief, Family Support and Dispute Resolution Branch, MSDE
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