


October 21, 2024




Dr. Melissa Brunson
Director of Special Education, WCPS
Washington County Public Schools
10435 Downsville Pike
Hagerstown, Maryland 21740

RE: 
Reference: #25-043

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 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 Washington County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The WCPS has not followed proper procedures in the evaluation and determination of eligibility of the student for special education services under IDEA, since January 2, 2024, in accordance with 34 CFR §§ 300.111, and .301-.311 and COMAR 13A.05.01.06.
2. The WCPS did not follow proper procedures in responding to a request for an evaluation to include speech-language, occupational therapy (OT), neuropsychological, and educational assessments since January 2024, in accordance with 34 CFR §§ 300.303 - .311 and .503.
3. The WCPS did not ensure that the IEP was developed within the required timelines since May 22, 2024, in accordance with 34 CFR § 300.323 and COMAR 13A.05.01.08A(1).
4. The WCPS has not ensured that the IEP team addressed the parent’s concerns regarding the student’s autism diagnosis since May 22, 2024, in accordance with 34 CFR § 300.324.

BACKGROUND:

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

FINDINGS OF FACT:

1. On January 2, 2024, the complainant emailed the WCPS. The email reflects that the student has attention deficit hyperactivity disorder (ADHD), severe anxiety, and a learning disability. It is further reflected that the complainant requested testing for speech-language, OT, and educational testing by a school psychologist.
2. On January 3, 2024, a Notice of IEP Team Meeting document was generated. This document reflects that the purpose of the IEP team meeting was to review the written referral and/or existing data and information, and, if appropriate, determine eligibility for special education services.
3. On January 17, 2024, a Child Find Referral was completed. The Child Find Referral reflects the purpose of the referral being articulation, motor, reading (fluency and oral reading skills), reading comprehension, written expression, and written language mechanics. It is further reflected that the observer noted difficulties compared to peers in the areas of reading comprehension, fluency, spelling, writing mechanics, writing a sentence, and small motor tasks.
4. On January 22, 2024, the IEP team convened to discuss the need for additional assessments and determine eligibility for special education services. The Prior Written Notice (PWN) generated following this IEP team meeting reflects that the school-based IEP team did not agree to complete additional assessments because the current data did not support the need. The data reviewed included the Primary Care Physician (PCP) diagnosis, classroom observations, "eRI data", teacher and parent input, grade level performance, and growth measurement assessments. The team agreed to continue interventions and monitor progress.

While the PWN does not specifically reflect that OT assessments were not needed, there is documentation that an occupational therapist was present for the IEP team meeting, and the PWN reflects that additional assessments were not agreed upon.

5. On January 22, 2024, a Notice of No Assessment Needed document was generated. It reflects that the student was not suspected of being a child with a disability or a child with a developmental delay, and no additional information was needed.
6. On March 27, 2024, a Child Find Referral was completed. The Child Find Referral reflects the purpose of the referral being articulation, expressive language, receptive language, phonemic awareness, reading fluency, reading skills, written expression, and written language mechanics. It is further reflected that the observer noted difficulties compared to peers in the areas of letter/word recognition, phonemic awareness, phonics, fluency, spelling, writing a sentence, organizing sentences and ideas into meaningful paragraphs, distractibility, organization, note-taking, working independently, frustration, and needs for consistent approval.

7. On March 27, 2024, a Notice and Consent for Assessment document was generated. It reflects that the student would be assessed in the areas of reading, mathematics, written language, articulation, expressive language, receptive language, intellectual cognitive functioning, fine motor skills. In addition, an observation, attention rating scales, and phonological processing and executive functioning assessments/checklists would be completed. On the same date, the complainant gave permission to conduct the agreed upon assessments.
8. On April 11, 2024, the WCPS completed an OT assessment.
9. On April 30, 2024, the WCPS completed an educational assessment.
10. On May 13, 2024, the WCPS completed a psychological evaluation.
11. On May 15, 2024, the complainant received a private psychiatric letter. The letter reflects that based on the Gilliam Autism Rating Scale-3 (GARS-3) the student was "showing high probability of having autism." The letter requests that the WCPS conduct the Autism Diagnostic Observation Schedule (ADOS).
12. On May 21, 2024, the complainant emailed the WCPS a copy of the psychiatric letter. The email reflects that the complainant "wanted to send it... for your file." It is not reflected that the parent wanted the IEP team to address the contents of the psychiatric letter.
13. On May 22, 2024, the IEP team convened to review a written referral, and/or existing data and information, and, if appropriate, determine eligibility for special education services. The PWN generated following this IEP team meeting reflects that the IEP determined that the student did not qualify for speech-language services based on formal assessments. The IEP team summary, dated May 22, 2024, reflects that the student was found eligible for special education services under OHI with reading phonics, reading fluency, written expression, and self-management being areas of need.

There is documentation that the OT, psychological, and educational assessment data was shared at this IEP team meeting.

There is no documentation that the parent-provided psychiatric letter was addressed by the complainant or the WCPS.

14. On June 6, 2024, the WCPS emailed the complainant requesting an extension for completing the IEP due to the school year ending and staffing changing for the summer.
15. On June 12, 2024, the complainant emailed the PGCPs staff in response to the request for an extension. The PGCPs staff member that was emailed was no longer on duty due to summer vacation and did not receive the email. The email reflects certain provisions that the complainant wanted to put into place in order to agree to the extension, however, it is unclear if an agreement was made.
16. On July 22, 2024, the IEP team convened to develop the student's IEP. The PWN generated following this meeting reflects that the IEP team based their decisions on a comprehensive assessment process, including current educational and psychological assessments, a parent-provided assessment report, classroom performance, parent concerns, and county level assessments.

There is no documentation that the parent-provided psychiatric letter was addressed by the complainant or the WCPS.

17. A meeting notice generated for an October 16, 2024, meeting reflects that the IEP team plans on reviewing the IEP, discussing the student's possible need for assistive technology, evaluation planning, and consideration of the parent-provided psychiatric letter.

CONCLUSIONS:

Allegation #1 Eligibility Procedures

In this case the complainant alleges that on January 22, 2024, the IEP team failed to follow appropriate procedures when they found the student ineligible for special education services and did not agree to conduct additional assessments. However, the IEP team did review existing data and used this data to inform their decision to find the student ineligible for special education services.

Based upon the Findings of Fact #1 through #5, the MSDE finds that the WCPS followed proper procedures in the evaluation and determination of eligibility of the student for special education services under IDEA, since January 2, 2024, in accordance with 34 CFR §§ 300.111, and .301-.311 and COMAR 13A.05.01.06. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #2 Responding to a Request to Evaluate the Student

In this case the complainant alleges that the IEP team incorrectly found the student eligible under OHI when Specific Learning Disability (SLD) would have been a more appropriate eligibility coding. There is documentation that the IEP team reviewed data to support the decision to select an eligibility coding of OHI.

Based upon the Findings of Fact #1 and #10, MSDE finds that the WCPS did follow proper procedures in responding to a request for an evaluation to include speech-language, OT, neuropsychological, and educational assessments since January 2024, in accordance with 34 CFR §§ 300.303 - .311 and .503. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #3 IEP Timeline

Based upon the Findings of Fact #13 through #16, MSDE finds that the WCPS did not ensure that the IEP was developed within the required timelines since May 22, 2024, in accordance with 34 CFR § 300.323 and COMAR 13A.05.01.08A(1). Therefore, this office finds a violation occurred concerning the allegation.

Allegation #4 Addressing Parent Concern

In this case, the complainant provided a private psychiatric letter to an IEP team member, which reflected that the student had a high probability of having autism. While the complainant indicated that it was for "the file", this letter should have prompted the IEP team to review the information and address the complainant's concerns.

Based upon the Findings of Fact #11 through #13, #16 and #17, MSDE finds that the WCPS has not ensured that the IEP team addressed the parent's concerns regarding the student's autism diagnosis since May 22, 2024, in accordance with 34 CFR § 300.324. Therefore, this office finds a violation occurred concerning the allegation.

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.¹ 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.² Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student-Specific

MSDE requires the WCPS to provide documentation, by December 9, 2024, that the IEP team has taken the following action:

- a. Conducted an annual review of the IEP, fully assess in all areas of a suspected disability, including autism and make a determination; and provide PWN of the team's decisions;
- b. Conducted an IEP team meeting to determine the amount and nature of compensatory services or other remedy to redress the violations identified in this Letter of Finding. The IEP team must consider:
 - i. The student's present levels of functioning and performance;
 - ii. The levels of functioning and performance that were expected to have demonstrated by the end of school year 2023-2024;
 - iii. The services needed to remediate the violations identified in this investigation; and
- c. Developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

The WCPS 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.

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.

School-Based

MSDE requires the WCPS to provide documentation by December 9, 2024, of the steps it has taken to ensure that the ██████████ staff properly implements the requirements for the development of an IEP within the required timelines, fully assessing students in all areas of suspected disabilities, and addressing parents' concerns. 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 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: Dr. David Sovine, Superintendent, WCPS
Brenna Creedon, Supervisor of Special Education, WCPS
Robert Koogle, Supervisor of Special Education, WCPS
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Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
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