

November 21, 2024

[REDACTED]¹

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

Re: [REDACTED]
Reference: #25-062

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 September 9, 2024, and October 7, 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 follow proper procedures when determining comparable services upon the student’s transfer to the HCPSS since September 2023, in accordance with 34 CFR § 300.323(e) and COMAR 13A.05.01.09.
2. The HCPSS did not ensure that the student was comprehensively assessed in all areas of need, and that the HCPSS did not follow proper procedures to determine eligibility for special education services, since September 2023, in accordance with 34 CFR §§ 300.301, and .304 -.311, and COMAR 13A.05.01.04 -.06. Specifically, the complainant alleges that the HCPSS did not consider the student's executive functioning, inattentiveness, adaptive skills, functional communication, reading, writing, and math needs.
3. The HCPSS did not ensure that the parent was provided with written notice of the Individualized Education Program (IEP) team meetings scheduled for September 8, 2023, in accordance with 34 CFR § 300.322.
4. The HCPSS did not ensure that the student's teachers had access to the student's IEP since September 2023, in accordance with 34 CFR § 300.101 and .323.

¹ The complainant did not provide an address.

5. The HCPSS did not develop and implement an IEP that addresses the student’s identified academic, behavioral, functional and related services needs since October 27, 2023, in accordance with 34 CFR §§ 300.101, .323 - .324.
6. The HCPSS did not follow proper procedures when responding to a request to amend the student’s education record made on November 16, 2023, in accordance with 34 CFR § 300.618.
7. The HCPSS did not provide prior written notice (PWN) of the IEP team's decisions from the IEP team meetings held on November 27, 2023, and January 24, 2024, in accordance with 34 CFR § 300.503.
8. The HCPSS did not ensure that the IEP team meetings convened on April 11, 2024, and July 9, 2024, included the required participants, in accordance with 34 CFR §300.321.
9. The HCPSS did not follow proper procedures when responding to requests to obtain the student’s educational records since September 2023, in accordance with 34 CFR § 300.323(g)(1).
10. The HCPSS did not ensure that the requirements of subtitle B of title VII of the McKinney–Vento Homeless Assistance Act (McKinney-Vento) were met, in accordance with 34 CFR § 300.149.

BACKGROUND:

The student is 15 years old and is not identified as a student with a disability under the IDEA. He attended [REDACTED] during the 2023-2024 school year.

ALLEGATIONS #1 and #3

COMPARABLE SERVICES AND MEETING NOTICE

FINDINGS OF FACT:

1. On August 25, 2023, the complainant completed the HCPSS registration form. The form reflects:
 - the student did not receive special education services and did not have a current IEP; and
 - in school year 2022, the student attended “virtual, [REDACTED]”.

The HCPSS registrar signed the form on August 30, 2023.

2. On August 31, 2023, the HCPSS transcript review form was completed.
3. On September 1, 2023, the HCPSS emailed the complainant scheduling an IEP team meeting for September 8, 2023. This email reflects the purpose of the meeting, which was to review the student’s out of state IEP, determine eligibility and develop a comparable service IEP. The email included the Google meeting link, a meeting notice, and procedural safeguards.
4. On September 8, 2023, the IEP team convened. The PWN generated following the IEP team meeting reflects:
 - the student's records were obtained from [REDACTED];
 - the complainant agreed with the comparable services IEP; and
 - the complainant agreed with the IEP team recommendation for formal assessments.

The comparable services IEP developed on September 8, 2023, reflects the student's primary disability as Other Health Impairment (OHI). The IEP reflects the areas impacted by the student's disability are reading comprehension, math, and self-management/behavior. The IEP required 17 hours per week of special education instruction inside the general education classroom, provided by the general education teacher, special education teacher, and instructional assistant. The IEP further required four hours and fifteen minutes per week of special education instruction outside the general education classroom, provided by the special education teacher and instructional assistant.

The following accommodations are required: audio amplification, bookmark (flag items for review), blank scratch paper, eliminate answer choice, general administration directions clarified, general administration directions read aloud and repeated as needed, highlight tool, headphones or noise buffers, line reader mask tool, magnification/enlargement device, note pad, pop-up glossary, redirect student, spell check or external spell check device, writing tools, graphic organizer, and audio materials.

There is no documentation that the comparable services IEP was provided to the student's teachers.

CONCLUSIONS:

Comparable services

Based on Findings of Fact #1 through #4, MSDE finds that the HCPSS did follow proper procedures when determining comparable services upon the student's transfer to the HCPSS since September 2023, in accordance with 34 CFR § 300.323(e) and COMAR 13A.05.01.09. Therefore, this office finds that a violation did not occur concerning the allegation.

Meeting notice

Based on Findings of Fact #3 and #4, MSDE finds that the HCPSS did not ensure that the parent was provided with a timely written notice of the IEP team meeting scheduled on September 8, 2023, in accordance with 34 CFR § 300.322. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #4, MSDE finds that the complainant participated in the IEP team meeting on September 8, 2023. Therefore, no student-based corrective action is required.

ALLEGATIONS #2, #4, #5, #7, #8

EVALUATION, ACCESS TO IEP, DEVELOPMENT AND IMPLEMENTATION OF IEP, PWN, MEETING PARTICIPANTS

FINDINGS OF FACT:

5. On September 22, 2023, the complainant provided written consent for HCPSS to evaluate the student. The form reflects that the following assessments were recommended:
 - Psychological evaluation;
 - Reading skills;
 - Reading comprehension;
 - Reading fluency;

- Mathematics calculation;
 - Mathematics reasoning;
 - Written expression; and
 - Classroom observation.
6. On October 27, 2023, the IEP team convened to review the assessment results, complete the evaluation process, and, if appropriate, determine eligibility for special education and related services. The PWN reflects the IEP team reviewed the education and psychological assessments, completed by the HCPSS. The complainant shared information regarding anxiety and ADHD; however, did not provide any documentation. Based on the results of the assessments and classroom data, the IEP team determined that the student did not meet the criteria as a student with an Emotional Disability (ED) or OHI.
7. A social worker (SW) from [REDACTED] also participated in the IEP team meeting. The SW shared the student has a diagnosis of anxiety and ADHD, concerns related to food and eating, demonstrating appropriate social skills, and a mental health concern. The SW also informed the IEP team that the student is being assessed to determine if he meets the criteria for Autism.
- In response, the IEP team agreed to continue the IEP team meeting to include a further eligibility discussion and discuss the complainant's concerns about Autism. The HCPSS agreed to continue providing IEP services and review the assessment report from [REDACTED] upon receipt before the next meeting. The assessment results would be used to help determine eligibility. The school team would re-consider the need for assessments as appropriate.
8. The HCPSS October 18, 2023, psychological assessment reflects the student was assessed using the Wechsler Intelligence Scale for Children fifth edition (WISC-V), Conners Rating Scale fourth edition (Conners 4) parent and teachers and the Conner's Comprehensive Behavior Rating Scale (CBRS) parent and teachers.
- The Conners 4 was given to provide a comprehensive assessment of symptoms and impairments associated with ADHD and common co-occurring problems. The report did not reflect "behaviors relevant to the clinical assessment and diagnosis of attention hyperactivity disorder (ADHD) as well as ADHD related problems such as learning problems and executive functioning." The scores were in the average range both in the home and school settings; and
 - The CBRS was given to gain a better understanding of academic, behavioral and social concerns that may be present.
9. On November 17, 2023, the complainant signed the HCPSS request for records and release of records. The release reflects the HCPSS can receive assessment reports, psychological assessments, and psychiatric assessments or reports. The release allows communication between the HCPSS school psychologist, the special educator, and the SW at [REDACTED].
10. On November 27, 2023, a school-based team member emailed the complainant inviting her to participate in an IEP team meeting scheduled for Wednesday, December 20, 2023, from 11:30 am to 12:30 pm. The purpose of the meeting was to review the outside assessment. The email requested that the complainant provide the school team with the assessment report by Wednesday, December 13, 2023.

11. There is no documentation that an IEP team meeting occurred on November 27, 2023.
12. On December 20, 2023, the IEP team convened for the purpose of reviewing the outside assessment. The PWN generated following the meeting reflects that based on private assessment, the student did not qualify for special education services as a student with Autism under the IDEA.

The PWN also reflects the complainant raised concerns about a Specific Learning Disability (SLD) and expressive/receptive language skills. The IEP team proposed, and agreed to, reconvene to review existing information, hear parent concerns, and, if appropriate, determine the need for further assessments.

13. A private assessment was completed by the [REDACTED]. A psychological outpatient consultation summary was conducted in August 2023 to address developmental delays and symptoms reported in the student's psycho-social history. The student was assessed using a comprehensive developmental evaluation (CDE). The CDE included a standardized test for Autism using the Childhood Autism Rating Scale, 2nd edition. The rating scale reflects the student did not meet the criteria for Autism. The assessment reflects diagnosis of anxiety disorder and ADHD. The report was signed on November 22, 2023, by the private provider.

14. On January 24, 2024, the IEP team convened to discuss parent concerns and the request for an assessment. The PWN generated following the IEP team meeting reflects that the school-based team proposed and agreed to conduct a formal assessment to determine if the student has a Specific Language Impairment (SLI). The PWN also reflects that the team would consider whether the student had a Specific Learning Disability (SLD) in math if a processing deficit was identified based on the language assessment. The team decided they would meet within 60 days of receiving signed parent consent to review the results of the assessments and determine eligibility for special education services.

There is documentation that the complainant was provided with the PWN.

15. There is documentation that the complainant was provided with access to the student's records, on February 12, 2024.
16. On February 20, 2024, the complainant emailed written consent to the HCPSS to evaluate the student. The consent form recommended the following assessments: receptive and expressive language assessments. The consent was signed on February 15, 2024.
17. On April 11, 2024, the IEP team convened to continue the evaluation process. The PWN generated following the IEP team meeting reflects:
 - Attempts by the school team to contact the parent to schedule the language testing were unsuccessful. The school-based team contacted the complainant on phone call/voicemail left on March 7, 2024; March 8, 2024; March 11, 2024; March 13, 2024; March 18, 2024; March 20, 2024; and April 2, 2024. The school-based team emailed the complainant on March 19, 2024, and April 2, 2024. The IEP team was unable to complete the eligibility determination within the 60-day timeline.

- The complainant verbally stated that she would like to withdraw consent for the language testing and requested that an independent educational evaluation (IEE) be completed for the educational and psychological assessments.

The PWN reflects the following participants at the meeting: administrator/designee, special educators, general educator, complainant, instructional facilitator, and instructional facilitator for special education.

18. On April 15, 2024, the HCPSS emailed the complainant approving the educational and psychological IEEs requested on April 11, 2024. On April 24, 2024, the HCPSS informed the complainant that the IEE request speech-language, was denied due to the withdrawal of consent to assess.
19. On June 28, 2024, the HCPSS emailed the complainant an IEP team meeting notice and procedural safeguards in response to an email sent by the family attorney. The meeting notice reflects the IEP team proposed to meet on July 9, 2024.
20. On July 9, 2024, the IEP team convened for the purpose of conducting an interim review to address parental concerns. The PWN generated following the meeting reflects that the family attorney shared that the family wanted the student to be evaluated for SLD, the student was in the process of being evaluated, and the outside evaluator was also waiting on a teacher evaluation.

The family attorney asked clarifying questions about why a language assessment was needed to determine eligibility for a specific learning disability, and questioned the process for completing a language assessment and steps after consent is received.

The school team summarized the IEP eligibility process initiated in the fall of 2023. The school-based team also discussed the relationship between language assessments and processing deficit. The IEP team shared that consent for the language assessment was provided, but it was later withdrawn. An IEE was granted by HCPSS for both the educational and psychological assessments, but the school team has not received the reports. Once received, the IEP team will meet to consider eligibility.

The meeting participants included: administrator/designee, special educator, general educator, parent, psychologist, speech pathologist, instructional facilitator, and family attorney.

There is no documentation that the HCPSS has been provided with the educational and psychological assessments granted through the IEE.

21. On July 9, 2024, the HCPSS developed a consent to evaluate the student's receptive, expressive, and other informal language. On July 9, 2024, the school-based staff emailed the complainant the PWN and the consent form to evaluate.
22. On July 17, 2024, the HCPSS emailed the complainant reminding her that the HCPSS has not received consent for the language assessment. On July 17, 2024, the family attorney responded to the HCPSS sharing that the family is considering their options.

There is no documentation that the consent to evaluate developed on July 9, 2024, was returned to the HCPSS.

23. On August 20, 2024, HCPSS received documentation reflecting that the student was attending an out of state school.
24. The student was found ineligible for special education services under the IDEA since September 2023.

CONCLUSIONS:

Evaluation

In this case, the complainant alleged that the HCPSS did not ensure that the student was comprehensively assessed in the areas of executive functioning, inattentiveness, adaptive skills, functional communication, reading, writing, and math needs. The IEP team on October 27, 2023, considered a HCPSS' educational assessment and psychological evaluation and on December 20, 2023, the IEP team considered a parent provided assessment. The combination of each assessment review addressed the areas of concern presented by the complainant. The IEP team followed proper procedures to determine eligibility in all areas of suspected disability.

Based on the Findings of Fact #5 through #23, MSDE finds that the HCPSS did ensure that the student was comprehensively assessed in all areas of need, and that the HCPSS did follow proper procedures to determine eligibility for special education services, since September 2023, in accordance with 34 CFR §§ 300.301, and .304 -.311, and COMAR 13A.05.01.04 -.06. Therefore, this office finds that a violation did not occur concerning this allegation.

Develop, Implement IEP, and Access to IEP

Based on the Finding of Fact #6, MSDE finds the HCPSS did develop a comparable services IEP, however, the HCPSS did not implement the comparable services IEP and did not ensure that the student's teachers had access to the student's comparable services IEP from September 2023 through October 27, 2023, in accordance with 34 CFR § 300.101 and .323. Therefore, this office finds that a violation did occur concerning the allegation.

Based on the Finding of Fact #24, MSDE finds the student did not qualify for services as a student with a disability under the IDEA, since October 27, 2023. Therefore, HCPSS was not required to develop and implement an IEP in accordance with 34 CFR §§ 300.101, .323-.324. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

PWN

Based on the Finding of Fact #11, MSDE finds that the HCPSS did not convene an IEP team meeting on November 27, 2023. As a result, the HCPSS was not required to develop a PWN in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation did occur concerning the allegation.

Based on the Finding of Fact #14, MSDE finds that the HCPSS did provide a PWN of the IEP team's decisions from the IEP team meetings held on January 24, 2024, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation did not occur concerning the allegation.

Meeting participants

Based on the Findings of Fact #17 and #20, MSDE finds that the HCPSS did ensure that IEP team meetings convened on April 11, 2024, and July 9, 2024, included the required participants, in accordance with 34 CFR §300.321. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #6

AMENDMENT

FINDINGS OF FACT:

25. On November 16, 2023, the complainant emailed the HCPSS staff requesting an amendment to the PWN developed following the October 27, 2023, IEP team meeting. The email reflects the complainant specified input that she would like to be included in the PWN, and concerns with errors related to the out of state IEP.
26. On November 21, 2023, the HCPSS staff informed the complainant that the PWN will be amended. The HCPSS also informed the complainant that "The school received transfer documents from [REDACTED], but the only special education record that was sent was the IEP." The email also reflects during the October 27, 2023, the IEP team "did not have any reports or other special education records from [REDACTED] - only the IEP."

There is no documentation that the HCPSS amended the PWN developed on October 27, 2023.

CONCLUSION:

Based on the Findings of Fact #25 and #26, MSDE finds that the HCPSS did not follow proper procedures when responding to a request to amend the student's education record made on November 16, 2023, in accordance with 34 CFR § 300.618. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

ALLEGATION #9

RECORDS REQUEST

FINDING OF FACT:

27. There is no documentation that the HCPSS requested the student's records when the student enrolled on August 25, 2023.

DISCUSSION AND CONCLUSION:

To facilitate the transition for a child the new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled; and the previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.
(34 CFR § 300.323(g)(1))

Based on Finding of Fact #27, MSDE finds that HCPSS did not follow proper procedures to obtain the student's educational records upon enrollment into HCPSS, since September 2023, in accordance with 34 CFR § 300.323(g)(1). Therefore, this office finds that a violation did occur concerning the allegation.

Notwithstanding the violation, based on Finding of Fact #4, MSDE finds that HCPSS had the student's IEP, and the transcript at the beginning of the 2023-2024 school year and determined comparable services. Therefore, no further student-specific corrective action is required.

ALLEGATION #10

McKINNEY VENTO ACT

FINDINGS OF FACT:

28. There is documentation that the complainant enrolled the student in the HCPSS on August 24, 2024, and met the requirements as a student eligible for protection under the McKinney Vento Act. The paperwork reflects the complainant would provide transportation.
29. The parties provided documentation around questions related to transportation reimbursement under McKinney Vento.
30. The student's comparable services IEP did not require transportation as a related service, and the student was found ineligible under IDEA as of October 27, 2024.

CONCLUSION:

During the course of the investigation, MSDE determined that while 34 CFR § 300.149 of the IDEA requires the State Education Agency to ensure that in carrying out the requirements of the IDEA, the requirements of the McKinney-Vento are met. This does not mean that the state special education complaint process can be used to resolve any and all disputes under McKinney-Vento. The State Board has passed regulations requiring each local education agency to develop and implement dispute resolution procedures under McKinney-Vento, which is the appropriate venue for the complainant's current concern about transportation reimbursement unrelated to IDEA. See COMAR 13A.05.09.07. Therefore, MSDE finds that there are no IDEA allegations for which MSDE to issue findings.

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 January 15, 2025, that:

- a. The IEP team has provided the complainant with the amended PWN that was developed following the October 27, 2023, IEP team meeting; and
- b. The IEP team has convened and determined whether the violations identified in this Letter of Findings 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 remedies 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 complainants 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.

School-Based

MSDE requires the HCPSS to provide documentation by January 15, 2025, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for requesting records for transfer students, implementation of IEPs, and the provision of the IEP to school staff under the IDEA. These steps must include staff development, as well as tools developed to document services and 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 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.

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.

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
Kelly Russo, Coordinator of Special Education Compliance and Dispute Resolution, HCPSS
[REDACTED], [REDACTED], Principal, HCPSS
Dr. Paige Bradford, Chief, Specialized Instruction, MSDE
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE
Nicole Green, Compliance Specialist, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Rabiatu Akinlolu, Complaint Investigator, MSDE