

December 19, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Colleen Sasdelli
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: [REDACTED]
Reference: #25-087

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.

ALLEGATION:

On October 18, 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 Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

MSDE investigated the allegation that the HCPS has not ensured that the student was provided with the special education instruction, related services, and supplementary aids, services, program modifications and supports required by the Individualized Education Program (IEP) since August 2024, in accordance with 34 CFR §§ 300.101 and .323. Specifically, the complainant alleged that:

- The student was not provided with the Private Duty Nurse and Sign Language Interpreter services and supports at two school sponsored events conducted in August 2024;
- The student has not been provided with Private Duty Nurse supports since September 6, 2024; and
- The HCPS has not provided the required HCPS Emergency Chain Protocol since September 6, 2024.

BACKGROUND:

The student is five years old and is identified as a student with Other Health Impairment (OHI) and is eligible for special education services under the IDEA. The student attends [REDACTED] ([REDACTED]) and requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. The IEP in effect in August 2024 is dated June 19, 2024. The IEP reflects the student's primary disability as OHI, with physical education, speech-language expressive language, speech-language pragmatics, speech-language receptive language, early learning language and literacy, early learning mathematics, early learning physical well-being and motor development, early learning social foundations, feeding/swallowing, health/medical, and functional mobility needs.

The student's IEP requires:

- Close adult supervision when navigating through the hallway, the building from room to room, and/or the playground to ensure safety; flexible schedule for navigating the building provided by a nurse, daily;
- Feeding and swallowing safety plan provided by a nurse, daily;
- Equipment to access bathroom facilities and sink provided by a nurse, general education teacher, instructional assistant, or special education classroom teacher, daily;
- Access to a fan provided by a nurse, general education teacher, instructional assistant, or special education classroom teacher, as needed to support temperature regulation;
- Access to a hat/helmet provided by a nurse, general education teacher, instructional assistant, or special education classroom teacher, daily;
- Access to personal medically prescribed wheelchair and frequent breaks provided by a nurse, general education teacher, instructional assistant, or special education classroom teacher, daily;
- Adult to assist with the student's medically prescribed wheelchair and medical equipment from transportation vehicle to the classroom and back; adult to transport the student's medical bags and medically prescribed wheelchair with him throughout his school day provided by a nurse, instructional assistant, or special education classroom teacher;
- Adult assistance with carrying his backpack/materials provided by a nurse, instructional assistant, or special education classroom teacher, daily;
- Adult assistance with toileting needs, provided by a nurse, instructional assistant, or special education classroom teacher, daily;
- Close adult supervision during snacks/meals provided by a nurse, instructional assistant, or special education classroom teacher;
- Consult with the Teacher of the Deaf and Hard of Hearing provided by the Teacher of the Deaf and Hard of Hearing, general education teacher, interpreter, special education classroom teacher, speech-language assistant/clinical fellow; speech/language pathologist;
- Personal skilled nursing care, daily;
- Email emergency protocol chain for communication of transport and supports provided by a nurse, interpreter, general education teacher, or special education classroom teacher, "as required if transport, interpreter or nurse are not available for [the student's] transport and school program or [the student] will be absent;" and
- Sign language interpreter, daily.

The IEP requires the following related services among others:

- 16, two hour and 30-minute sessions of interpreting services inside general education, monthly: "A sign language interpreter will be with [the student] throughout his school day to build curriculum level vocabulary, facilitate expressive/receptive language development, facilitate communication between him and peers/staff. The interpreter will be available to [the student] throughout his school day;" and

- Transportation: "...A skilled nurse will accompany [the student] during transportation to monitor his medical needs. The skilled nurse will be positioned on the vehicle that can accommodate his rear facing car seat in a manner in which she can effectively monitor [the student] during transport. [The student] will also be accompanied by a sign language interpreter to support his communication on transport... [The student] requires individual nurse monitoring during transport."
2. On August 21, 2024, the IEP team convened to plan for the student's transition to kindergarten and to review the updated feeding plan. The prior written notice (PWN) generated after the meeting reflects the student would use a van to transport him to school and would be accompanied by a nurse and an interpreter. The nurse and interpreter would also accompany the student to class, and while he is on the playground. The nurse would assist with the student's "feeding and swallowing safety plan" to be included in the student's updated supplementary aids in the IEP. The nurse would support the student with toileting needs as well as rest time. It was determined that the nurse and interpreter would also assist the student during fire drills and in executing his evacuation plan, and the nurse would be designated as the provider of the student's "close adult supervision." The nurse and interpreter were also included in the student's emergency protocol team.
 3. On August 26, 2024, [REDACTED] sponsored a Kindergarten Play Date at the school. There is documentation that an interpreter was available to the student during the event.
 4. On August 29, 2024, [REDACTED] sponsored an Open House. There is documentation that an interpreter was available to the student during the event.
 5. There is no documentation that a private duty nurse was available to the student on August 26, 2024, and August 29, 2024.
 6. On September 8, 2024, HCPS staff emailed the complainant sharing "as per the emergency protocol plan for notification established on [the student's] IEP, I am writing to alert you that there is no private duty nurse available to attend school tomorrow, Monday September 9, 2024."
 7. The complainant received the emergency protocol plan notifications every day for the following weeks:
 - September 9, 2024, through September 13, 2024;
 - September 16, 2024, through September 20, 2024;
 - September 23, 2024, through September 27, 2024;
 - September 30, 2024, through October 2, 2024; and
 - October 4, 2024.

Schools were closed to students on Thursday, October 3, 2024.

8. On September 12, 2024, the IEP team reconvened at the parent's request to review the student's sign language needs and other educational concerns. The PWN generated after the meeting reflects the IEP team discussed the role the nurse would play on the days the student would be eating cafeteria food, and the IEP team also decided that the "case manager will send an email to identify all to be included in the protocol for days when [the student] or providers are out." It was determined that the Supervisor of Health Services (SHS) would review the plan for notifying the complainant of the nurse's absence and "when the position is filled." The SHS would also review the catheterization plan with the nurse. The PWN reflects the IEP team decided to schedule a follow-up meeting to address compensatory services for days in September when nursing services were not available.

9. On September 27, 2024, the IEP team reconvened at parent request to review sign language and other educational needs for the student. The PWN generated after the meeting reflects the IEP team discussed the dynamics of the student's sign language needs, and determined what sign language structure would be used and how the student would express his academic knowledge. The team recommended that informal assessments be completed for the student, and it was decided that the SHS would try to coordinate nursing coverage for that time. The SHS shared that "she continues to seek a full-time private duty nurse for [the student] through outside agencies."
10. The amended IEP, dated September 27, 2024, reflects the addition of the following supplementary aids, services, program modifications and supports:
 - Use of fidgets provided by a nurse, general education teacher, occupational therapist, speech-language pathologist, or special education classroom teacher, daily;
 - Email protocol chain for communication for food and safety in cafeteria provided by a nurse, general education teacher, instructional assistant, or special education classroom teacher, daily: "The cafeteria staff will be the primary provider for providing modified meals with the nurse being an additional provider;" and
 - Close adult supervision when navigating through the hallway, the building from room to room, and/or the playground to ensure safety; flexible schedule for navigating the building provided by a nurse, general education teacher, or instructional assistant, daily.

The IEP's PLAAFP data, communication, AT services, and related services continued as on the student's previous IEP.

11. There is documentation that from October 3, 2024, through October 8, 2024, HCPS staff were in the process of hiring a Registered Nurse (RN). An October 8, 2024, email reflects that complainant would be notified of the hire when a start date was determined, and the hiring paperwork was completed. At that time, the complainant would be invited to come in "to do the wheelchair in-service," in addition to "meeting with the RN to review the skills and complete what is necessary before the nurse starts."
12. The complainant received the emergency protocol plan notifications every day for the following weeks:
 - October 9, 2024, through October 11, 2024;
 - October 14, 2024, through October 17, 2024;
 - Schools were closed to students on October 18, 2024;
 - October 22, 2024, through October 25, 2024; and
 - October 28, 2024, through October 30, 2024.

Schools were closed to students on November 1, 2024.

There is no documentation that a notification was sent to the complainant on October 7, 2024, October 8, 2024, October 21, 2024, or October 31, 2024, as required by the IEP.

13. There is documentation that from September 2024 through November 2024 HCPS staff sent email inquiries to healthcare agencies seeking a Registered Nurse (RN) and a Licensed Practical Nurse (LPN) and worked to secure possible candidates.

14. On November 7, 2024, the IEP team reconvened to review parent concerns and discuss compensatory services. The PWN generated after the meeting reflects the team reviewed the results of the “handshape” assessment conducted for the student, and discussed how the student’s kindergarten sight words would be addressed. The team discussed how the private duty nurse would be instructed on how to “ensure proper fitting of [the student’s] braces” and the SHS emphasized the “necessity of open communication between nurses and physicians to ensure clarity and safety in administering medical orders.” “The team agreed to revisit the exact number of compensatory services that have been delivered and those still required once [the student] returns to school. The IEP team reported that a private duty nurse may be starting on November 12, 2024.”
15. The amended November 7, 2024, IEP reflects the addition of the following supplementary aids, services, program modifications and supports among other things:
 - Close adult supervision when navigating through the hallway, the building from room to room, and/or the playground to ensure safety; flexible schedule for navigating the building provided by a nurse, general education teacher, special education teacher, or instructional assistant, daily.
16. While there is some documentation that the complainant was provided with the required HCPS Emergency Chain Protocol as required by the IEP, it does not demonstrate that the protocol was consistently implemented.
17. There is documentation that the student missed 37 days of school due to a lack of private duty nurse services.

DISCUSSIONS AND CONCLUSIONS:

ALLEGATION #1 PROVISION OF SPECIAL EDUCATION INSTRUCTION AND RELATED SERVICES

As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. (34 CFR § 300.323).

Provision of Nursing Services During School Two School Sponsored Events

Based on the Finding of Fact #5, MSDE finds that the HCPS has not ensured that the student was provided with Private Duty Nursing services and supports at two school sponsored events conducted on August 26 and 29, 2024 as required by the IEP, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred.

Provision of Interpreter Services During Two School Sponsored Events

Based on the Findings of Fact #1 to #4, MSDE finds that the HCPS has ensured that the student was provided with Sign Language Interpreter services and supports at two school sponsored events conducted in August 2024 as required by the IEP, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that no violation occurred concerning the allegation.

Provision Of Nursing Services Since September 6, 2024

Based on the Findings of Fact #1 to #16, MSDE finds that the HCPS has not ensured that the student was provided with Private Duty Nurse supports since September 9, 2024, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred.

Provision Of the HCPS Emergency Chain Protocol Since September 6, 2024

Based on the Findings of Fact #1, #5 to #7, #9, and #15, MSDE finds that the HCPS has not consistently implemented the required HCPS Emergency Chain Protocol since September 6, 2024. Therefore, this office finds that 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. 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 Branch, 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

By February 3, 2025, MSDE requires the HCPS to provide documentation that the school system has:

- Provided the student with the required private duty nursing services;
- Ensured consistent provision of the HCPS Emergency Chain Protocol to the complainant; and
- Convened an IEP team meeting and determined whether the violation related to failure to provide private duty nursing services 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 a year of the date of this Letter of Findings.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

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.

The HCPS must ensure that the parent is provided with 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.

Similarly Situated Students

By January 15, 2025, the HCPS must inform MSDE of all similarly situated students who require a private duty nurse as required by their IEP, but who have not been receiving those services. The HCPS must provide MSDE with monthly reports, due on or before January 30, 2025, February 14, 2025, and March 3, 2025, of the status of the hiring process for the student in this case, as well as any other similarly situated student. The HCPS must also convene an IEP team to determine appropriate compensatory services for any other similarly situated students who have not been provided with private duty nursing services in accordance with their IEPs on or before May 1, 2025.

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/ebh

c: Sean Bulson, Superintendent, HCPS
[REDACTED], Principal, [REDACTED], HCPS
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Nicole Green, Compliance Specialist, MSDE
Elizabeth B. Hendricks, Complaint Investigator, MSDE