

December 19, 2024



Dr. Richard Jeffries
Director of Special Education
Howard County Public School System
10910 Clarksville Pike
Ellicott City, Maryland 21042

RE: [REDACTED]
Reference: #25-089

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 October 7, 2024, MSDE received a complaint from [REDACTED] and [REDACTED], hereafter, “the complainants,” 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 proper procedures were followed in conducting a reevaluation under the IDEA since October 2023, in accordance with 34 CFR §§ 300.301 - .306, and COMAR 13A.05.01.06.
2. The HCPSS did not ensure that the student was comprehensively assessed in all areas of need when evaluating the student to determine if the student is a student with a disability requiring special education instruction since October 2023, in accordance with 34 CFR §§ 300.303-.311 and COMAR 13A.05.01.06. Specifically, the complainants allege that the student was not comprehensively assessed in occupational therapy.
3. The HCPSS did not ensure that proper procedures were followed in determining if the student is a student with a Specific Learning Disability (SLD), since October 2023, in accordance with 34 CFR §300.309 and COMAR 13A.05.01.06.

4. The HCPSS has not developed an Individualized Education Program (IEP) that addressed the student's identified speech-language, auditory processing and reading needs since January 2024, in accordance with 34 CFR §§ 300.101 and .324.
5. The HCPSS did not provide the complainants with prior written notice (PWN) of the team's decision to withdraw speech-language services, which was made at the IEP team meeting on February 2, 2024, in accordance with 34 CFR § 300.503.
6. The HCPSS did not provide the complainants with a copy of the IEP documents within five business days after the IEP team meetings since October 2023, in accordance with COMAR 13A.05.01.07.
7. The HCPSS did not ensure that proper procedures were followed when responding to a request for an independent educational evaluation (IEE) obtained at the public expense since October 2023, in accordance with 34 CFR § 300.502 and COMAR 13A.05.01.14.
8. The HCPSS did not consider the need for Extended School Year (ESY) services during ESY 2024, in accordance with 34 CFR § 300.106, COMAR 13A.05.01.07B(2) and COMAR 13A.05.01.08B(2).

BACKGROUND:

The student is eight years old and is identified as a student with a developmental delay 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. The student's IEP developed on April 26, 2023, has a projected annual review date of April 26, 2024.
2. On October 31, 2023, a private speech-language evaluation was completed. The evaluation reflects that the student has:
 - A moderate to severe speech production or articulation disorder;
 - Receptive and expressive language skills in the average range;
 - Voice and fluency skills in the average range;
 - Oral motor skills in the mildly impaired range; and
 - Pragmatic language skills in the mildly moderate range.

The evaluation recommends that the student attend speech-language therapy 2 to 3 times per week and that "due to parental concerns about possible auditory processing impairment, an audiological evaluation" be completed.

3. On November 30, 2023, the IEP team reviewed and considered the parent provided private speech-language evaluation. The Review of Independent Assessment Form reflects that the IEP team determined that the report included relevant information from a variety of assessment tools and strategies. However, "more information was needed to determine present levels as standard scores are significantly different than school data suggests. Also, more information was needed to determine the educational impact."

4. On December 13, 2023, the IEP team convened to conduct an “interim review to address parental concerns regarding speech.” The IEP team meeting report generated following the meeting reflects that the IEP team considered the Review of Independent Assessment Form for the parent provided private speech-language evaluation that was submitted on October 21, 2023. The HCPSS agreed to “accept the evaluation report as part of the [the student’s] record, while seeking additional clarification regarding the independent assessment and educational implications... The IEP team recommended speech articulation and audiology assessments to determine the present levels of functioning and how they impact [the student’s] ability to engage in the educational setting.”
5. The student’s IEP was amended on December 13, 2023. The IEP reflects the student’s primary disability as developmental delay with articulation as the area impacted by the disability. The IEP reflects an annual review date of April 26, 2024.

The IEP requires the provision of supplementary aids, services, and accommodations to address the student’s speech-language needs, including a periodic speech-language pathologist consult.

The IEP requires the provision of fifteen minutes monthly of speech-language therapy in the general education classroom and one hour weekly of speech-language therapy outside the general education classroom.

The IEP requires goals in the areas of:

- Speech-articulation goal one: “[the student] will independently produce /sh/ and /ch/ in all positions of words for 2-3 turns in an unstructured conversation” with 90% accuracy across three data collections; and
- Speech-articulation goal two: “During structured speech therapy tasks, [the student] will independently eliminate the phonological process of gliding for 2-3 turns in a conversation”; with 90% accuracy across three consecutive therapy sessions.

The IEP reflects that the student was not found eligible for ESY services.

There is no documentation that the parent was provided with the completed revised IEP document.

6. On December 20, 2023, the complainants emailed the HCPSS. The email reflects a “parent addendum” attachment which reflects that the complainants disagreed with the IEP team’s response to the parent provided private speech-language evaluation.
7. On December 28, 2023, a private “auditory information processing” evaluation was conducted. The evaluation reflects that the student has deficits in:
 - Auditory overloading;
 - Auditory lexical (linguistic/work);
 - Extraction; and
 - Auditory lexical integration.

The evaluation recommends that the student receive accommodations to address his auditory processing needs, including “preparation, previewing, and present things in small usable chunks.”

8. On January 25, 2024, an HCPSS Educational Assessment Report for Students with Speech-Language Difficulties Only was completed. The report reflected that the student was on grade level for reading and written language and was above grade level for math. It is further reflected that the student does not demonstrate difficulties in the area of educational performance.
9. On January 26, 2024, an HCPSS speech-language assessment report was completed. The report reflects that the student "does not appear to meet eligibility for speech-language impairments, however, the team should consider all available data in making this determination."
10. On February 2, 2024, and March 22, 2024, the IEP team convened and considered a parent provided private Auditory Information Processing assessment. The Review of Independent Assessment Form reflects that the IEP team agreed to "waive" the central auditory processing assessment. A school-based IEP team member shared that "a clinical diagnosis of a central auditory processing disorder does not equate to an educational disability; therefore, the team has additional diagnostic questions based on the conclusion of the report. The IEP team formed diagnostic questions surrounding the educational disability categories of SLD and Other Health Impairment (OHI) in the area of attention and agreed to conduct the following assessments that were recommended: expressive/receptive language, educational, and psychological."

There is documentation that the complainants were provided with the documents the IEP team planned to discuss at the meeting on January 26, 2024.

There is documentation that the complainants were provided with the completed "meeting minutes" on February 9, 2024.

11. On March 22, 2024, the complainant gave consent to the HCPSS to conduct a psychological assessment to aid the IEP team in determining if the student met the requirements for a SLD and/or OHI. The assessment included assessments in the areas of cognitive ability, social/emotional development, attention/behavior, information processing/memory, specific learning strengths and weaknesses.
12. On April 4, 2024, the complainant gave consent to the HCPSS to assess the student in the areas of:
 - Educational: reading skills, reading comprehension, reading fluency, math calculation, math reasoning, written expression; and
 - Language assessment: receptive and pragmatic language.
13. On April 12, 2024, an educational assessment report was completed. The report reflects that the educational assessment results indicate the student:
 - "Does not demonstrate difficulty in an area of educational performance";
 - "Lack of education performance is not the result of limited English proficiency"; and
 - "Lack of educational performance is not the result of a lack of instruction in reading or math."

There is documentation that the educational assessment report was sent home with the student on June 4, 2024.

14. On April 26, 2024, the IEP team convened to conduct an annual review of the student's IEP. The IEP team meeting report generated following the meeting reflects that the IEP team reviewed the student's present levels, parental input, and the parent provided private speech-language assessment's articulation diagnosis. The HCPSS shared that articulation was no longer an area of need for the student. It was noted that the complainants did not agree with the decision.

There is no documentation that the complainants were provided with the completed meeting report following this IEP meeting.

15. On May 18, 2024, the complainants emailed the HCPSS their parental input statement for the IEP.
16. On May 20, 2024, the IEP team convened to conduct the continuation of the annual review of the IEP that took place on April 26, 2024. The IEP team meeting report generated following the meeting reflects that the IEP team reviewed the parental statement, including their concerns for the HCPSS speech-language assessment results, the IEP team decision that articulation no longer had an educational impact on the student, and the complainants' disagreement to the decision. It is further reflected that the IEP team reviewed the self-management/behavior and social emotional sections of the IEP.
17. On June 4, 2024, an HCPSS psychological assessment report was completed. The report reflects that the student "does demonstrate variability between his Very to Extremely High cognitive reasoning skills assessing categorical reasoning, and verbal/visual processing and his Average cognitive processing requiring speed and under a time constraint. However, the assessment results indicate no evidence of significant reading delays or cognitive processing disorders at this time.... The Psychological Assessment scores from the current evaluation do not support the presence of the [the student] having an underlying cognitive processing disorder."

There is documentation that the psychological assessment report was sent home with the student on this date.

18. On June 4, 2024, an HCPSS speech-language assessment report was completed. The report reflects that "based on formal assessment, informal measures, and teacher input, [the student] exhibits receptive and expressive language skills that are within expectations for his age group and functioning level...does not appear to demonstrate educational needs in the area of receptive/expressive language."

There is documentation that on June 11, 2024, the IEP team convened and started the "Specific Learning Disability Supplement" form. There is documentation that the form has not yet been completed.

19. On July 25, 2024, the IEP team convened and considered a parent provided private literacy evaluation. The IEP team agreed to discuss the recommendations after the determination of eligibility.
20. On August 16, 2024, the complainants requested at IEE at public expense from the HCPSS.
21. On August 28, 2024, the HCPSS responded to the complainant's request for an IEE. The response reflects that "the IDEA regulations at 34 C.F.R. § 300.502 indicate the following. If a parent disagrees with an evaluation completed by the public agency, the parent has the right to have the child evaluated by someone who does not work for the public agency."

Per the IEP Meeting on July 24, 2024, the IEP Team Meeting Report indicates assessments were reviewed, but an informal reading assessment was recommended as part of the evaluation. Given that this evaluation process has not been completed, you are not entitled to an IEE at this time, as there is no assessment result to disagree with.”

22. On September 19, 2024, the IEP team convened to review assessments. The IEP team meeting report generated following the meeting reflects that the IEP team reviewed the Qualitative Reading Inventory (QRI) 6 assessment results, the SLD supplement form, Woodcock Johnson IV (WJIV) assessment results, Pffeifer Assessment of Reading results, Weschler's Intelligence Scale for Children (WISC) results, and academic strengths and weaknesses of the student. It is further reflected that the complainants indicated that the student is not meeting grade level standards for basic reading based on the WJIV Letter-Word Identification subtest. It is reflected that based on teacher input the student is reading “5.5 in Being a Reader, which is considered on grade level. It aligns with the grade level standards.”

The IEP team meeting required a continuation due to time constraints.

There is documentation that on September 26, 2024, the complainant was emailed the “meeting minutes for this IEP team meeting.

23. There is a Notice of an IEP team meeting form generated for November 7, 2024.
24. There is no documentation to support the complainant’s allegation that the student has occupational therapy needs.
25. There is no documentation that the IEP has been completed since December 13, 2023.

CONCLUSIONS:

Allegation #1 Proper Procedures for Conducting a Reevaluation of the Student

In this case, the IEP team did not complete the reevaluation within the required timeline, resulting in the student’s IEP not being reviewed at least annually.

Based on the Findings of Fact #1 through #5, #7 through #14, #16 through #20, #23, and #24, MSDE finds that the HCPSS did not ensure that proper procedures were followed in conducting a reevaluation under the IDEA since October 2023, in accordance with 34 CFR §§ 300.301 - .306, and COMAR 13A.05.01.06. Therefore, this office finds a violation occurred concerning the allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

Annual Review

A public agency shall ensure that the IEP team meets periodically, but not less than annually, to review and revise the IEP (34 CFR § 300.324).

In this case, the IEP team met before the annual review date of the IEP, however, there is no documentation that a finalized IEP has been provided since December 13, 2023.

Based on the Findings of Fact #1, #3 through #5, #10, #14, #16, #19, #20, #23, and #26, MSDE finds that the HCPSS has not ensured that the IEP team convened to conduct an annual review resulting in a finalized IEP on or before April 26, 2024, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation occurred.

Allegation #2 Comprehensively Assessed in All Areas of Need

In this case, the complainants allege that the student was not assessed in the area of occupational therapy as part of determining if the student is a student with a disability requiring special education. There is no documentation to demonstrate that occupational therapy was a suspected area of need.

Based on the Finding of Fact #25, MSDE finds that the HCPSS was not required to assess the student in the area of occupational therapy when evaluating the student to determine if the student is a student with a disability requiring special education instruction since October 2023, in accordance with 34 CFR §§ 300.303-.311 and COMAR 13A.05.01.06. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #3 Proper Procedures in Determining SLD Eligibility

In this case, the complainant alleges that the IEP team has not followed proper procedures in determining if the student is a student with a SLD. On June 11, 2024, the IEP team started the "Specific Learning Disability Supplement" form, there is no documentation that the form was completed. To date, the HCPSS has not completed the eligibility process for SLD.

Based on the Findings of Fact #6, #7, #9 through #12, #16, #19, and #22, MSDE finds that the HCPSS has not timely completed the reevaluation process; therefore, HCPSS has not yet made a determination of the student's eligibility as a student with SLD. Therefore, this aspect of the allegation is not ripe for MSDE's review until the IEP team completes the eligibility determination process for SLD. MSDE has found that there is a violation with respect to the entire reevaluation process, including consideration of SLD, however, the team has not specifically completed their consideration of this disability and the potential impact to the student's learning.

Allegation #4 Development of the IEP

In this case, the complainant alleges that the IEP team has not developed an IEP that addresses speech-language, auditory processing, and reading needs. There is documentation that the IEP team has reviewed assessment data with regards to speech-language, auditory processing, and reading. There is documentation that the IEP team determined that the student does not require speech-language services. There is no documentation to demonstrate that the IEP team has made a determination that auditory processing and reading are areas of need requiring special education services. The most recent IEP team agreed to schedule a follow-up meeting, which had not occurred at the time of this complaint.

Based on the Findings of Fact #2 through #5, #9, #14, #16, #18, and #24, MSDE finds that the HCPSS was not required to develop an IEP that addresses speech-language, since January 2024, in accordance with 34 CFR §§ 300.101 and .324. Therefore, MSDE finds that a violation has not occurred concerning this aspect of the allegation.

Based on the Findings of Fact #5, #7, #8, #10 through #12, #14, #16, #17, #20, #23, and #24, MSDE finds that the HCPSS has not made a determination about the whether the student is a student with an auditory processing and reading needs, because the IEP team has not concluded the student's annual review. Therefore, this aspect of the allegation is not ripe for MSDE's review until the IEP team completes the annual review of the IEP and makes a determination about the student's areas of need, based on assessments and other relevant information. MSDE has found a violation with respect to completing the annual review process as a whole, however, MSDE is not able to investigate if an IEP has been developed to address specific speech-language, auditory processing and reading needs because the IEP team has not yet determined if they are areas of need.

Allegation #5 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).

In this case, the complainants alleged that speech-language services were withdrawn on February 2, 2024. While there is no documentation to support this allegation, there is documentation that the student was determined ineligible for speech-language services on April 26, 2024.

Based on the Findings of Fact #10 and #14, MSDE finds that the HCPSS did not provide the complainants with PWN of the team's decision to withdraw speech-language services, which was made at the IEP team meeting on April 26, 2024, in accordance with 34 CFR § 300.503. Therefore, this office finds a violation did not occur concerning the allegation.

Allegation #6 Provision of IEP Document Five Days After an IEP Meeting

The public agency must ensure that the parent is provided with the completed IEP not later than 5 business days after a scheduled IEP or other multidisciplinary team meeting (COMAR 13A.05.01.07).

In this case, there is documentation that the IEP team convened and amended the student's IEP on December 13, 2023. There is no documentation the amended IEP was provided to the complainants.

Based on the Findings of Fact #4 and #5, MSDE finds that the HCPSS did not provide the complainants with a copy of the IEP document within five business days after the IEP team meeting on December 13, 2023, in accordance with COMAR 13A.05.01.07.

In this case, there is documentation that the IEP team convened on February 2, 2024, March 22, 2024, April 26, 2024, May 20, 2024, June 11, 2024, July 25, 2024, and September 19, 2024. There is no documentation that an IEP was completed or amended at these IEP team meetings.

Based on the Findings of Fact #10, #14, #16, #19, #20 and #23, MSDE finds that the HCPSS was not required to provide the complainants with a copy of the IEP document within five business days after the IEP team meetings on February 2, 2024, March 22, 2024, April 26, 2024, May 20, 2024, June 11, 2024, July 25, 2024, and September 19, 2024, in accordance with COMAR 13A.05.01.07. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #7 Responding to a Request for an IEE

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. Upon request for an IEE, the public agency must, without unnecessary delay, either approve funding for the IEE and provide parents with information about where an IEE may be obtained and the agency criteria applicable for an IEE or file a due process complaint to request a hearing to demonstrate that its evaluation is appropriate. If a parent requests an IEE, the public agency may ask for the parent's reason for objecting to the public evaluation (34 CFR § 300.502).

In this case, the complainant alleges that the HCPSS failed to file for due process when they refused to approve an IEE. While there is documentation that the evaluation process was not yet completed when the request was made, there is documentation that assessments had been reviewed. The HCPSS was still obligated to file for due process when denying the request.

Based on the Findings of Fact #21 and #22, MSDE finds that the HCPSS did not ensure that proper procedures were followed when responding to a request for an independent educational evaluation (IEE) obtained at the public expense since October 2023, in accordance with 34 CFR § 300.502 and COMAR 13A.05.01.14. Therefore, this office does find that a violation occurred concerning the allegation.

Allegation #8 Determination of ESY Services

In this case the complainants allege that the determination of eligibility for ESY 2024 was not made at an IEP team meeting. While the IEP amended on December 13, 2023, reflects that the student did not require ESY services, the PWNs from the 2023-2024 school year do not reflect that ESY was considered by the IEP team.

Based on the Finding of Fact #5, MSDE finds that the HCPSS did not consider the need for ESY services in 2024, in accordance with 34 CFR § 300.106, COMAR 13A.05.01.07B(2) and COMAR 13A.05.01.08B(2). 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 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 HCPSS to provide documentation, by February 28, 2025, that the IEP team has taken the following action:

- a. Convened an IEP team meeting to complete the re-evaluation process and determine the student's current educational needs;
- b. Reviewed and revised the IEP as appropriate;
- c. Followed proper procedures for responding to the request for an IEE;
- d. Convened an IEP team meeting to determine the amount and nature of compensatory services or other remedy to redress the violation related to the reevaluation, annual review, and consideration for ESY services on the student's ability to benefit from the education program; and
- e. Developed a plan for the implementation of the services within one 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.

School-Based

MSDE requires the HCPSS to provide documentation by February 28, 2025, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for conducting reevaluations, conducting annual reviews, provision of prior written notices of proposed decisions to remove services, provision of prior written notice and completed IEPs after IEP team meetings, responding properly to IEE requests, and determining eligibility for ESY services under the IDEA and COMAR. These steps must include staff development, as well as tools developed to monitor compliance.

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, 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.

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 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: Bill Barnes, Superintendent, HCPSS
Kelly Russo, Coordinator of Special Education Compliance and Dispute Resolution, HCPSS
[REDACTED], Principal, [REDACTED], HCPSS
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
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