



March 28, 2023

Ms. Jessica Williams
Education Due Process Solutions, LLC
711 Bain Drive #205
Hyattsville, Maryland 20785

Dr. Terri Savage
Executive Director of Special Education
Howard County Public Schools
10910 Clarksville Pike
Ellicott City, Maryland 21042

RE: [REDACTED]
Reference: #23-134

Dear Parties:

Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On January 27, 2023, MSDE received a complaint from Ms. Jessica Williams, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that Howard County Public Schools (HCPSS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The HCPSS did not ensure that the student was provided with the support required by the Individualized Education Program (IEP) since January 2022¹, in accordance with 34 CFR §§300.101 and .323. Specifically it was alleged that:
 - a. The student was not provided with specialized instruction;
 - b. The student was not provided with supplementary aids and services;
 - c. The student was not provided with a sensory plan and aids;
 - d. The student's binder is not being utilized;
 - e. The student's token chart was not implemented;
 - f. The student's BIP cards were not implemented;
 - g. The student was not provided with adaptive seating;
 - h. The HCPSS failed to have an effective substitute plan;
 - i. The student was not provided with movement breaks; and

¹ The Complainant alleged the violations began more than one year ago; however, consistent with 34 CFR §300.153, MSDE only investigates allegations that occurred no more than one year prior to the date the complaint is received.

- j. The student was not provided with manipulative/sensory activities.
2. The HCPSS has not ensured that the parent was provided with appropriate quarterly progress reports toward achieving the written language annual IEP goals since January 2022, in accordance with 34 CFR §300.320 and .323.
 3. The HCPSS did not ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address lack of expected progress toward achieving his annual IEP goals, since January 2022, in accordance with 34 CFR §§300.101 and 324.
 4. The HCPSS has not followed proper procedures to reevaluate and identify the student as a student with a disability requiring special education and related services, since January 2022, in accordance with 34 CFR §§300.303-.306 and COMAR 13A.05.01.06.
 5. The HCPSS did not ensure that the IEP developed for the student addressed his behavioral needs, since November 2022, in accordance with 34 CFR §300.324.
 6. The HCPSS did not ensure that the parent was provided with prior written notice of the IEP team decision to reject her proposal that a Functional Behavioral Assessment (FBA) be conducted for the student during an IEP team meeting in November 2022, in accordance with 34 CFR §300.503.

BACKGROUND:

The student is 6 years old and is assigned to [REDACTED] School. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. On December 15, 2021 and December 21, 2021, the IEP team convened to discuss the reevaluation of the student. The IEP team recommended a pre-academic skills assessment, a speech/language assessment, and sensory processing assessment. The parent provided consent for the recommended evaluations in January 2022.
2. The IEP in effect in January 2022, was developed on March 31, 2021. The areas impacted by the disability included Early Learning Skills: Social Foundations, Language and Literacy, Mathematics, physical well-being, and motor development. Additionally, the student has special communication needs that require the provision of Assistive Technology devices and services. The IEP also reflects the student requires Occupational Therapy and Speech/- Language Therapy as related services.
3. On February 2, 2022, the IEP team met to review and revise, as appropriate, the student's IEP. As part of this review, the IEP team considered information collected by the student's private Occupational Therapist, as provided by the parent. The IEP team determined that the examiner's findings were consistent with the assessment and progress data collected by the school.
4. The student has FBA conducted in February 2022. The FBA identifies four targeted behaviors: elopement, non-compliance, physical aggression, and yelling. As a result, a behavior intervention plan (BIP) was developed with the following replacement behavior goals:
 - Replacement Behavior Goal #1: the student will remain in his designated area and or chair;

- Replacement Behavior Goal #2: the student will follow adult directions and classroom routines with three or fewer reminders 80% of the time;
 - Replacement Behavior Goal #3: the student will keep self to self with three or fewer reminders 80% of the time; and
 - Replacement Behavior Goal #4: the student will use his total communication approach to communicate his needs and wants 80% of the time.
5. The student's BIP includes : educative strategies, preventive strategies, positive behavior supports-, reinforcement for display of replacement behavior(s), rewards and incentives, responsive strategies to address the targeted behavior if/when they occur, strategies to limit the impact of contributing factors, implementation by and documentation of all staff working with the student.
6. The parent expressed concerns that the BIP did not include sensory elements, opportunities for breaks or non-verbal cues, and a definition of elopement. Documentation reflects that the IEP team informed the parent that there were many sensory elements already included in the student's program, and that the BIP does contain opportunities for breaks. The team further clarified that elopement was any time the student left the room. The IEP team did not incorporate additional changes, and the parent was provided with prior written notice of the determination that no changes would be made.
7. On January 19, 2022 and February 9, 2022, the team met for the purpose of completing an annual review of the student's IEP. The purpose of the meeting was to discuss and review the annual IEP and to consider Extended School Year (ESY) services. The areas affected by the disability identified by the IEP team included Early Learning Skills: Social Foundations, Language and Literacy, Mathematics, and Physical well-being, and motor development. The IEP reflects the student required the following supports and services to access the curriculum:
- An AT device and services, including monitoring of the device;
 - OT services, including one 30 minute session per week inside the general education setting, and one 30 minute session per week outside of the general education setting;
 - Speech/language services, including one 30 minute session per week inside the general education setting and two 30 minute sessions per week outside of the general education setting;
 - ESY services, including six hours per week of special education services, transportation, and three 15 minute sessions of speech/language services per week;
 - Transportation;
 - Ten hours per week of specialized instruction inside the general education setting and six hours of instruction outside of the general education setting; and
 - IEP progress reports will be sent quarterly.
8. While there is some documentation of reporting on some of the goals, there is not consistent documentation that the parent was provided with quarterly progress reports for all of the student's goals.
9. On March 2, 2022, the IEP team met for the purpose of reviewing the assessment results. The student has developmental delays in the areas of cognition, communication, motor skills, adaptive skills, and social emotional development. Both parent and teacher rating scales indicate that the student has behaviors associated with Autism. The team also noted additional behaviors of concern, such as inattention, hyperactivity, and meeting developmental milestones.

10. On April 20, 2022, and May 25, 2022, the IEP team met for the purpose of completing the review of the IEP and discussing the student's transition to kindergarten in the fall of 2022. The team resumed the meeting with a review of service hours. A discussion regarding the parent's concern about the student's hours outside of the general education classroom and self-regulation was documented. The IEP team determined that the services continued to be appropriate, but that starting in the 2022-2023 school year, the student would receive additional speech/language services and instruction outside of the general education setting. The parent received and reviewed the IEP and Sensory Plan in advance of the meeting, and agreed with both plans during the meeting.
11. On June 15, 2022, the IEP team convened to discuss Adaptive Physical Education (PE) information collected for the student. Based on an observation conducted of the student, the team agreed to conduct an adaptive PE assessment during ESY.
12. On August 26, 2022, the IEP team met for the purpose of reviewing the Adaptive PE assessment. The team discussed the student's strengths and weaknesses, and the parent provided input regarding the student's gross motor skills. Based on the assessment results and parental input, the team determined that the student qualified for Adaptive PE services.
13. On September 14, 2022, the IEP team met and developed an Adaptive PE goal and services for the student.
14. On November 17, 2022, the IEP team met for the purpose of addressing the parental concerns. The parental concerns included the frequency of library check out, adding/changing options to the AT device, make up work from missed classes, and a request for a new FBA. The prior written notice from this meeting, provided to the parent on November 22, 2022, documents that the IEP team agreed to collaborate with the media specialist to coordinate a new check out system. The parent was provided an AT guide and was reminded about Canvas for any missed classwork. The school-based team declined to conduct a new FBA because the functions of the student's behaviors were consistent with the FBA completed in February. The team agreed to work with the BCBA in the school setting to fade edible reinforcements and to conduct a new FBA if there were any changes to the intensity, frequency, or presentation of the student's behaviors.
15. There is documentation that the student was provided with the use of a binder with first/then prompts, a reward choice page, break choice page, schedule visuals, and assigned area page. Within the classroom settings, the student had:
 - adaptive chairs - cube chair and backjack chair;
 - whole class visual schedule;
 - help request cards on cubby - at student eye level;
 - learning behavior visual cards;
 - large visual cards for staff to use as needed (responses based on BIP);
 - table top visuals;
 - bathroom picture schedule - at student eye level;
 - handwashing visual schedule;
 - classroom sensory shelf - at student eye level; and
 - access to the sensory room.

DISCUSSION/CONCLUSIONS:

ALLEGATION 1

IMPLEMENTATION OF IEP

Based on the Finding of Facts #2, #7, #10 through #11, and #15, MSDE finds that the HCPSS provided the support required by the IEP in accordance with 34 CFR §§ 300.101 and 323. Therefore, MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #2

PROVISION OF IEP PROGRESS REPORTS

While there is documentation that school staff generated IEP progress reports related to annual IEP goals, there is not documentation that the parent consistently received progress reports in each area as required by the IEP. Therefore, MSDE finds that a violation occurred with respect to this allegation.

ALLEGATION #3

REVIEW AND REVISION OF IEP

Based on Finding of Facts # 2 through 13, since January 2022, the IEP team has met 11 times for the purpose of reviewing the student's behavior and academic needs. The IEPs developed since January 2022, reflect revisions made to address the student's needs, in accordance with 34 CFR §§300.101 and 324. Therefore, MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #4

CONDUCTING RE-EVALUATION

Based on Finding of Facts #1, #7, and #9 through #13, MSDE finds that the HCPSS has ensured that proper procedures were followed when conducting an evaluation of the student, since January 2022, in accordance with 34 CFR §§300.303-306 and COMAR 13A.05.01.06. Therefore, MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #5

ADDRESSING THE STUDENT'S BEHAVIORAL NEEDS

Based on Finding of Facts #4 through 6, and #14 MSDE finds that the student's behavioral needs were identified by the IEP team in the FBA, assisted through working with the BCBA, and addressed in his IEP through the development of a BIP, including a consideration of the parent's concerns, in accordance with 34 CFR §300.324. Therefore, MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #6

PROVISION OF PRIOR WRITTEN NOTICE

The prior written notice must indicate a description of the action proposed or refused by the school system; an explanation of why the school system is proposing or refusing the action; a description of the procedure, assessment, record, or report used as the basis for the proposed or refused action.

Based on Finding of Fact #15, MSDE finds that the HCPSS provided the parent with prior written notice in accordance with 34 CFR §300.503.

CORRECTIVE ACTIONS/TIMELINES:

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.

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MSDE has established reasonable time frames 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 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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

MSDE requires HCPSS to provide documentation by May 1, 2023, that the parent has been provided with copies of annual IEP progress reports from January 2022 to the present.


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 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,

Dr. Deann Collins
Deputy Superintendent
Division of Early Intervention/Special Education Services

DMC:ra

c: Michael Martirano
Kelly Russo

Gerald Loiacono
Diane Eisenstadt
Rabiatu Akinlolu

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.