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April 12, 2017

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

Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #17-085

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 3, 2017, the MSDE received a complaint from Ms. Jessica Williams, hereafter, “the complainant,” on behalf of the above-referenced student, and his father, Mr. XXXXXXXX. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The MCPS has not developed an Individualized Education Program (IEP) that addresses all of the student’s needs, since January 18, 2016, in accordance with 34 CFR §§300.320 and .324.
2. The MCPS did not ensure that proper procedures were followed in response to requests for, and when conducting, reevaluations of the student, since January 18, 2016, in accordance with 34 CFR §§300.303 - .306, and COMAR 13A.05.01.06.

3. The MCPS has not ensured that the parent has been provided with quarterly reports of the student's progress towards mastery of the annual IEP goals as required by the IEP, since January 18, 2016, in accordance with 34 CFR §§300.101 and .323.
4. The MCPS has not ensured that the parent has been provided with proper written notice of the IEP team's decisions following review of the Independent Educational Evaluation (IEE) obtained by the parent, and of the IEP team's consideration of the recommendations in the IEE, including the recommendation that the student requires occupational therapy, in accordance with 34 CFR §300.503.
5. The MCPS did not ensure that parental consent was obtained before conducting an occupational therapy assessment, in accordance with 34 CFR §300.300 and COMAR 13A.05.01.13.

INVESTIGATIVE PROCEDURES:

1. On January 18, 2017, the MSDE provided a copy of the State complaint, by facsimile, to Mr. Philip A. Lynch, Director of Special Education, MCPS, and Ms. Tracee Hackett, Supervisor, Resolution and Compliance Unit, MCPS.
2. On February 1, 2017, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On February 3, 2017, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the MCPS of the allegations and requested that the MCPS review the alleged violations.
4. On February 6, 2017, the MSDE requested the complainant to provide additional documentation.
5. On February 6, 7, 9, 10 and 23, 2017, the complainant provided additional documentation to the MSDE for consideration.
6. On February 8, 2017, Ms. Austin conducted a telephone interview with the student's father to discuss the allegations.
7. Also on February 8, 2017, and March 26, 27 and 28, 2017, the MSDE requested the MCPS to provide documentation for consideration.
8. On February 9, 10, 15, 24 and 28, 2017, and March 2, 17, 27 and 28, 2017, the MCPS provided documentation to the MSDE for consideration.

9. On February 24, 2017, Ms. Austin and Dr. Nancy Birenbaum, Compliance Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXX (XXXXXXXX) to review the student's educational record, and interviewed the following school system staff:
 - a. Mr. XXXXXXXX, Principal Intern, XXXXXXXX;
 - b. Ms. XXXXXXXX, Psychologist, XXXXXXXX;
 - c. Ms. XXXXXXXX, Principal, XXXXXXXX;
 - d. Ms. XXXXXXXXXXX, Speech and Language Pathologist, XXXXXXXX;
 - e. Ms. XXXXXXXXXXXXXXX, Special Education Teacher, XXXXXXXX;
 - f. Ms. Daphne Shye, MCPS Assessment Team; and
 - g. Ms. XXXXXXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXX.

Ms. Hackett, participated in the site visit as a representative of the MCPS and to provide information on the school system's policies and procedures, as needed.

10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Amended IEP, dated September 29, 2015; IEP and Prior Written Notice dated February 8, 2016; IEP and Prior Written Notice, dated April 12, 2016; IEP Amendment, dated May 3, 2016; IEP and Prior Written Notice, dated June 13, 2016; IEP and Prior Written Notice, dated September 20, 2016; and IEP and Prior Written Notice, dated October 24, 2016;
 - b. The MCPS Reevaluation Planning form, dated February 8, 2016;
 - c. Authorizations for Assessments, signed by the parent on February 8, 2016, March 23, 2016 and April 12, 2016;
 - d. Electronic mail (email) correspondence between the parents and the school staff, and emails among the school system staff, dated January 2016 to February 2017;
 - e. Reports of the student's progress towards mastery of the annual IEP goals, dated January 22, 2016, June 17, 2016, December 19, 2016, and January 26, 2017;
 - f. The student's class schedule for the 2015 - 2016 and 2016 - 2017 school years;
 - g. Correspondence from the school staff to the parent concerning the student's disciplinary infraction on March 18, 2016;
 - h. Visual chart of the student's daily schedule, tasks, expectations, and behavior, undated;
 - i. The student's reports cards for the 2015 - 2016 and 2016 - 2017 school years;
 - j. The IEP team's Consideration of External Report, dated February 8, 2016;
 - k. Reports of the student's private medical providers, dated January 13, 2016 and February 1, 2016;
 - l. Report of the student's private psychologist, dated January 21, 2016;
 - m. Data charts recording the student's transitions, and his behaviors relating to following directions and work completion, dated February 2016 to March 2016, and September 2016 to February 2017;

- n. Notification of the student's placement in the English for Speakers of Other Languages (ESOL) Program, dated September 8, 2015, and the parent's approval of the ESOL placement, signed on September 18, 2015;
- o. The school staff's request for consultation, dated March 23, 2016;
- p. The ESOL Home Language Survey completed by the parent, undated;
- q. The MCPS "Bilingual Assessment Team Referral for Special Education Assessments for School-age Students: ESOL Level 1 or 2 Only" form, dated February 9, 2016;
- r. The MCPS Memorandum addressing the process for referring school-age students to the Bilingual Assessment Team, dated December 10, 2015;
- s. Bilingual Educational Assessment Report, dated March 16, 2016;
- t. The Report of a Bilingual Psychological Assessment conducted in April 2016;
- u. The MCPS *Report of Speech and Language Reassessment*, dated April 21, 2016;
- v. Functional Behavioral Assessments, dated March 23, 2016, and September 18, 2016;
- w. Behavior Intervention Plans, dated March 23, 2016, and September 18, 2016;
- x. Parental Reports, dated March 28, 2016 August 26, 2016, and October 6, 2016;
- y. Parental Input prepared by the parents' advocate for the April 12, 2016 IEP team meeting;
- z. Memorandum from the MCPS Bilingual Assessment Team to the school staff, dated February 18, 2016;
- aa. Summary of Parent Conference on April 18, 2016;
- bb. Emails from the parents' advocate to the school system staff, dated April 11 and 21, 2016;
- cc. The school staff reports prepared prior to IEP team meetings, dated April 4, 2016, May 24, 2016, September 20, 2016, and October 24, 2016;
- dd. The MCPS documentation of the student's continued eligibility as a student with an Other Health Impairment, dated May 3, 2016;
- ee. The report of an independent occupational therapy assessment conducted on June 8, 2016;
- ff. Parent report submitted on August 28, 2016, for consideration at the September 20, 2016 IEP team meeting;
- gg. Memorandum from the MCPS Physical Disabilities Program to the school staff, dated September 26, 2016;
- hh. The school staff's "Summary Review of Non-MCPS Occupational Therapy Report," dated September 6, 2016;
- ii. Chart of reading level targets for grades kindergarten to fifth grade, undated;
- jj. Documentation of students receiving social skills instruction from January 2016 to June 2016; and
- kk. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on January 18, 2017.

BACKGROUND:

The student is seven (7) years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education and related services (Doc. a).

During the period of time addressed by this investigation, the parents participated in the education-making process and were provided with written notice of the procedural safeguards (Doc. a).

ALLEGATIONS #1XXXXXXXX, #2 AND #4 IEP THAT ADDRESSES THE STUDENT'S NEEDS AND PRIOR WRITTEN NOTICE OF THE IEP TEAM'S DECISIONS FOLLOWING REVIEW OF THE INDEPENDENT EDUCATIONAL EVALUATION (IEE) AND CONSIDERATION OF THE RECOMMENDATIONS IN THE IEE

FINDINGS OF FACTS:

1. The IEP in effect at the start of the investigation period was developed on September 29, 2015. The IEP identifies that the student's primary disability is a Developmental Delay that affects the areas of "expressive language, "willingness to complete non-preferred tasks, work completion [and] problem solving when stressed" (Doc. a).
2. The September 2015 IEP reflects that the student is performing on grade level in reading and math. It also reflects that the student is performing on grade level in the area of written language, and documents that his written language performance does not impact his academic achievement or functional performance. However, the September 2015 IEP also states that the student "sometimes has difficulty generating an idea for writing," and that he "needs prompting to stay on task" when writing sentences (Doc. a).
3. The September 2015 IEP provides the following additional information about the student's performance in non-academic areas:
 - He has difficulty "self-starting," staying on task, and completing assignments.
 - He will put his head down and has difficulty sustaining attention for long periods of time.
 - He needs prompts to complete his work. He has difficulty with problem solving and does not always follow directions the first time they are given (Doc. a).
4. The parental input section of the September 2015 IEP documents that the parents expressed concern that the student "requires a great deal of assistance maintaining focus on task," and that he needs to improve his writing skills. The parents also reported that the student needs "help with some behaviors & self-control issues," and questioned "if

- there is a school test to determine if he is overactive or suffers from ADHD” (Doc. a).
5. The September 2015 IEP includes one (1) goal in the area of “learning skills” that requires the student to follow class rules and expectations, with teacher prompts and modeling.¹ The objectives within the goal focus on the student’s need to complete tasks, persevere with tasks that are perceived to be difficult, and to use calming strategies when frustrated (Doc. a).
 6. In order to assist the student with achieving the IEP goals, the September 2015 IEP requires that the student be provided with accommodations, including extended time, multiple breaks, and reduced distractions, as well as supplementary supports, including repetition of directions, additional prompts and cues, wait time, preferential seating, and reduced distractions (Doc. a).
 7. The September 2015 IEP requires that the student be provided with one (1) hour of specialized instruction each week in the general education classroom, and one (1) hour of specialized instruction each week in a separate special education classroom (Doc. a).
 8. The September 2015 IEP documents that the student is identified as “limited English proficient,” performing at the 1.8 level of overall proficiency. While it does not identify the student’s native language, the September 2015 IEP documents that XXXXXXXX is the native language of the student’s mother (Doc. a).
 9. The student’s schedule for the 2015 - 2016 school year reflects that he was assigned to three (3) class periods per week of instruction in ESOL (English for Speakers of Other Languages), and two (2) class periods per week of instruction in social skills (Doc. g).
 10. In January 2016, the school staff documented that the student was not making sufficient progress to achieve the IEP goal addressing learning skills, and that the IEP team needed to meet to address the lack of progress. The documentation states that the student “continues to have inconsistent progress - he is requiring a lot of supports to attend to task and complete modified workload. He shuts down when he perceives work as being new or too difficult” (Doc. f).
 11. On February 8, 2016, the IEP team convened to review the student’s progress. The IEP team considered updated information about the student’s academic performance, including the following:
 - In math, while still functioning on grade level, the student is easily distracted, and produces work only if there is “an immediate reward.” He requires “lots of coaching and reminders.”
 - In reading, the student is functioning below grade level and needs frequent reminders to continue working on tasks.
 - In written language, while he “is capable of writing sentences,” the student needs “one on one,” a “shared workload with supports,” and prompting to stay on task

¹ The September 2015 also includes two (2) goals in the area of speech and language. The complainant has not alleged any violations with respect to the student’s speech and language needs (Docs. a and kk).

in order to produce written work. He is performing on grade level in the area of written expression (Doc. a).

12. The IEP team also considered updated information about the student's work completion and his social, emotional and behavioral functioning, including the following:
 - He continues to have difficulty engaging in classroom instruction, and with problem solving when stressed.
 - He has difficulty complying with adult and peer requests when not related to a preferred activity, and does not consistently follow directions from adults when they are first given.
 - He has difficulty sustaining attention to tasks and with transitions, and continues to need "outside motivators" and prompts to begin, maintain and complete work and to make transitions (Doc. a).
13. At the February 8, 2016 IEP team meeting, the parents expressed concern about the impact on the student of his diagnosed Attention Deficit Hyperactivity Disorder (ADHD), and requested a Functional Behavior Assessment (FBA). The IEP team decided to conduct reevaluation planning to address the parents' concerns (Docs. a and b).
14. The IEP team agreed that the student requires additional support and "direct intervention of different strategies to continue to make progress in the general education curriculum" (Doc. a).
15. At the February 8, 2016 IEP team meeting, the IEP team revised the student's IEP to include a new behavioral goal to address the student's transitions inside and outside of his classroom, and a new goal in the area of reading. They also added supplementary supports, including wait time, warnings for transitioning, additional prompts, frequent changes in activities or opportunities for movement, provided to the student on a daily basis. In addition, the IEP team determined that the student requires an increase in the amount of specialized instruction in the general education classroom, from one (1) hour to five (5) hours per week, and an increase in the amount of specialized instruction in a separate special education classroom, from one (1) hour to almost five (5) hours per week, in order to address reading, math and social skills (Doc. a).
16. Also on February 8, 2016, following the IEP team's review and revision of the student's IEP, the team conducted reevaluation planning. The IEP team considered the student's current performance and functioning. They also reviewed the reports prepared by three (3) of the student's private providers which include the following information about the student:
 - He has diagnoses of ADHD and Attention Deficit Disorder (ADD)
 - He is easily distracted, has poor attention, does not finish work, needs frequent redirection, is impulsive, has difficulty making friends, is sensitive to changes in routine, and cannot sit still.
 - He has difficulty transitioning that requires "numerous reminders," difficulty

expressing his feelings and “responding to limits,” and needs “multiple prompts to follow directions.”

The reports also include recommendations that the student be assessed in the areas of academics, speech and language, and behavior, as well as a psychological evaluation (Docs. a, e and k - m).

17. Based on all of the information considered at the February 8, 2016 reevaluation planning meeting, the IEP team determined that additional data is needed. They identified diagnostic questions to address whether the student has an Other Health Impairment and Autism, to identify his present levels of performance in reading, math and writing, to determine the impact of his attention and self regulation, and his current communication skills. The IEP team recommended an educational, speech and language, psychological, and language dominance assessments (Docs. b and c)
18. On February 8, 2016, the student’s father provided written consent for the recommended assessments, and on February 9, 2016, the school staff referred the student to the MCPS Bilingual Assessment Team (BAT) for assessments. The referral identifies that English and XXXX are spoken in the student’s home, and that he is a Level 2 ESOL student (Doc. r).
19. The February 8, 2016 IEP documents that the student’s native language is English, while also identifying that his mother’s native language is XXXX. The IEP also reflects that the student was identified as a student with limited English proficiency, and that he was participating in the English for Speaker of Other Languages (ESOL) Program.² There is also documentation of parental approval for the student’s participation in the ESOL Program (Docs. a and n).
20. The MCPS has developed guidance for conducting assessments of students receiving ESOL services, or who have received ESOL services within one (1) year, and who have, or are suspected of having, an educational disability. The MCPS guidance in effect in February 2016 required the referral of ESOL Level 1 and 2 students to the Bilingual Assessment Team (BAT) unit to complete all assessments, with the exception of speech and language assessments for non-Spanish speaking students (Doc. r and MCPS website, Bilingual Assessment Team).
21. In email exchanges between the parent and the school staff on February 29, 2016, the parent expressed concern that the student was being assessed by the bilingual staff. The school staff explained that because the student is a level 1 student, he was being tested by the BAT unit and will have an interpreter. The parent informed the school staff that the student does not speak or understand XXXX, that his mother speaks to him in English, and that he may be confused if the interpreter speaks to him in XXXX, possibly impacting the results of the testing (Doc. e).

² The student’s class schedule indicates that he was participating in ESOL classes three (3) times per week (Doc. f).

22. In February and March 2016, the student continued to exhibit interfering behaviors evidenced by his difficulty with focusing, difficulty attending to work and in his willingness “to complete work - written and otherwise,” work refusals, difficulty with transitions, and not following directions (Docs. e , h and i).
23. In mid-February 2016, the school staff identified and began implementation of an informal plan of steps for the school staff to use in response to the student’s difficulty with transitions and following directions. The school staff decided to collect data on the student’s responses in order to determine the effectiveness of the plan (Doc. e.).
24. There is documentation that, in February and March 2016, the school staff provided positive behavioral interventions to the student, including breaks after whole group and small group instruction, use of a timer, reflection forms to process behavior choices, a sticker reward chart, and a “break box” of fun activities. There is also documentation that, in February 2016, the school staff began a system of consequences and rewards with the student that involved the loss of recess time for inappropriate behavior, and the reward of computer time for appropriate behavior (Docs. e and i).
25. The documentation reflects that, during February and March 2016, there were times that the student responded positively to the interventions. However, the documentation indicates that the student’s response was inconsistent, and the school staff report that there was no commonality between the particular intervention used with the student and his responses (Doc. e and interview with the school staff).
26. On March 23, 2016, the school staff requested assistance with developing strategies and interventions for the student through consultation with the MCPS Department of Special Education Services, Emotional Disabilities Office. The request documents that the school staff attempted prior interventions with the student, including warnings informing him before transitions, instruction in social skills and problem solving, and rewards for task completion (Doc. o).
27. The documentation reflects that, on March 23, 2016, the student’s father provided written consent for a FBA and a Behavior Intervention Plan (BIP). There is also documentation that the school staff conducted a FBA and developed a proposed BIP on the same date, March 23, 2016³ (Docs. a, c, t, v and w).
28. On April 12, 2016, the IEP team convened for the annual review of the student’s educational program. Prior to the meeting, the parents provided the school staff with written input of questions, concerns and requests, which included the following:
 - Bilingual assessments “will be confusing” to the student since his “first and only language is English,” which the parents speak with each other, and to the student “since [his] birth.” The parents have not been included in the development of the FBA and BIP with the IEP team, but they have specific input and requests that they would like included through a revised FBA and BIP.

³ There is documentation that, on April 18, 2016, the parents participated in a telephone conference with the school staff about the FBA and BIP, and that the parents requested revisions to the FBA and BIP (Docs. aa and bb).

- The student is missing the general education curriculum during times when he attends ESOL classes, which also requires the student to make additional transitions.
 - Request for an occupational therapy assessment “to explore reasons why” the student is not writing, with the focus on sensory processing, visual motor integration skills, and self regulation skills.
 - Request for additional adult support to the student in the general education classroom for immediate feedback, clarification and behavioral support (Docs. e, x and y).
29. At the April 12, 2016 IEP team meeting, the IEP team discussed that the student has difficulty transitioning, responding appropriately to requests and with problem solving, and that he does not “typically” follow directions, has “attention seeking temper tantrums,” and “consistently avoids tasks that he perceives as difficult.” The IEP team also considered that the student is easily distracted, “often shuts down,” and is refusing to attend social skills classes and reading interventions. The IEP team documented that the student’s “social and emotional status is impacting all of his academics.” The IEP team also considered that the student was now performing “below grade level” in math as well as reading (Docs. a and cc).
30. In the area of writing, the IEP team considered that, while the student “has shown that he is capable of writing,” he “often refuses” to participate, and “has not produced or engaged in learning activities for writing at all” during the third (3rd) quarter of the school year. The IEP team determined that the student’s performance in the area of written language was “below average” (Docs. a and cc).
31. At the April 12, 2016 IEP team meeting, the parents requested a “one-on-one paraeducator” to provide more prompting and to assist the student with staying on task. The Prior Written Notice of the decisions made at the April 12, 2016 IEP team meeting documents that the school based members of the IEP team determined that the parents’ request for an additional adult for one-to-one support to the student was considered to be a “staffing” issue “not connected to the IEP,” and that it would be determined between the school staff and the school system. There is documentation that the school system staff were aware, prior to the meeting, that the parents were requesting additional “staffing” (Docs. a, e, bb and x).
32. The parents also requested that the number of daily transitions that the student makes be reduced, based on the understanding that transitions have been identified as triggers for his frustration (Docs. a and x).
33. The IEP team revised the IEP to require additional accommodations and supplementary supports, including visual and graphic organizers, change in schedule or activities, organizational aids, a picture schedule, frequent or immediate feedback, repetition of directions, alternative ways to demonstrate learning, multiple warning before transitions, use of a word bank for extended writing, kinesthetic activities, altered or modified assignments, sentences starters, and strategies to sustain attention (Doc a).

34. In order to address concerns about the student's writing, the IEP team added a goal in the area of written language requiring the student to write phrases and sentences, with supports. The IEP team also developed a new goal to address the student's below grade level performance in math, and revised the reading and learning skills goals. They also determined that the student requires additional specialized instruction in the general education classroom, totaling eight (8) hours and forty (40) minutes per week, to address his needs in reading, writing and math, as well as his behavior support and organizational needs (Doc. a).
35. At the April 12, 2016 meeting, the IEP team agreed to the parental request for an occupational therapy assessment to consider the student's sensory processing, and the student's father provided written consent at the meeting (Docs. a and c).
36. The IEP developed by the team at the April 12, 2016 meeting reflects that the student has the same FBA and BIP dated March 23, 2016. The FBA identifies that the student's "problem behaviors" are noncompliance, difficulty with transitions, avoidance of written work and other academic tasks, elopement, and physical aggression towards peers and adults. The FBA states that the function of the behaviors are to escape task demands and to gain attention or a preferred activity. The BIP identifies strategies to prevent the interfering behaviors, including prior warnings for transition; strategies to teach and increase replacement behavior, including praise, rewards and modeling; and strategies to respond to the behaviors, including the use of a timer and crisis team intervention (Docs. a, v and w).
37. There is no documentation that the IEP team considered all of the parents' concerns at the April 12, 2016 IEP team meeting, including, specifically, their concerns about the number of transitions in the student's day, the provision of bilingual assessments to the student, and their request for revisions to the FBA and BIP (Review of the student's educational records).
38. On May 3, 2016, the IEP team convened. The IEP team reviewed the results of the assessments that were recommended at the February 8, 2016 IEP team reevaluation planning meeting, which include the following information:
 - The educational assessment, conducted by the BAT unit, states that the student's mother is a native XXXX speaker and that "much of [his] early language development was in XXXX." The report of the educational assessment reflects that a XXXX interpreter was present during the first (1st) session of testing, and while she spoke in XXXX to greet the student, the interpreter did not need to restate any of the testing directions in XXXX. The report reflects that the student demonstrated some work avoidance behaviors, including repeated statements of "I don't know" and "this is hard." The results of the educational testing document that the student was performing at the "low average" levels in reading, math and written language.
 - The psychological assessment, conducted by the BAT unit, does not indicate that a XXXX interpreter was included in any of the testing sessions. The report

includes information from the student's parent that he has been seeing a private psychologist for two (2) years due to behavioral difficulty, including frustration and transitions. The report reflects that the student repeatedly exhibited protest when asked to perform tasks that he perceived to be difficult. The results of the psychological testing document that the student has "average" intelligence, working memory and quantitative reasoning functioning. The evaluator concluded that helplessness and disregard for others' rights are the areas in which the student requires "immediate attention."

- The speech and language assessment was not performed by the BAT unit, but included the involvement of a XXXX interpreter. The interpreter reported that the student "did not appear to have XXXX vocabulary." The report indicates that the student has "average" speech and language functioning. Based on the data, the IEP team determined that the student is a student with an Other Health Impairment due to ADHD (Docs. dd, s and u).
39. On June 13, 2016, the IEP team convened to review the student's IEP. The IEP team revised the IEP to include updated information about the student's levels of performance based on recent assessments. The IEP team also considered reports from two (2) of the student's private providers documenting the student's ADHD diagnoses (Doc. a).
 40. The IEP team added a new behavior goal to the student's IEP focusing on social skills and problem solving, removed crisis intervention from the supplementary supports, and increased the student's specialized instruction inside the general education classroom by one (1) hour. The documentation reflects that the IEP team also agreed to the continuation of the BIP into the next school year, and to meet at the end of the first (1st) quarter for a periodic review (Doc. a).
 41. At the June 13, 2016 IEP meeting, the parents provided the IEP team with the report of an independent occupational therapy assessment conducted by the student's private provider on June 8, 2016. The following day, on June 14, 2016, the school staff provided the report to the Central Office OT Assessment Team (OT Team). However, the OT Team reported that the review of the report "will likely occur in the fall" (Docs. a, e and ee).
 42. The June 17, 2016, progress reports reflect that the student was making sufficient progress towards mastery of all of the IEP goals, including the behavior goal addressing transition, and the learning skills goal addressing following rules and expectations. The reports also state that the student's progress is variable, and that his "behavior and anxiety continue to impact his work production" (Doc. f).
 43. The student's report card for the 4th (4th) quarter of the 2015 - 2016 school year documents that the student "not yet making progress or making minimal progress towards meeting the grade-level standard in two areas of writing. It also documents that the student was "in progress toward meeting the grade-level standard" in all areas of reading, and performing below the reading target for the quarter (Doc. i).

44. On July 5, 2016, the parents sent an email to the school staff making their second request that the student be provided with a paraeducator for additional adult support, notwithstanding “budget restrictions and staffing limitations” (Doc. e)
45. On August 9, 2016, the parents provided the school staff with written input and recommendations from the student’s private tutor. The tutor expressed the opinion that the student “does not have the underlying foundational skills to tackle written language tasks,” making it “laborious and tiring” for him to write. The tutor also noted that because the student struggles with spelling easy first grade words, he “finds written language to be an extremely daunting task,” and may be unwilling to use a computer if he has low fine motor skills. Recommendations included the use of a word bank, a spelling device, speech to text programs, and “very explicit instruction” to the student (Doc. e).
46. On August 9, 2016, the parents sent an email to the school staff inquiring about the status of the occupational therapy assessment that was agreed upon at the April 2016 IEP team meeting. In its response on the same day, the school staff agreed to follow up with the request that was sent to the “OT Office” school system staff on June 14, 2016. The school staff sent another email on the same date to the school system staff inquiring about the procedure for obtaining an occupational therapy assessment “over the summer” (Doc. e).
47. On August 29, 2016, the parent sent an email to the school staff inquiring, again, about the status of the occupational therapy assessment by the school staff, and requested that the upcoming IEP meeting on September 20, 2016 include discussion about his concerns about the student’s “sensory and fine motor functioning” (Doc. e).
48. On August 30, 2016, the school staff sent an email informing the parents that the occupational therapist would be meeting with the student for testing on September 6, 2016. The school staff also noted that the results of the testing may not be available at the next IEP team meeting scheduled on September 20, 2016 (Doc. e).
49. On September 20, 2016, the IEP team convened to review the student’s progress. Approximately four (4) weeks prior to the meeting, the parents submitted a list of requested accommodations and supports for the student, including their third (3rd) request for a paraeducator to support the student in the classroom. The parents also provided the school staff with another copy of the June 8, 2016 report of an independent occupational therapy assessment, as well as the May 27, 2016 and July 25, 2016 progress notes from the student’s private psychologist, and the June 1, 2016 report from the student’s pediatrician (Docs. ff).
50. At the September 20, 2016 IEP team meeting, the team considered the following information about the student’s current levels of performance:
 - The student is “hesitant to complete written assignments,” but he is completing most assignments “with all supports in place.”
 - While the student avoids writing, and will stop working when there is a writing

demand, he is “capable” of writing and is “more willing” to participate in writing activities with dictation, “shared” writing, reminders, redirection to task, and encouragement.

- He has been successful “more than 90% of the time” with following directions, transitioning and completing assignments, with three (3) prompts (Docs. a, m and c).
51. The IEP team revised the IEP to require faded dictation, a peer buddy, and allowance for the student to respond verbally to questions instead of writing as additional supplementary supports. They also decreased the amount of specialized instruction to the student in the general education classroom to two and one-half (2.5) hours per week, and increased the amount of specialized instruction to the student in a separate special education classroom to eleven and one-half (11.5) hours per week (Doc. a).
 52. The IEP developed on September 20, 2016, documents that the parents declined the continuation of ESOL services to the student (Doc. a).
 53. The Prior Written Notice of the decisions IEP team’s decisions at the IEP team meeting on September 20, 2016 reflects that the school staff reported that “the OT report will be shared when it becomes available” (Doc. a).
 54. On September 26, 2016, the Central Office OT staff notified the school staff that the review of the independent occupational therapy assessment was completed, and that “service is not recommended at this time” (Doc. gg).
 55. On October 6, 2016, in preparation for the upcoming IEP meeting scheduled for October 24, 2016, the parents provided the school staff with written input of their concerns and requests. The parent reported that the student was participating in group activities, participating in class instruction, following school rules and demonstrating appropriate behavior in class. The parent expressed the belief that the student needs more support in writing and requested “more handwriting instruction,” and access to technology in order to reduce the student’s anxiety . The parents also reported that the student needs to transition from having a scribe to writing his own work. The parents also noted that the “great support” by two (2) school staff members who have had a “positive impact” on the student (Doc. x).
 56. On October 24, 2016, the IEP team convened. The IEP team considered information about the student’s current levels of performance, including the following:
 - The student is functioning on grade level in math, and at the mid-first (1st) grade level in reading.
 - The student’s “reluctance” to writing has decreased and he is “gaining momentum, needing less prompts to do all writing tasks.” He also “adds a sense of humor to his writing.”
 - With prompting, the student is able to write “more neatly.”
 - Due to his ADHD, the student’s spatial organization, and legibility are affected, and he may rush through his work (Docs. a and ii).

57. The IEP developed at the October 24, 2016 IEP team meeting indicates that, when identifying the student's present levels of performance in the area of written language, the IEP team considered the report of the "Summary Review of Non-MCPS Occupational Therapy Report" by the school system staff (Docs. a and hh).
58. The "Summary Review of Non-MCPS Occupational Therapy Report" reflects that the evaluator reviewed the independent occupational therapy assessment obtained by the parents. The report of the independent occupational therapy assessment includes the recommendation for occupational therapy once a week to address the student's needs in the areas of self-regulation, social and emotional behavior, handwriting, and executive functioning, as well as proposed goals for the student. It also includes recommendations for other supports and accommodations to the student (Docs. ee and hh).
59. The "Summary Review of Non-MCPS Occupational Therapy Report" also documents that, through the administration of a subtest of the Bruininks-Osteretsky Test of Motor Proficiency-2 (BOT), the evaluator conducted an assessment of the student's fine motor skills (Doc. hh).
60. The "Summary Review of Non-MCPS Occupational Therapy Report" includes the following conclusions of the evaluator:
- The student's sensory processing "appears" functional for school. In addition, the classroom teacher reported that the student has not demonstrated behaviors in the classroom that indicate concerns about sensory processing.
 - The student has "sufficient" motor skills to manage routines and classroom materials and "average" visual motor skills.
 - The student scored in the "average" level of functioning on a subtest measuring fine motor precision.
 - When asked to write the alphabet, the student stated "It's too hard for me." He transposed letters, omitted one letter, and did not completely produce one letter. Although he used his finger to space words, he over-spaced words, had words close together, showed inconsistent spacing, and his "misspelling affected the legibility of his work product."

The evaluator concluded that the student has no needs "requiring school-based occupational therapy," and that "the expertise of an occupational therapist is not required for [the student] to access and participate in his educational program." The evaluator opined that the student's reluctance to write "appears to be due to factors other than his motor skills," while also noting that his tendency to write quickly affects letter formation, spacing and alignment. The evaluator also suggested that, if the student continues his reluctance to write, the IEP team may consider consultation with the High Incident Accessible Technology (HIAT) office about additional strategies and accommodations to address the student's written expression (Doc. hh).

61. While the IEP team reviewed the report of the MCPS review of the independent occupational therapy assessment (IEE), that report did not include information about the recommendations for services that are contained in the IEE and there is no

documentation that the IEP team considered those recommendations (Docs. a, ee, hh and interview with the school system staff).

62. The parents' request that the student be provided with occupational therapy as a related service was denied at the October 24, 2016 IEP team meeting. The documentation reflects that the school based members of the IEP team concluded that the student "does not qualify" for occupational therapy. Their decisions was based on the results of the MCPS occupational therapy report documenting that the student has "average" fine motor skills and visual motor skills, as well as the underlying skills for writing (Doc. a).
63. At the October 24, 2016 IEP team meeting, the IEP team revised the IEP to require that the student be provided with of lined paper for extended assignments as additional support. (Doc. a).
64. The school staff collected data on the student's behavior from September 2016 to February 2017. The data collection documents that the student was successfully transitioning, following directions, and completing his work ,with no more than three (3) prompts, on a regular basis (Doc. m).
65. In December 2016 and January 2017, the school staff documented that the student was making sufficient progress towards mastery of all of the annual IEP goals (Doc. f).
66. The student's report card for the 2016 - 2017 school year reflects grades of "I" meaning "In Progress" towards meeting the grade-level standard, and "P" meaning "Processing," which indicates that he is meeting the grade level standard (Doc. i)
67. There is documentation that the student was provided monthly instruction in social skills from February to June 2016 (Doc. jj).
68. The student's class schedule for the 2016 - 2017 school year indicates that a paraeducator provides support to the student three (3) days per week in his writing class. The schedule does not reflect any other classes in which a paraeducator works with the student (Doc. f).

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP That Addresses the Student's Needs Since January 18, 2016

A Free Appropriate Public Education (FAPE) means special education and related services that are provided in conformity with an IEP at public expense, under public supervision and direction, and without charge to the parent (34 CFR §§300.17, .101 and .323).

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the

academic, developmental, and functional needs of the student. If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

In this case, the complainant has expressed concern about the student's social, emotional, and behavioral needs, as well as his fine motor needs related to handwriting and sensory needs.

Social, Emotional and Behavioral Needs

Based on the Findings of Facts #1 - #7, the MSDE finds that the IEP in effect at the start of the investigation period identifies that the student has needs in the areas of following class rules and expectations, completing tasks, and using calming strategies when frustrated.

Based on the Findings of Facts #9 - #12, the MSDE finds that, following the school staff's determination in January 2016 that the student was not making sufficient progress to achieve mastery of the annual IEP goals due to interfering behavior, the IEP team promptly convened a meeting in February 2016 to address his lack of progress. Based on the Findings of Facts #13 - #15, the MSDE finds that the IEP team made revisions to the student's IEP at the February 2016 IEP team meeting, including increased specialized instruction and new goals, in order to address the student's newly identified areas of needs in reading and behavior. Based on the Findings of Facts #16 - #18, the MSDE also finds that the IEP team determined the need for additional data about the student's functioning, and obtained parental consent to conduct assessments.

Based on the Findings of Facts #22 - #26, the MSDE finds that, in February 2016 and March 2016, the school staff took a series of steps in an effort to determine strategies to address the student's interfering behavior, and collected data in an effort to determine the effectiveness of the strategies. Based on the Findings of Facts # 27, the MSDE finds that, in March 2016, with parental consent, the school staff conducted a FBA and proposed a BIP to further address the student's interfering behaviors.

However, based on the Findings of Facts #28 - #63, the MSDE finds that the IEP team did not consider the parents' concerns about the FBA and proposed BIP, and the request to limit the number of transitions in the student's day, or concerns about the manner in which assessments were conducted. Therefore, this office finds that the MCPS did not ensure proper parent participation in the identification and addressing of the student's needs, and that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #28 - #31, #33, #34, #36, #38 - #40, #42, #49 - #52, #55 and #63, the MSDE finds that the IEP team continued to convene meetings in April 2016, May 2016, June 2016, September 2016, and October 2016, as they continued to review additional data about the student's functioning and his progress. Based on the same Findings of Facts, the MSDE finds that the IEP team made revisions to the student's IEP at each meeting.

Based on the Findings of Facts #42, #50, #55, #64 - #66, the MSDE finds that there is documentation of the student's academic progress, his progress towards mastery of the annual IEP goals, and his progress in the area of social and emotional behavior, between June 2016 and

February 2017. Therefore, the MSDE does not find a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #30, #31 and #44, the MSDE finds that there is documentation that, at the April 2016 IEP team meeting, the school based members of the IEP team denied the parents' request for a paraeducator to provide additional adult support to the student based on the availability of resources, rather than on the needs of the student. Therefore, the MSDE finds a violation occurred with respect to this aspect of the allegation.

Fine Motor Needs Relating to Handwriting and Sensory Needs

Based on the Findings of Facts #41, #47, #49, the MSDE finds that, on three separate occasions in June 2016, August 2016, and September 2016, the parents provided the school staff with information about the student's fine motor and sensory needs contained within the report of the independent occupational therapy assessment. However, based on the Finding of Fact #61, the MSDE finds that there is no documentation that the IEP team has considered this information, and therefore the IEP team has not determined whether the student has needs in these areas. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Allegation #2: Reevaluations Since January 18, 2016

When conducting a reevaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the reevaluation is sufficiently comprehensive to identify all of the student's special education and related services needs. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team in determining whether the student is a student with a disability and in determining the student's needs (34 CFR §300.304).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

When conducting a reevaluation, the public agency must ensure that assessments are conducted, the results are considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety (90) days of the date the team determines that assessments are required (COMAR 13A.05.01.06E).

Based on the Findings of Facts #11 - #17, the MSDE finds that, on February 8, 2016, the IEP team conducted reevaluation planning for the student, recommended assessments in the areas of speech and language, academics, and cognitive functioning, and obtained parental consent for the recommended assessments.

Based on the Findings of Facts #18, #20 and #38, there is documentation that the MCPS BAT unit conducted the educational assessment of the student with a XXXX interpreter present for assistance, as needed. Based on the Findings of Facts #21 and #28, the MSDE finds that the parents expressed their concern about the use of XXXX interpretation to the student during assessments. Based on the Findings of Facts #8, #9 and #19, the MSDE finds that there is documentation that, at the time that the educational assessment was administered to the student, he was identified as a student with limited English proficiency, was participating in the ESOL program with parental permission, and the native language of the student's mother was XXXX.

Based on the Finding of Fact #35, the MSDE finds that, on April 12, 2016, as part of the student's reevaluation that began on February 8, 2016, the IEP team agreed to conduct an occupational therapy assessment.

Based on the Finding of Fact #38, the MSDE finds that, on May 3, 2016, the IEP team reviewed the results of the psychological, educational, and speech and language assessments. However, based on the Findings of Facts #46 - #49, #53, #54, #57 - #61, the MSDE finds that the IEP team did not review the results of the occupational therapy assessment until October 24, 2016, because of the school system's staff's inability to conduct the assessment "over the summer." Therefore, the MSDE finds that the reevaluation that began on February 8, 2016 was not completed within the required timeline, and finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #41 and #57 - #61, the MSDE further finds that because the IEP team has not reviewed information about the student's fine motor needs and sensory needs contained in the June 8, 2016 report of the independent occupational therapy assessment, the IEP team has not reviewed all existing data about the student as part of the reevaluation. Therefore, the MSDE finds a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #21, and #28 - #63, the MSDE finds, as stated above in Allegation #1, that the MCPS has not considered the parents' concerns about the manner in which the MCPS assessments were conducted. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Allegation #4 Prior Written Notice of the IEP Team's Decisions Following Review of the IEE, and Consideration of the Recommendations in the IEE

If a parent of a student with a disability obtains an IEE at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of a FAPE to the student (34 CFR § 300.502).

Written notice must be provided to parents when the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a FAPE to the student. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

Based on the Findings of Facts #41 and #57 - #61, the MSDE finds that there is no documentation that the IEP team has considered all of the information contained in the June 8, 2016 report of the independent occupational therapy assessment that the parents privately obtained, and therefore there is no documentation that prior written notice has been provided to the parents that addresses decisions made about all of the information in the IEE. Therefore, the MSDE finds a violation occurred.

ALLEGATION #3 PROVISION OF PROGRESS REPORTS

FINDINGS OF FACTS:

69. The IEPs in effect during the investigation period require that the parents be provided with the reports of the student's progress towards mastery of the annual IEP goals on a quarterly basis, and "in writing with [the] report card" (Doc. a).\
70. There is documentation that the school staff prepared reports of the student's progress dated January 22, 2016, June 17, 2016, December 19, 2016, and January 26, 2017 (Doc. f).
71. There is documentation that, on February 11, 2016, the school staff sent the IEP progress reports dated January 22, 2016 to the parent, via email (Doc. e).
72. There is documentation that, on February 8, 2017, the school staff sent the IEP progress reports dated December 19, 2016 and January 26, 2017 to the parent, via email (Doc. e).
73. There is no documentation that the school staff provided the parent with the IEP progress reports dated June 17, 2016. However, on September 20, 2016, the IEP team including the parents met and considered the student's progress (Doc. a and interview with the school staff).

DISCUSSION/CONCLUSIONS:

The IEP must include a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parents (34 CFR §300.320). The public agency must provide all services as described in the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #69 -#72, the MSDE finds that there is documentation that the school staff provided the parents with the January 2016, December 2016, and January 2017 IEP progress reports.

However, based on the Findings of Facts #69, #70 and #73, the MSDE finds that there is no documentation that the school staff have provided the parents with the June 2016 IEP progress reports as required by the IEP. Therefore, the MSDE finds a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation based on the Finding of Fact #73, the MSDE finds that the student's progress was reviewed with the parents as part of the IEP team between the last quarter of the 2015 - 2016 school year and the first (1st) quarter of the 2016 - 2017 school year. Therefore, the MSDE finds that there is no impact on the student, and does not require any student-based corrective action.

**ALLEGATION #5 PARENTAL CONSENT FOR OCCUPATIONAL
THERAPY ASSESSMENT**

FINDING OF FACT:

74. There is documentation that, on April 12, 2016, the student's father provided written consent for an occupational therapy assessment (Doc. c).

DISCUSSION/CONCLUSIONS:

The public agency must obtain informed parental consent prior to conducting any reevaluation (34 CFR §300.300).

In this case, the complainant alleges that the MCPS did not obtain parental consent for the occupational therapy assessment conducted on September 6, 2016.

Based on the Finding of Fact #74, the MSDE finds that the fact do not support the allegation, and therefore does not find a violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the MCPS to provide documentation by June 15, 2017, that the IEP team has convened a meeting and taken the following actions:

1. Reviewed the independent occupational therapy assessment, and determined whether to accept or reject the recommendations included in the report. If the IEP is revised based on the review of this data, the IEP team must also determine the compensatory services or other remedy for the delay in the provision of services.

2. Considered the parents' concerns about the use of a XXXX interpreter during assessments of the student, the number of transitions in the student's day, and the FBA and BIP.

The MCPS must ensure that the parents are provided with written notice of the team's decisions. The parents and the MCPS maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the IEP team's decisions.

School-Based

The MSDE requires the MCPS to provide documentation by August 1, 2017, of the steps it has taken to ensure that the school staff at XXXXXXXXXXXXXXXXXXXX properly implement the requirements in the areas of noncompliance identified through this investigation. The documentation must include a description of how the MCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the MCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement as reported in this Letter of Findings [only if corrective action].

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parents and the MCPS maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or

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provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/ksa

c: Jack Smith
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Julie Hall
Tracee Hackett
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