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State Superintendent of Schools

June 7, 2019

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RE: XXXXX
Reference: #19-160

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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 April 30, 2019, the MSDE received a complaint from Margaret Joya Jones, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXX. 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 above-referenced student.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s reading needs, social, emotional, and behavioral needs, speech/language needs, and motor and sensory needs, since April 30, 2018, in accordance with 34 CFR §§300.101, .320, and .324.
2. The MCPS has not ensured that prior written notice was provided of the decisions made by the IEP team on January 11, 2019, in accordance with 34 CFR §300.503.

3. The MCPS has not ensured that the student has been provided with the one-to-one support and related speech/language services required by the IEP since April 30, 2018,¹ in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is eight (8) years old and is identified as a student with Multiple Disabilities, including an Emotional Disability, a Specific Learning Disability related to Dyslexia and Dysgraphia, and an Other Health Impairment related to Attention Deficit/Hyperactivity Disorder (ADHD), under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

Since April 2018, the student has attended XXXXXXXXXXXXXXXXXXXX as a result of a change in educational placement made by the IEP team. He previously attended XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX.

FINDINGS OF FACTS:

IEP in Effect in April 2018

Reading Skills and Social, Emotional, and Behavioral Functioning

1. The IEP in effect in April 2018 was developed on January 29, 2018 while the student was attending XXXXXXXXXXXXXXXXXXXX. The IEP states that the student, who was in the first (1st) grade, was performing at the early kindergarten level in reading phonics, but that it was “difficult to get a true measure of [his] abilities and knowledge because of his strong emotional reactions to direct instruction and assessment.” The documentation reflects that the student’s difficulty with decoding and learning and retaining sight words impacts his ability to read instructional level text fluently.
2. The report of the psychological assessment considered when developing the IEP states that the student was diagnosed with ADHD, Autism Spectrum Disorder (ASD), Generalized Anxiety Disorder (GAD), Oppositional Defiant Disorder (ODD), and Disruptive Mood Dysregulation Disorder (DMDD). It states that GAD symptoms displayed include difficulty “controlling excessive anxiety, worry about a number of events/activities, and feeling restless, keyed up, or on edge.” It states that the DMDD symptoms include “having verbally or physically aggressive temper outbursts and a persistently irritable or angry mood between temper outbursts.” The ODD symptoms demonstrated included “losing his temper, arguing with authority figures, and defying

¹ While the complainant alleged that the violation occurred prior to this date, she was informed, in writing, that only those violations that occurred within one (1) year of the receipt of a State complaint can be addressed through this procedure.

rules or refusing to comply with requests from authority figures.” The ASD diagnosis was based on “impaired emotional/social reciprocation, difficulty in developing peer relationships appropriate to developmental level, and rigidly adhering to routines/rituals.” The report states that the student was experiencing “clinically significant concerns and issues across all settings, including home and school,” resulting in externalizing (e.g., hyperactivity and aggression) and internalizing (e.g., anxiety and depression).

3. A November 3, 2016 report of a Functional Behavioral Assessment (FBA), conducted when the student was in kindergarten, identifies physical aggression towards peers and adults, defiance, persistent disruption to the classroom, and elopement from the playground and classroom as interfering behaviors that the student has demonstrated since before he was school-aged and received childcare services. It states that the student had hit another student with a jump rope, kicked another student in the face, and punched other students. The FBA states that the student demonstrates physical aggression for about thirty (30) seconds on a daily basis, that he can remain engaged in an assigned task for no more than sixty (60) seconds, and that noncompliance and refusal to initiate work occurs approximately fifty percent (50%) of the time, “even with adult support.” The FBA identifies the function of the behavior as an attempt to gain control and avoid work.
4. The Behavioral Intervention Plan (BIP) that was in effect on April 30, 2018 describes replacement behaviors, such as requesting assistance when tasks appear difficult, and strategies to increase these behaviors. It also includes strategies to prevent the problem behavior, and strategies to use to respond to the behavior.
5. The IEP includes a goal for the student to recognize all letters and their corresponding sounds in eight (8) out of ten (10) trials by January 28, 2019. It also includes goals for the student to engage in peer conversation, interact appropriately with peers and staff, maintain personal space, remain safe and calm when dealing with stressful situations, comply with classroom rules, and move safely through the school building.
6. The IEP requires the provision of special education instruction and the use of the BIP in order to assist the student with achieving the goals.

Speech/Language Skills

7. The December 7, 2017 report of a speech/language assessment considered when developing the IEP states that the student’s onset of oral communication was delayed, that he did not begin speaking until he was three (3) years old, but that “no other concerns have been noted.” The report states “occasional errors in articulation were noted,” but that “these errors are often observed in boys [the student’s] age and are considered to be a normal part of speech sound development.” In addition, the report states that “none

of the errors negatively impact [the student's] overall intelligibility or the effectiveness of his speech." In addition, the report of the FBA considered when developing the IEP identifies being "articulate" as a strength for the student. However, the speech/language assessment report identifies areas of weakness in the student's ability to introduce and change conversational topics and use pragmatically appropriate language skills with peers.

8. The IEP states that an observation of the student was conducted in December 2017 and the student "demonstrated a variety of speech acts, including asking questions, making comments, explaining, protesting, negotiating, and requesting confirmation." The IEP states that the student demonstrated pragmatic language weakness, having a strong preference for interacting with adults, and that conversations and interactions with peers "typically require adult mediation."
9. A goal was included in the IEP for the student to initiate, maintain, and end conversations with peers and two (2) hours of speech/language therapy per month in a separate special education classroom was required to be provided in order assist him with achieving the goal. The speech services were required to be provided in four (4) thirty (30) minute sessions.

Motor and Sensory Skills

10. The December 5, 2017 occupational therapy assessment report considered by the team when developing the IEP states that the student demonstrated "average" manual dexterity, but "below average" skills in areas involving precise finger movements, such as using a pencil and cutting. While he was observed by the teacher having difficulty managing buttons on his pants, the report states that this was not unusual for the student's age and could be addressed by wearing pants with elastic waistbands.
11. The occupational therapy assessment report states that the student was able to copy five (5) letters that he knew in a legible manner, but that he was not willing to copy other letters or a word. The report suggests student's test scores should be considered with caution because his scores were "greatly impacted by his tendency to rush and draw quickly." It states that the student's written work production was impacted by his working speed, attention, and engagement, and that he benefitted from adult support to provide reassurance, verbal cues, models, and incentives. It further states that the student's ability to reproduce letters "is intimately tied to letter-sound associations," and that "when the letters do not have strong meanings associated with them, then writing becomes a series of copying complex drawings, rather than a production of meaningful text." It states that the student's reluctance to write is "influenced by his literacy skills and the difficulty the task presents."

12. The occupational therapy assessment report states that sensory-based strategies had been trialed in school “with limited success” due to the student’s refusal to continue using them. It states that the student may benefit from embedding sensory-based activities that provide “heavy input” to supplement behavioral and other strategies in use, but that they should be discontinued if shown to be ineffective.
13. The occupational therapy assessment report contains a recommendation for one (1) thirty (30) minute session of occupational therapy per month in order to explore a sensory diet to facilitate the student’s participation in school, and recommends that the school occupational therapist informally assess the need for continued service after two (2) quarters. In addition, it contains a recommendation to minimize the amount of copying and writing and provide keyboarding opportunities in short practice sessions to develop familiarity with letter locations and functions.
14. Based on the data, the IEP team decided that the student’s written language needs would be addressed through the goal to improve his availability for learning. The IEP includes a goal for the student to use tools appropriately, walk and maintain an upright position when transitioning through the school building, and remain in an assigned location. It requires the provision of thirty (30) minutes of occupational therapy per month in a separate special education classroom.
15. The January 29, 2018 IEP requires the provision of breaks, the reading aloud of assessments, extended time, reduced distractions, alternative ways to demonstrate learning, picture schedule, repetition of directions, monitoring of independent work, frequent and immediate feedback, checks for understanding, modified workload, and use of pictures to support reading passages. It further requires breaking assignments down into small units, use of an individualized work-break schedule that allows the completion of tasks over multiple sessions and days, provision of a menu of coping strategies, social skills training, social stories, positive/concrete reinforcers, strategies to sustain attention, reinforcement of positive behavior. In addition, it requires opportunities for movement, frequent reminders of rules, frequent eye contact and proximity control, encouragement to ask for assistance, advanced preparation for schedule changes, preferential seating, extra time for movement between classes. It also requires “one-on-one support for all school hours.”

Educational Placement

16. The report of the psychological assessment considered when developing the IEP states that the student’s teacher indicated that the student was unable to function even with one-to-one adult support. The IEP states that the student “operates on a constant work-break schedule throughout the day,” and that his average work time is between five (5) and ten (10) minutes.

17. The IEP team documented that it considered whether the IEP could be implemented effectively in the current school, which was the school the student would attend if not disabled, and found that it could not be done even with the provision of supplementary aids and services, such as the one-to-one support provided at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The team found that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a combination of separate special education and general education settings in a school with a program designed for students with emotional needs. The team decided that the school with such a program nearest to the student's home is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.
18. The student's mother disagreed with the IEP team's placement decision and continued to send the student to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The MCPS informed her that the student would no longer be permitted to attend that school after March 2, 2018. The student's mother requested mediation to resolve the dispute, which took place on March 19, 2018. Following mediation, the parent began sending the student to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The reports of the student's progress towards achievement of the annual IEP goals, made in February 2018 and April 2018, state that the goals had not yet been addressed.
19. There is documentation that in April 2018, May 2018, and June 2018, the student was involved in physical altercations with peers at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.²

June 2018 IEP Team Meeting

Speech/Language Skills

20. On June 8, 2018, the IEP team documented its consideration of the parent's request to provide the student with speech/language therapy to address speech articulation skills through Extended School Year (ESY) services. The IEP team documented that it refused the request because the student was not identified with speech articulation needs.
21. The reports made of the student's progress on the IEP goals in June 2018 and November 2018 state that the student was making sufficient progress to achieve them all by January 2019.

² The documentation of the June 2018 incident reflects that the student and another student were both trying to get through the front office door first, and that the student pushed the other student, who in turn, scratched the student in the face. The documentation reflects that this type of incident had also happened a couple of weeks before.

December 7, 2018 IEP Team Meeting

Reading Skills and Social, Emotional, and Behavioral Functioning

22. On December 7, 2018, the IEP team met to conduct a review of the IEP. A review of the audio recording of the meeting reflects that the student's private psychologist shared the results of cognitive, behavioral, and educational testing that had been conducted. She made diagnoses of Dyslexia and Dysgraphia, ADHD, Frontal Lobe and Executive Function Deficit, and DMDD, and reported that the student demonstrates problems with attention, fine motor skills, and persistence in completing tasks that do not hold his attention. However, she reported that the student does not meet the diagnostic criteria for ASD. The private psychiatrist recommended that speech and occupational therapy evaluations be conducted, and at the same time, recommended that the student be provided with one-to-one services in these areas due to his oppositional behavior. She also recommended socialization training and individual therapy at least one (1) time per week and additionally, as needed, but stated that she was not sure how to fit all of this therapy into his school day along with instruction.
23. The student's mother expressed concern that the IEP continues to state that one-to-one adult support is to be provided, but that this service had not been provided since the student transferred to XXXXXXXXXXXXXXXXXXXX. The school staff reported that one-to-one adult support should have been continued once the student was transferred to the specialized program with behavioral supports at XXXXXXXXXXXXXXXXXXXX. They reported that the student is working with someone assigned to work exclusively with him on a one-to-one basis in the classroom about fifty percent (50%) of the time, and that during all other times, he has additional adult support who work with him and two (2) other students. The school staff reported that this level of support was sufficient in the current educational placement, where instruction was being provided in a program that is designed to address social, emotional, and behavioral needs. When the student's mother insisted that the student be provided with one-to-one support throughout the school day because it remained on the IEP, the school staff agreed to review the IEP and begin to provide those services, as written. However, the MCPS acknowledges that there is no documentation that this was done.

Speech/Language Skills

24. At the meeting, the speech/language service provider reported that she was working with the student in a small group of three (3) students each week for thirty (30) minutes and that he was doing very well. She reported that she also works with him inside the general education classroom and that she works closely with the special education teacher. She indicated that she notices some articulation errors, but that the student corrects them

when given reminders and modeling. She also indicated that she has observed no major problems with behavior at all during the year and that the student was making sufficient progress on the goals.

25. The team discussed recommendations that were made by the student's private speech provider for thirty (30) minutes of speech for two (2) times per week of individual therapy. The speech/language therapist agreed that the amount of speech therapy that was recommended was appropriate since she was working on pragmatics and articulation, but stated that individual therapy was not practical for scheduling purposes or appropriate because the student's needs are being met in the group setting and he needs peers to work on the pragmatic language. She reported that the only reason why she would recommend individual therapy for the student would be if his behaviors could not be managed in a group setting.
26. The student's mother reported that the student demonstrates behavior pushback needing many rewards and movement breaks when he receives private one-on-one speech services. She expressed concern that the school staff must not be focusing on the student when he is in a group session if they are not seeing these behaviors at school.

Motor and Sensory Skills

27. The occupational therapist reported that she focuses on writing mechanics (cutting, writing, etc.), and that because the student was more emotionally regulated and accessing instruction, she did not believe that the amount of therapy needed to be increased as was recommended in the report of a private occupational therapy assessment that was obtained by the mother.
28. The student's mother expressed concern that a private occupational therapist, "who does not know the student," was able to identify the need for a significant increase in services while the school staff believe that the current amount is appropriate. She expressed the belief that the student would not be able to demonstrate the performance reported by the school staff if the student was not receiving private occupational therapy, physical therapy, behavioral therapy, and speech/language therapy outside of school.
29. The occupational therapist explained that, in addition to the occupational therapy that the student receives outside of the classroom, they are working with him in the classroom, including working on core strengthening throughout the school setting.
30. Due to time constraints, the team was unable to complete the review of the IEP. The complainant requested that the assessment results from 2017 be supplemented in the present levels of performance by current data. The team decided to complete its review of the IEP after conducting a reevaluation and to reconvene to begin that process.

January 11, 2019 IEP Team Meeting

31. On January 11, 2019, the IEP team reconvened. The IEP team documented that it considered the results of a private psychological assessment that had been provided by the student's parent at the December 7, 2018 IEP team meeting. The team also

documented that it decided that the student meets the eligibility criteria for Multiple Disabilities based on an Emotional Disability, a Specific Learning Disability in reading and written language, and an Other Health Impairment related to ADHD.

Reading Skills and Social, Emotional, and Behavioral Functioning

32. The IEP team considered information that the student and his special education teacher were working with a reading specialist to develop his reading skills. The student's teacher reported that the student demonstrates frustration in the classroom, but that his behavior is successfully regulated when the work is chunked into small segments. The teacher reported that the student had improved his sight word recognition and was performing at the middle of kindergarten level in reading phonics.
33. The student's mother expressed concern that the student had not made more progress in reading and that memorizing high frequency words was not assisting him to decode. The teacher indicated that the student needs to work on sight word recognition as well as phonics because some words cannot be sounded out.
34. The student's mother expressed the belief that the student performs at a much higher level when working with his private service providers than what he is demonstrating in school, and that he was reading books "start to finish" without pictures. The team agreed to do additional testing in reading due to the mother's concern that more information be obtained about the student's decoding ability.
35. In response to the question of whether the student becomes frustrated with math work, the teacher reported that approximately two (2) days per week he demonstrates frustration with the work in this area. The teacher reported that he demonstrates frustration about fifty percent (50%) of the time overall, but that he is able to regulate his behavior with supports and strategies. The teacher reported that the results of classroom-based assessments reflect that the student has already improved performance in math by twelve (12) points when students normally improved by ten (10) points per year.
36. The team documented that the student demonstrates interfering behaviors when schoolwork becomes frustrating and when he perceives that peers have invaded his space. The school staff reported that in the previous year, the student had seventeen (17) behavior incidents in the thirty-nine (39) days of school he attended. They further reported that, based on classroom observation and data from behavior points sheets, in the thirty-eight (38) days of school from November 1, 2018 to January 2019, there were

twenty-four (24) behavior incidents. In addition, there were incidents that occurred during unstructured activities. However, they indicated that they were now seeing an improvement in the student's ability to regulate his behavior with the use of coping strategies.

37. The complainant pointed out that the behavior data appeared to be inconsistent with the school staff's belief that the student had improved his ability to regulate his behavior. The school staff responded that consideration must be given to factors such as the amount and difficulty of the work expectations this year compared to last year, the nature of the behavior, the amount of time it is taking the student to recover from an incident, and the ability to reflect upon his behavior. The complainant requested more specific data in these areas, particularly with respect to physical aggression, to determine objectively whether the student was making improvement with this behavior. The school staff reported that more specific information would be obtained through the FBA being conducted.
38. A review of the audio recording of the meeting reflects that the team discussed that the complainant asked the school staff for more objective information about the amount of time that the student becomes frustrated and the number of behavioral incidents. The school staff reported that that the student's incidents of physical aggression at his previous school was above sixty-five percent (65%). The complainant requested that the present levels of performance section of the IEP include information about the percentage of school days in which the student engaged in acts of physical aggression, and the team agreed to include this information on the IEP. However, the IEP includes only information about the number of incidents of dysregulation and not the specific information requested by the complainant.
39. The IEP team discussed that behavioral interventions, such as seclusion and restraint, have not been used with the student at XXXXXXXXXXXXXXXXXXXX. A review of the audio recording reflects that the complainant stated that the student's mother would not provide consent for the use of behavioral interventions and the school staff indicated that they were not requesting that the IEP include the use of such interventions.
40. The information that the student's mother provided written consent to the use of behavior interventions, which was contained on the IEP that was previously in effect, was removed from the IEP. However, the IEP continued to state that the BIP, which includes the use of restraint, would be implemented, and that restraint would continue to be "used as a last resort." This error was corrected when the IEP was revised on March 1, 2019 to state, "the parent does not consent to the use of seclusion or restraint."
41. The IEP team also documented that the student's mother expressed concern that the staff at XXXXXXXXXXXXXXXXXXXX had not read the IEP when the student transferred from XXXXXXXXXXXXXXXXXXXX, and that, as a result, one-to-one support had

not been provided. The school staff reported that the one-to-one support that was previously provided in the general education classroom should not have been maintained on the written IEP document when the student transferred to XXXXXXXXXXXXXXXXXXXX XXXX because of the behavioral supports and student-to-teacher ratio in the school that make the one-to-one support unnecessary. This decision is reflected in the Prior Written Notice document generated following the meeting.

42. The student's mother also expressed concern that speech/language services did not begin as stated in the IEP when the student transferred to XXXXXXXXXXXXXXXXXXXX and that now they were trying to make up for those lost services, as well as services missed the prior school year. She also expressed frustration that she had requested an IEP team meeting when the student transferred to the school in order to avoid such problems.
43. The school staff disagreed that services were not provided since the transfer to XXXXXXXXXXXXXXXXXXXX and reported that the student has had a lot of adult support at the school.
44. The student's mother reported that there was an altercation the prior week between the student and another student. The school staff said that there was an adult present, that it was an unusual situation because the students were made to wait outside of school in the cold because of a gas leak, and that a one-to-one assistant would not have been able to intervene any faster to prevent the incident.³
45. The parent requested that one-to-one adult support be provided in the current educational placement. She reported that such support during unstructured times could prevent the student from eloping and improve the regulation of his behavior in order to increase his participation in academic instruction.
46. The school staff reported that use of one-to-one support was not beneficial for the student because he would not be able to learn to interact with peers, and that he had only one (1) incident of elopement during this school year. The team decided that the student would be provided with "additional adult support" during unstructured times and documented the decision to increase counseling services to twenty (20) minutes per week.
47. The student's mother reported that the private speech/language therapist and reading specialist use a specific phonics program, which results in much less frustration for the student and much more willingness on his part to participate. The school staff requested information on the specific program being used by the private providers, and the mother agreed to provide this information.

³ Documentation of the incident reflects that, after being pushed by another student, the student punched that student in the face so hard that he fell to the ground.

48. The complainant requested that the team begin using a research-based reading program designed to address the needs of students with Dyslexia. The school staff reported that they currently had two (2) of these programs at the school, but they were not appropriate for the student.⁴ However, they reported that they were training staff in the XXX XXXXXX program and would be offering the student instruction through this program in the future. The complainant argued that the current setting is not appropriate because the lack of an appropriate reading program for the student.
49. The complainant requested that the student be provided with a “reader pen”⁵ and the team agreed to explore this.

Speech/Language Skills

50. The team documented that the student’s mother expressed the belief that the student requires additional speech/language therapy. The speech/language therapist reported that the student was performing below age expectancy in speech articulation because he was not consistent or independent with certain speech sounds in words or utterance, and required more than one (1) repetition/model for successful productions.
51. A goal to improve speech articulation was added to the IEP and the amount of speech/language services was increased to two (2) times per week for thirty (30) minutes consistent with the decision made by the team in December 2018.

Motor and Sensory Skills

52. The school staff reported that the student could write all of his letters and copy sentences. The occupational therapist reported that she requires all of her students to perform certain tasks related to fine and gross motor functioning, and that they end the session with a gross motor activity. She reported that the student requires more opportunity for physical activity and that now she is seeing that he is more willing to participate in such activities.
53. The parent and complainant expressed concern that the student has functional life skills like buttoning that need to be addressed through occupational therapy. The team documented that the parent recently provided the report of a private occupational therapy assessment and that they would address this concern when it considered the report and the additional data being obtained for the reevaluation.
54. The team revised the goal from addressing fine motor and sensory skills to addressing fine motor coordination skills. The team also decided that occupational therapy services would be increased to four (4) times per month for thirty (30) minutes each session in order for the student to increase overall coordination and manual dexterity skills and

⁴ One of the programs required instruction through a peer group, which was not available at the school, and the other was designed for students of a different age group.

⁵ This is a pocket-sized assistive technology device that reads text aloud with and digital voice.

improve “everyday life skills.”

55. The student’s mother expressed the belief that the student requires much more occupational therapy than what the team decided based on the recommendations in the private occupational therapy assessment report, and the team indicated that it would reconsider this information once the assessment data was reviewed. This decision is reflected in the Prior Written Notice document generated following the meeting.
56. The team documented its recommendations for assessments in the areas of reading, pragmatic language, and speech articulation, an updated FBA, and a High Incidence Assistive Technology consultation.
57. Although the student had been reported to be continuing to make sufficient progress to achieve all of the annual goals by January 2019, the reading phonics and pragmatic language goals developed in January 2019 continue to address the same skills as the previous year’s goals.

March 1, 2019 IEP Team Meeting

Reading Skills and Social, Emotional, and Behavioral Functioning

58. On March 1, 2019, the IEP team reconvened to review assessment data. The team considered the results of an educational assessment reflecting that the student is performing at the middle of kindergarten in reading phonics. However, the school staff reported that the results were impacted by the student’s aversion to reading and the need for continuous breaks during testing due to dysregulation of behavior.
59. The reading specialist reported that she had been trained in the provision of the XXX XXXXXXXX reading intervention. She reported that, when assessing reading levels of students and the appropriateness of their participation in the intervention, the student became dysregulated and she provided him with some assistance to get through the assessment in order to calm him down. The reading specialist explained that, by that time, she had obtained enough information to determine where to begin with the student’s instruction through the intervention.

60. The reading specialist reported that she had begun working with the student using the XXXXXXXXXX reading intervention, and that he has refused to participate, but that she had only been working with him for three (3) days and that she was hopeful that he would settle down and engage.
61. A review of the audio recording of the meeting reflects that the team discussed that a referral had been made for consultation with the High Incidence Assistive Technology team, that the consultation was being scheduled, and that recommendations would be made by the following week. The team discussed that the consultation will include whether the reader pen is appropriate for the student. The complainant indicated that she and the parent were under the impression that the consultation would have occurred already so that the team could consider recommendations.
62. A review of the audio recording of the meeting reflects that the team reviewed an updated FBA, which identified targeted behaviors and strategies used to address them, and discussed that the effectiveness of these strategies had been variable.
63. The team identified physical aggression, lack of task initiation, and inappropriate peer interaction as targeted behaviors. The team found that the physical aggression is most likely displayed when the student is anxious because there is conflict that he does not know how to address and is seeking attention. Difficulty with peers was seen during unstructured activities. Triggers for lack of task initiation included the student observing other students receiving attention that he is not receiving or when work is perceived to be challenging and he is seeking adult attention. Based on the information considered, the BIP was revised. However, a review of the audio recording of the meeting reflects that the team did not consider the specific information that it decided was necessary at the January 2019 IEP team meeting to determine whether the student has made improvement in his behavior.
64. The complainant expressed the belief that the student's lack of sufficient academic progress resulted from not using an appropriate reading intervention, which, in turn, was resulting in increased inappropriate behavior, and concern that the current placement does not have an appropriate reading intervention for the student.
65. The complainant indicated that it was her understanding that the program at XXXXXXXX School is based on behavior modification and did not use a therapeutic model to address behavior caused by anxiety. The school staff reported that a therapeutic setting is not required for staff to recognize when the student is anxious and make modifications to reduce the anxiety.

Speech/Language Skills

66. The IEP team considered the results of a speech/language assessment conducted in February 2019, which reflects that the student is performing “below age expectancy” in speech articulation and information from the speech/language therapist that she had been working with the student in this area. The assessment report states that articulation errors at times negatively impact the student’s speech intelligibility and his ability to efficiently communicate with peers and adults. The report states that the student is performing in the “average” range in pragmatic language, but that “this is an area that could still be more difficult for [the student] to navigate at times.”
67. A review of the audio recording of the meeting reflects that the complainant indicated that it did not seem that the student was making much progress with improving articulation. The speech/language therapist reported that the student is able to correct errors with prompting and modeling, but is not consistent or independent with these speech sounds in words or sentences and requires more than one (1) repetition or model for successful productions.
68. The audio recording of the meeting reflects that the complainant asked whether articulation could be addressed with individual therapy. The speech/language therapist answered that they could, but that the student was doing well in a group setting with other students who had similar goals for improving articulation.
69. The student’s mother requested individual speech/language therapy to work on speech articulation and the team decided that one (1) of the three (3) group sessions would be used to work on articulation individually with the student and that the remaining two (2) sessions would continue to be group instruction on pragmatic language. However, the IEP was not revised to reflect the team’s decision about the amount and nature of the services to be provided and the present levels of performance were not updated to reflect the data from the most recent assessment.
70. At the meeting, the team also discussed that there were missed speech/language sessions, but that they had been made up.

Motor and Sensory Skills

71. A review of the audio recording of the meeting reflects that the IEP team considered a December 13, 2018 report of the private occupational therapy assessment obtained by the student’s mother, which reflects that the student has “hunched posture and rounded shoulders,” presents with “low muscle tone throughout his body,” and demonstrates “global weakness” compared to same-aged peers. The report states that the student “demonstrated increased anxiety and poor frustration tolerance during structured assessment tasks which he perceived as difficult,” and that “he appeared to prefer

- interactive, sedentary activities rather than physical challenges.” It states that the student “presents with decreased activity tolerance,” that he “struggled with maintaining postural endurance,” had “decreased gross motor coordination and skill,” and that he demonstrates signs of “learned postural insecurity.”
72. The private occupational therapy assessment further states that the student presents with “decreased fine motor coordination and skills,” that he has “inconsistent precision grasp patterns,” and “struggled with completing in hand manipulation tasks.” The evaluator concluded, “these observations suggest significant difficulties with fine motor planning and bilateral integration.”
73. The private occupational therapy report contains recommendations for occupational therapy to target coordination, strength, cognition, and social participation in order to improve participation and independence. It contains a recommendation for the services to be provided two (2) times per week for sixty (60) minutes per session to include sensorimotor training in a natural therapeutic setting in combination with a home program and educational consultation for home and classroom strategies.
74. The IEP team also considered information from the occupational therapy service provider that she recommended keeping services at the same level and to begin to work with the student on generalizing what he is learning in the classroom setting so that the services can focus on teaching him how to use the skills to access the curriculum. The occupational therapist clarified that she is already working with the student on mechanical skills that will address the mother’s concern about his being able to dress himself.
75. Based on the information from the occupational therapy service provider, the team continued the same amount of occupational therapy services as the previous IEP required.
76. On April 3, 2019, reports were made that the student is making sufficient progress to achieve all of the annual IEP goal by January 2020.
77. The IEP states that the student requires Extended School Year (ESY) services during the summer of 2019 due to his needs in early academic skills areas. However, none of the annual IEP goals indicates that they are to be addressed through ESY services, and the IEP reflects that the only ESY service to be provided is transportation.

CONCLUSIONS:

Allegation #1 IEP Development

Reading Skills and Social, Emotional, and Behavioral Functioning

In this case, the complainant alleges that the MCPS delayed providing an evidence-based reading intervention to address the student's Dyslexia when there was data that the student was not making sufficient progress in reading with the provision of one-to-one reading support. She further alleges that, although the school system has obtained a reading intervention for the student, the intervention is not being implemented with fidelity because the reading specialist provided the student with assistance completing an assessment of the student's reading level and appropriateness for the intervention.

Both the complainant and the student's mother have asserted that the student's interfering behavior is the direct result of the anxiety he feels because of his skills deficits, and that the MCPS has not provided appropriate instruction and services to mitigate those deficits and the social, emotional support needed to address his anxiety.

Based on the Findings of Facts #1 - #3, #8, #11, #12, #14 - #19, #22, #26, #27, #32, #35 - #38, #44 - #47, #52, #58 - #66, and #71, the MSDE finds that, while the student may experience anxiety about completing tasks in which he has skills deficits, he has displayed interfering behaviors since he was in preschool, and those behaviors have significantly impacted all areas of his development.

Based on the Findings of Facts #1, #5, #6, #16, #21, #31 - #34, #47, #48, and #57, the MSDE finds that, although the IEP addressed the student's identified reading needs in April 2018, the MCPS did not ensure that the IEP was reviewed and revised, as appropriate, to address the lack of progress in reading from November 2018 until January 2019, in accordance with 34 CFR §§300.101 and .320 and .324.

In addition, based on the Findings of Facts #49 and #61, the MSDE finds that the MCPS has not ensured that the use of a reader pen has been explored for the student's use consistent with the decision made by the IEP team in January 2019, in accordance with 34 CFR §§300.101 and .320 and .324.

Furthermore, based on the Findings of Facts #48, #59, and #60, the MSDE finds that there was a delay in providing the student with reading instruction through a research-based reading intervention, as recommended, from January 2019 to February 2019, in accordance with 34 CFR §§300.101, .323, and .324. However, based on the Findings of Facts #59 and #60, the MSDE finds that there is no evidence that the reading intervention being used since

February 2019 has not been implemented with fidelity, in accordance with 34 CFR §§300.101 and .323.

Based on the Findings of Facts #1, #3, #16, #23, #26, #41, #44 - #46, #65, and #76, the MSDE finds that the documentation does not support the allegation that the student's social, emotional, and behavioral needs can be effectively addressed through one-to-one adult support.

Based on the Findings of Facts #2, #4, #8, #9, #19, #21, #23, #35 - #38, #44, #57, #58, #60, and #62 - #65, the MSDE finds that, while the IEP in effect in April 2018 addressed the student's behavioral needs, there is no documentation that the student's progress with improving his behavior is being sufficiently measured, as determined by the IEP team. Therefore, this office finds that the MCPS has not ensured that the student's social, emotional, and behavioral needs are being sufficiently addressed, in accordance with 34 CFR §§300.101 and .320 and .324.

Based on the Finding of Fact #77, the MSDE further finds that the IEP does not ensure that the student's needs will be addressed through the provision of ESY services, in accordance with 34 CFR §§300.320.

Speech/Language

In this case, the complainant alleges that the MCPS has not ensured that the student's speech articulation needs have been identified and addressed and that he has not been provided with a sufficient amount of speech/language therapy to assist him with achieving the goal to improve pragmatic language.

Based on the Findings of Facts #7, #20, #24, #25, #50, #51, and #66 - #69, the MSDE finds there was no basis for the team to identify speech articulation needs prior to the team's decision to include a goal and services to address this area, in accordance with 34 CFR §§300.101, .320 and .324. Therefore, this office does not find that a violation occurred with respect to addressing the student's speech articulation needs.

Based on the Findings of Facts #8 and #9, the MSDE finds that there was data to support the IEP team's decisions with respect to the speech/language services required to address the student's pragmatic language needs, in April 2018, in accordance with 34 CFR §§300.101, .320 and .324.

However, based on the Findings of Facts #21 and #57, the MSDE finds that the MCPS did not ensure that the IEP team reviewed and revised, as appropriate, the IEP to address the lack of progress with pragmatic language from November 2018 until January 2019, in accordance with 34 CFR §§300.101 and .320 and .324.

In addition, based on the Findings of Facts #66 - #69, the MSDE finds that the MCPS did not ensure that the IEP revised on March 1, 2019 reflects the results of the most recent speech/language assessment and the team's decision about the manner in which speech/language

services are to be provided, in accordance with 34 CFR §§300.101 and .320 and .324. Therefore, this office finds that violations occurred with respect to addressing the student's pragmatic language needs.

Motor and Sensory Needs

Based on the Findings of Facts #10 - #15, #27 - #30, #52 - #57, and #71 - #76, the MSDE finds that there was data to support the IEP team's decisions about motor and sensory needs, in accordance with 34 CFR §§300.101 and .320 and .324. Therefore, this office does not find that a violation occurred with respect to addressing the student's needs in these areas.

Requested Remedies

The complainant reports that the parent has provided the student with "countless hours with outside providers each week" to provide psychotherapy, a reading tutor, and occupational and speech/language therapy, and that these services should be provided in the school setting. She requests that the parent be reimbursed for the private services she obtained for the student and that the student be placed in a non-public separate special education school. She further requests compensatory education through the provision of additional instruction through the XXXXXXXXXXXX reading intervention. In addition, the complainant requests that the MCPS be required to provide the student with the use of a reader pen at home to help facilitate his use of this assistive technology device in school.

Based on the Findings of Facts #1, #3, #8, #10, #26, #28, #33, #34, #47, #48, #50, #59, #60, #66, and #71 - #73, the MSDE finds that there is no data that the student's skills have improved with the provision of private services obtained by the student's mother. Therefore, this office finds that reimbursement for those services is not an appropriate remedy.

In addition, based on the Findings of Facts #3, #16, #22, #23, #26, #35 - #38, #59, and #60, the MSDE finds that the current data does not reflect that the student can be made available for the provision of additional instruction or that he will benefit from participation in a reading intervention. Therefore, such compensatory services are not an appropriate remedy.

Further, based on the Finding of Fact #65, the MSDE finds that there is no data that the IEP cannot be implemented in a public school. Therefore, a change in educational placement to a nonpublic separate special education school is also not an appropriate remedy.

Finally, based on the Findings of Facts #49 and #61, the MSDE finds that there is no data that the student's use of a reader pen would be an appropriate remedy.

Allegation #2 Prior Written Notice

In this case, the complainant alleges that prior written notice was not provided of the IEP team's decisions with respect to services and revisions to the IEP that were requested by the parent at the January 11, 2019 IEP team meeting.

Based on the Findings of Facts #38 - #40, #41, #55, #56, #69, and #75, the MSDE finds that, while written notice of some of the decisions was provided, the MCPS did not ensure that proper written notice of all of the decisions made on January 11, 2019 was provided, in accordance with 34 CFR §300.530. Therefore, this office finds that a violation occurred.

Allegation #3 IEP Implementation

In this case, the complainant alleges that the student was not provided with one-to-one adult support required by the IEP. She also alleges that the student was not provided with speech/language services as required by the IEP, and that while missed services were made up, the loss of timely services negatively impacted the student's ability to benefit from the education program.

One-to-One Adult Support

Based on the Findings of Facts #15, #23 - #25, #41, and #43, the MSDE finds that the student was not provided with one-to one support as required by the IEP, from April 2018 to January 11, 2019, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts # #1, #3, #16, #23, #26, #41, #44 - #46, #65, and #76, the MSDE finds that there is evidence that the provision of one-to-one assistance in the past has not addressed the student's behavioral needs. Therefore, this office finds that the violation did not negatively impact the student's ability to benefit from the education program and no student-specific corrective action is required to remediate the violation.

Speech/Language Services

Based on the Findings of Facts #9, #24, #42, #43, and #51, the MSDE finds that, while speech/language services were provided, they were not provided in the amount and frequency required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #21, #57, and #70, the MSDE finds that, while the missed services were made up, as stated in Allegation #1 above, the student did not achieve the speech pragmatics goal for which the services were designed to assist him with mastering. Therefore, this office finds that the violation had a negative impact on the student's ability to benefit from his education program.

CORRECTIVE ACTION/TIMELINES:

Student-Specific

The MSDE requires the MCPS to provide documentation by July 1, 2019 that it has done the following:

- a. Provided the student's mother with proper written notice of each of the decisions made at the January 11, 2019 IEP team meeting that addresses each concern raised in the State complaint.
- b. Revised the IEP to reflect the specific behavioral data agreed to at the January 11, 2019 IEP team meeting, as well as the results of the most recent speech/language assessment and the IEP team's March 1, 2019 decision about how speech/language services are to be provided.
- c. Provided the student's mother with a copy of the revised IEP.

The MSDE requires the MCPS to provide documentation by the start of the 2019-2020 school year that, when offering ESY services to the student during the summer of 2019, as determined necessary by the IEP team, it ensured that those services addressed the student's reading goals as well as the behavioral and pragmatic language goals, which address the skills the student needs to access instruction in reading.

The MSDE also requires the MCPS to provide documentation by the start of the 2019-2020 school year that the IEP team has done the following:

- a. Developed a plan for obtaining data to objectively measure the student's progress with improving each interfering behavior. This data must include, but is not limited to, information such as the nature of the behavior, the length of each incident, the amount of time it is taking the student to recover from an incident, and the student's ability to reflect upon the behavior after each incident.
- b. Determine whether the student responded to the provision of any evidence-based reading intervention used, and if not, how the student's reading needs will be addressed during the 2019-2020 school year.

- c. Consider data regarding whether the student would benefit from the use of an assistive technology device, including a reader pen, and review and revise the IEP, as appropriate, to include any assistive technology device that is determined appropriate consistent with the data.

The MSDE requires the MCPS to provide documentation by the end of the first (1st) quarter of the 2019-2020 school year that the IEP team has done the following:

- a. Considered data collected on each of the student's interfering behaviors and determine whether he is improving his access to instruction and is expected to achieve all of the annual IEP goals by January 2020.
- b. Considered data regarding the student's current reading level and determine whether the student has made the expected growth in skills.
- c. If there is a lack of expected progress towards achievement of the annual IEP goals or skills growth, the team must review and revise the IEP and determine the additional services and supports to be provided and the educational placement in which they can be provided.

School-Based

The MSDE requires the MCPS to provide documentation by November 1, 2019 of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXX IEP teams do the following:

- a. Follow proper procedures to review and revise each IEP to address lack of expected progress towards achievement of annual IEP goals.
- b. Provide services as stated in each IEP and measure progress with behavioral functioning using objective data.
- c. Provide proper written notice of IEP team decisions.
- d. Revise each IEP to reflect current evaluation data and IEP team decisions regarding services to be provided.
- e. Ensure that goals are identified to be addressed through the provision of ESY services.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.
Margaret Joya Jones, Esq.

Margaret Joya Jones, Esq.
Mr. Philip A. Lynch
June 7, 2019
Page 23

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 student's mother and the school system 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. 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 Early Intervention/Special Education Services

MEF:ac

c: XXXXXXXXX
 Jack R. Smith
 Philip A. Lynch
 Kevin Lowndes
 Julie Hall
 Tracee Hackett
 XXXXXXX
 Dori Wilson
 Anita Mandis
 Janet Zimmerman
 Bonnie Preis