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State Superintendent of Schools

September 26, 2019

Ms. Jessica Williams  
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Dr. Arden Sotomayor  
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RE: [REDACTED]  
Reference: #20-006

Dear Parties:

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

**ALLEGATIONS:**

On July 29, 2019, the MSDE received a complaint from Ms. Jessica Williams, hereafter “the complainant,” on behalf of the above-referenced student and his mother, Ms. [REDACTED]. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The CCPS has not ensured that the student was provided with a Free Appropriate Public Education (FAPE) since the start of the 2018 – 2019 school year, in accordance with 34 CFR §§300.101, .320, .323 and .324. The complainant specifically alleged that:
  - (a) The Individualized Education Program (IEP) has not addressed the student’s needs in the areas of receptive and expressive language, math recognition of numbers, and written expression, as well as his sensory and health-related needs.
  - (b) The IEP team has not addressed the student’s lack of expected progress.
  - (c) The CCPS has not ensured that the reports of the student’s progress towards achievement of the annual IEP goals are consistent with the data.

2. The CCPS did not ensure that the student was provided with the Extended School Year (ESY) services required by the IEP, during the summer of 2019, in accordance with 34 CFR §§300.101 and .323.

### **BACKGROUND:**

The student is six (6) years old and is identified as a student with an Other Health Impairment (OHI) under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD). He has an IEP that requires the provision of special education and related services, and attended kindergarten [REDACTED] School ([REDACTED]) for the 2018 - 2019 school year.

On August 23, 2019, the parent completed documentation requesting to withdraw the student from the [REDACTED] due to a transfer to [REDACTED] School.

### **ALLEGATION #1                      PROVISION OF A FAPE**

### **FINDINGS OF FACTS:**

1. The IEP in effect at the start of the 2018 - 2019 school year was developed on August 24, 2018. The IEP reflects that the student has “a significant developmental delay.”<sup>1</sup> The IEP states that the student’s “delays in pre-academic concepts and articulation impact his ability to make his thoughts, ideas, needs, and wants known to peers and adults without support across settings.”
2. The IEP identifies that the student has needs in the area of early learning skills in math where he is functioning below age expectancy. The IEP states that the student has difficulty with understanding quantity, and was unable to demonstrate clapping “one time” or giving “three blocks” upon request. It also states that he “inconsistently recalled three-digit sequences of numbers from memory.”
3. There is documentation that, at the meeting when the IEP was developed, the parent expressed concern that the student is having difficulty counting past two (2).
4. The IEP includes an annual goal in math that requires the student to independently demonstrate an understanding of math concepts by identifying objects/pictures. Within the goal is an objective that requires the student to demonstrate an understanding of quantity by identifying or giving sets of objects or pictures, such as “give me one block, show me no birds, give me two cookies.”<sup>2</sup>

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<sup>1</sup> The IEP contrasts the student’s developmental quotient score of 57 with “average” developmental quotient scores that fall within the range of 90-100.

<sup>2</sup> The goal contains two (2) additional objectives that requires the student to demonstrate an understanding of the concepts of size, same and different.

5. The IEP does not identify that the student has any sensory needs or health-related needs. However, there is documentation that, at the meeting when the IEP was developed, the parent reported that the student has a diagnosis of a cognitive delay from the [REDACTED] and agreed to provide the team with the supporting assessment reports as soon as possible.
6. The IEP does not identify that the student has needs in the area of written expression.
7. The IEP does not identify receptive language or expressive language as areas of need for the student. However, at the time the IEP was developed, the IEP team considered information from a speech/language assessment that was conducted on November 13, 2017.<sup>3</sup> The assessment report documents that the student, who was 4.5 years old at the time, had receptive language skills equivalent to those of a 2.7 year old and expressive language skills equivalent to those of a 2.10 year old. There is documentation that when the previous IEP team reviewed this assessment report in November 2017, they determined that the student's "below average" receptive language scores were "considered a low estimate of his true abilities" due to the impact of his attention on his ability to answer receptive language items. They also determined that his "below average" expressive language skills were low due to the student's articulation difficulty with dropping final sounds.
8. While the IEP does not specifically identify receptive language as an area affected by the student's disability, it identifies "early learning skills - language and literacy" as an area of need for the student. The IEP states that the student could not answer questions about a story read aloud to him "(without visuals)," and that he has difficulty sorting objects by a single characteristic such as color and size and difficulty with identifying the source of common actions.
9. The IEP includes three (3) "early learning skills - language and literacy" annual goals requiring the student to answer questions related to an activity or story, sort objects/pictures by a single attribute, and to follow at least ten - 1 step teacher directions across settings and people. In addition, the IEP reflects that the student requires the daily provision of picture supports "throughout the school day" to assist him with "understanding directions given and instruction presented, as well as to communicate his wants/needs," and checks for understanding "to ensure [that] he understands what is expected of him" after given directions.
10. While the IEP does not specifically identify expressive language as an area affected by the student's disability, it identifies speech and language articulation as an area of need for the student. The IEP states that the student, who was five (5) years old at the time, was using phonological processes that should have been resolved by age three and one-half (3.5) years, and that the number of substitutions and deletions in the student's speech

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<sup>3</sup> This assessment was completed as part of the evaluation of the student that determined his initial eligibility under the IDEA as a student with a speech/ language impairment and a Developmental Delay.

“make it difficult for [him] to be understood at the word level and in connected speech.” The IEP includes two (2) annual speech and language articulation goals that require the student to reduce stopping by verbally producing fricatives and to reduce final consonant deletion by verbally producing final consonants at the carrier phrase level.<sup>4</sup>

11. The IEP requires five (5) hours per week of specialized instruction in a general education classroom, comprised of thirty (30) minutes of daily instruction in both reading and math. It also requires speech therapy once a week for thirty (30) minutes.
12. On September 18, 2018, the student’s classroom teacher sent an electronic mail message (email) to the school staff stating that she was “noticing some areas that may need review and addressed to make sure we are meeting the needs of the student for his success in the classroom” and requesting a meeting to review the student’s IEP.
13. On October 31, 2018, the parent sent an email message to the school system staff expressing concern that the student has regressed, is not understandable in his speech and does not want to come to school. The parent requested guidance on how to change the student’s placement. On the same date, the school staff confirmed an IEP meeting scheduled for November 20, 2018.
14. The student’s first (1st) quarter report card states that he has difficulty identifying numbers and needs to continue to work on writing his name.
15. The November 2018 progress reports for the first (1st) quarter of the 2018-2019 school year document that the student was making sufficient progress towards mastery of the annual IEP goals.
16. On November 13, 2018, the school staff documented that the student was sleeping at school.
17. On November 20, 2018, the IEP team convened. The written summary of the meeting documents the team’s concerns that the student was “not making any progress in speech sessions,” and “no progress” in his academics. The team discussed that the student has difficulty with why, when and where questions, requires multiple prompts, and requires “a lot of attention” when completing independent work. The parent reported that recent genetic testing of the student was negative and that she was considering additional testing by the [REDACTED] ([REDACTED])<sup>5</sup>

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<sup>4</sup> The term “carrier phrase” refers to phrases in which the first few words stay the same and only the last word changes (Examples: I want a... I see a...).

<sup>5</sup> The documentation does not indicate the purpose of type of additional testing that the parent was considering.

18. The IEP team recommended assessments of the student's academics, cognitive functioning, adaptive performance, social/emotional/behavior development, and fine motor skills.<sup>6</sup>
19. There is documentation that, at the time of the November 2018 IEP meeting, the student had eight (8) absences, all of which were supported by a "doctor's certificate." There is no documentation that the IEP team considered the impact of these absences on the student's lack of progress.
20. On November 26, 2018, the school staff documented that the student fell asleep on two (2) separate occasions during the school day.
21. On December 10, 2018, the parent informed the school staff that the student had an "episode" and would not be coming to school. She explained that the student "woke up at 12:43 am and started crying around 5 am-6:45 am," and "just went to sleep at 8:45 am."
22. On January 24, 2019, the school staff developed progress reports documenting that the student was not making sufficient progress towards mastery of one (1) of the IEP speech and language articulation goals, and that the IEP team needs to meet to address insufficient progress. The progress report states that the student missed three (3) out of ten (10) speech sessions due to absences.
23. The student's second (2nd) quarter report card reflects that he continues to have difficulty with number recognition and other math concepts.
24. On February 4, 2019, the school staff sent correspondence notifying the parent that the student had been absent from school for 5 or more days. The student's attendance record reflects that the student had twenty-two (22) absences as of this date.
25. The February 5, 2019 progress reports reflect that the student was making sufficient progress towards the IEP academic goals.
26. On February 6, 2019, the school staff documented that the student was having difficulty completing written tasks.
27. On February 8, 2019, the parent informed the school staff that the student was late arriving to school due to difficulty sleeping the previous night.
28. On February 26, 2019, the IEP team convened to review the results of the assessments that were recommended at the November 2018 IEP meeting.

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<sup>6</sup> The school staff received the parent's written consent for the assessments on January 4, 2019.

29. The IEP team considered the report of an educational assessment that documents that the student achieved a “low” score of 73 in math. The report reflects that the student was able to count to ten (10) and show a specific number of fingers, but had difficulty reading numbers. The IEP team discussed that, while the student can identify some but not all numbers between one (1) to ten (10), he does not independently write numbers from one (1) to twenty (20) and cannot identify numbers in a sequence. In the area of written language, the report documents that the student achieved a “very low” score of 62 in contextual writing and a “low average” score of 81 in basic writing. The report reflects that the student was able to draw a picture of his favorite television show and activity, write his name, trace a letter and show how to hold a pencil, but that he had difficulty with writing numbers and identifying letters.
30. The team considered the report of a psychological assessment documenting the student’s “below average” full scale intelligence quotient (IQ) of 81, which was comprised of “low” scores on the verbal comprehension and working memory indexes. The evaluator noted that the student’s speech “was often complicated to interpret” and that he “often” complained that the tasks were “too hard.” The evaluator also noted that the student was “typically in constant motion,” required “continuous prompting” to focus, and that his level of distractibility interfered with his ability to retain information and resulted in confusion about the task.
31. The psychological assessment report includes information from the school staff that the student cannot recognize numbers in isolation or any sight words, is still learning pre-primer reading skills and cannot read, and requires “constant redirection, teacher proximity, visual models, hand-over-hand assistance, peer model[s] and checks for understanding throughout the day in order to maintain his focus.” The school staff rated the student with a “very elevated” score in the area endorsing learning problems and an “elevated” score in the area endorsing hyperactivity.
32. The IEP team reviewed the report of an occupational assessment. The report reflects that the student’s fine motor skills were in the “average” range but that his visual motor skills were in the “below average” range. The report states that the student had difficulty with accurately copying horizontal and intersecting line basic strokes, copying geometric shapes with angles, tracing a line, and connecting two (2) dots separated by twelve (12) inches. It also states that the student copies items using a bottom to top approach, and that his writing quality is impacted due to his difficulty with motor coordination while completing tasks.
33. There is documentation that at the February 2019 meeting, the IEP team reviewed the report of a neurological assessment conducted by the [REDACTED] dated January 15, 2019 ([REDACTED] Report). The [REDACTED] Report states that the student has “a history of developmental delay, behavior regulation concerns and medical complications.” It also reflects that the student has received genetic testing that was negative and is scheduled for a brain MRI scan.

34. The [REDACTED] Report states that the student has difficulty with sleep onset, wakes or gets out of bed before morning, is hard to wake in the morning, averages four (4) hours of sleep per night, and has been referred to the [REDACTED] Sleep Clinic for an evaluation. The [REDACTED] Report includes information from the student's teacher that he cannot identify or write numbers, has difficulty with 1:1 correspondence, "often is not attending to instruction," has difficulty with organizational skills, is "significantly behind in all areas," and needs to have "his own instructional assistant due to how often he requires redirection." The teacher rated that student "as having extreme problems" in reading, math calculation and written expression.
35. The [REDACTED] Report documents that the student's overall intellectual functioning was in the "low average" range and his adaptive skills were in the "extremely low/impaired" range. It also reflects that the student's visual-motor/sensorimotor functioning was in the "at risk" range for problems with handwriting, disorganized or messy papers, immature drawings, and difficulty lining up numbers in a row. The evaluator noted articulation difficulties throughout the evaluation and previous reports of the student's weaknesses in receptive and expressive language skills.<sup>7</sup>
36. Based on the test results, the [REDACTED] evaluator diagnosed the student with ADHD due to his demonstrated difficulties and weaknesses with rapid naming, attention/inhibitory control and emotional regulation. The evaluator also documented that the student was also demonstrating symptoms of anxiety, including worrying, difficulty with transition and physical complaints. The evaluator further noted the importance of recognizing that "the student's distractibility and activity level is primarily outside of the realm of his control."
37. The [REDACTED] Report contains many recommendations, including the following:
- Specialized instruction in a separate special education classroom for reading, writing and math;
  - Evaluation to determine whether the student has a Specific Learning Disability (SLD);
  - Updated speech and language evaluation;
  - Teaching strategies that incorporate multiple modalities for understanding concepts;
  - Highly structured behavioral program that includes positive reinforcement, extinction, structure and routine;
  - Movement breaks and opportunities to complete work while standing;
  - Periodic breaks of two to three (2-3) minutes from activities that require sustained attention;
  - Behavior reward system;
  - Preferential seating; extended time and reduced distractions;

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<sup>7</sup> The evaluator noted that the student was not assessed for language and academic functioning due to current testing in those areas by the school.

- Cues for approaching tasks, breaking down problems into steps, checklists and other external organizational cues;
- Assistance with organizing and planning strategies, including checklists for organizing tasks with multi-step directions; and
- A 1:1 aide for safety and assistance with redirecting to task and reinforcement of the use of communication tools.

The IEP team added movement breaks and preferential seating to the IEP, but did not document whether they accepted or rejected the other supports that the [REDACTED] report recommended.

38. At the February 2019 meeting, the IEP team determined the student's continued eligibility under the IDEA as a student with an Other Health Impairment related to ADHD.
39. At the time of the February 2019 meeting, the IEP goals were not expected to be achieved until August 2019. However, based on the updated information about the student's present levels of development from the reevaluation results, the IEP team developed new goals and decided that the student would have a years' time, until February 2020, to achieve them. The revised IEP included two (2) math goals requiring the student to write numbers from 1-20 and to demonstrate an understanding of one to one correspondence from 1-20. The "early learning skills language and literacy" goal was replaced with a reading comprehension goal requiring the student to answer "WH" question about an instruction level text read or read to him, a reading phonics goal was added, and the speech and language articulation goal was revised to require increased skills development. A supplementary support requiring movement breaks was also added to the IEP.
40. At the February 2019 meeting, the IEP team also determined that the student has needs in the area of fine motor skills and developed two (2) IEP fine motor skills goals requiring the student to produce legible handwriting and use bilateral hand skills while writing and cutting. They also added weekly occupational therapy services to the IEP.
41. The IEP team also increased the specialized instruction that the student requires per week from 5 hours to 7.5 hours in a general education classroom, and decided that he also required an additional 7.5 hours per week of specialized instruction in a separate special education classroom. Speech therapy services were also increased to twice a week.
42. There is documentation that, at the time of the February 2019 IEP meeting, the student had accumulated 28 absences for the school year, 23 of which were supported by a doctor's certificate or due to illness. There is no documentation that the IEP team considered the impact of the student's absences resulting from his health needs on his progress.



43. On March 11, 2019, the school staff documented that the student fell asleep during math instruction. On March 21, 2019, the parent informed the school staff that the student was not sleeping much because his medicine was not working.
44. The student's third (3rd) quarter report card states that the student has made "significant" progress in writing his name, and that he can recognize and write three (3) numbers. It also states that the student is at risk in all academic areas.
45. On April 9 and 11, 2019, the school staff developed progress reports documenting that the student was making sufficient progress towards mastery of the annual IEP goals, with the exception of the fine motor skills goals for which there is no documentation of progress reported for this period.<sup>8</sup>
46. On May 8, 2019, the school staff documented that the student "keeps falling asleep."
47. On May 22, 2019, the IEP team convened at the request of the parent and the complainant. A review of the audio recording of the meeting reflects that the parent expressed concern about the lack of progress made by the student. The parent and the complainant also expressed concern that, while the IEP goal progress reports for the 2018-2019 school year documented that the student was making sufficient progress to achieve the goals, he did not achieve any of the IEP goals when the team revised the IEP goals at the annual review meeting in February 2019. The IEP team discussed that while the student did not achieve the goals, he was making slow progress towards mastery of the skill levels required in the goals. The complainant requested documentation to support the progress reports. The goals in the IEP in effect from the start of the 2018-2019 school year until February 2019 were not expected to be achieved until August 2019.
48. The IEP team discussed that the student continues to struggle academically and that his rate of progress has been slow. They decided to add a written language mechanics goal to the IEP requiring the student to compose a three to five (3-5) word sentence with no more than three (3) visual and/or verbal prompts. The IEP team also added a third (3rd) math calculation goal requiring the student to recognize numbers from 1-20 with no more than two visual and/or verbal prompts, as well as a supplementary support requiring a research-based math intervention for thirty (30) minutes each day. In addition, the IEP team increased the amount of specialized instruction that the student requires in order to assist him with achieving the IEP goals.
49. A review of the audio recording of the May 2019 IEP meeting documents that the complainant expressed concern that the student has sensory issues that are not being addressed.<sup>9</sup> The parent also reported that the student wears glasses with tinted lenses due

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<sup>8</sup> There is no report of the student's progress on the IEP fine motor skills goal requiring him to produce legible handwriting during this reporting period.

<sup>9</sup> While the complainant referred to the [REDACTED] Report that states that the student experiences sensitivity to light and

- to his light sensitivity. The school staff reported that they do not see any adverse reactions by the student to light or sound at school that are interfering with his access to instruction. The IEP team discussed that the student is seeking sensory input from the school staff through hugs and touch and agreed to conduct a sensory profile assessment to obtain additional information about the student's sensory needs.
50. The audio recording also reflects that the IEP team also discussed the complainant's concern that the student requires IEP services to address his receptive language and expressive language skills needs. The parent reported that she was in the process of obtaining a private evaluation of the student's speech and language skills. The IEP team agreed to conduct a "language screening" to obtain additional information about the student's current speech and language functioning, while waiting for the private evaluation to occur.
51. The audio recording also documents the report by the school staff that the student is "often knocked out" sleeping on the floor during class. The parent explained that the student has difficulty sleeping, has been diagnosed with insomnia, and that she is waiting for the results of a recent sleep study that the student underwent. The parent also reported that the student has had many medical appointments with teams of professionals at [REDACTED] and [REDACTED] who are following him due to medical complications following his birth when he was deprived of oxygen. She further reported that based on the results of a recent MRI, it was determined that the student has brain damage. The parent agreed to provide the school staff with the written reports of the brain MRI and the sleep study once she receives them.
52. At the May 2019 meeting, the school staff reported that the student has missed approximately 36 days of school and been tardy 9 times since the start of the 2018-2019 school year.<sup>10</sup> The audio recording of the meeting reflects that the parent explained that the absences and tardiness are due to the student having a lot of medical appointments, anxiety attacks,<sup>11</sup> difficulty waking due to sleep medication, and some overnight stays in the hospital. At the complainant's request, the school staff agreed to provide the parent with forms to request Home and Hospital Teaching (HHT) if the student is unable to come to school due to a physical or emotional condition. There is no documentation that the IEP team decided how to address the high number of student absences at the meeting.

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displays sensitivity to sound, the [REDACTED] Report does not include any recommendations for these areas.

<sup>10</sup> The school staff noted that the 45 days that the student was either absent or tardy was the equivalent of one (1) quarter of a school year.

<sup>11</sup> There is documentation that the parent reported that the student was having "an episode," "a rough start," "an outburst," or "a difficulty morning" that was causing him difficulty with coming to school on December 10, 2018, January 9, 24 and 28, 2019, March 14 and 21, 2019, and June 3, 2019.

53. On June 5 and 12, 2019, the school staff developed progress reports documenting that the student made progress towards mastery of the IEP goals.
54. On August 23, 2019, the IEP team convened. The IEP team reviewed the information from the sensory profile that the student shows “a definite difference” in the area of underresponsive/seeking sensation. They also discussed that he “seeks all kinds of movement that interferes with daily routines,” engages in behaviors seeking proprioceptive input, responds negatively to unexpected or loud noises and is distracted when there is a lot of noise, and touches people and objects. The team revised the IEP to identify that the student has needs in the area of sensory processing strategies and also added a supplementary support to the IEP requiring a monthly consultation by an occupational therapist (OT) to address the student’s sensory processing difficulties. In addition, the IEP team decided to collect data through a trial to determine the student’s responses to, and preferences for, specific sensory strategies and tools in a variety of settings, and to reconvene in October 2019 to review the data.
55. The IEP team reviewed a speech/language assessment update, the results of which reflect that the student has areas of weakness in his receptive language, including giving attention to/listening to progressively longer units of speech, comprehension of linguistic concepts and logical relations (pronouns, sequence, spatial, time, word associations, categories, opposites). The update also includes reports by the student’s teachers that his “language comprehension deficits adversely impact his performance in the general education setting.” The team revised the IEP to identify that the student has needs in the area of receptive language skills and added a goal to address this area of need.
56. The written summary of the August 2019 meeting states that the “CCPS clarifies that support is warranted for [the student] in the area of his school attendance.”<sup>12</sup> The IEP team proposed adding “parent support” as a supplementary support for weekly communication between the parent and the case manager to address the student’s absences and increase consistency in his attendance. The parent disagreed, noting that the proposed parent support does not address the needs of the student. She also reported that the student has anxiety attacks that prevent him from accessing school.
57. On August 23, 2019, following the IEP meeting, the parent provided with the school staff with a report of a speech and language evaluation conducted by the [REDACTED] dated May 23, 2019.
58. There is data to support the reports of the student’s progress towards mastery of the IEP speech and language articulation goals during the 2018-2019 school year.

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<sup>12</sup> The student’s attendance record documents that he was absent or tardy 49 days during the 2018-2019 school year. It also documents that his absences on 22 days were supported by a doctor’s certificate, and 10 days were for being tardy and 11 days were due to illness.

59. There is data to support the reports of the student's progress towards mastery of the academic goals for the second (2nd) and third (3rd) quarters of the 2018-2019 school year. However, there is no data to support the reports of the student's progress towards mastery of the academic goals for the first (1st) or fourth (4th) quarters of the 2018-2019 school year.
60. There is no data to support the reports of the student's progress towards mastery of the fine motor skills goals during the 2018-2019 school year.
61. The student's report card documents that he received N (needs improvement) grades for every quarter of the 2018-2019 school year in reading, math and writing, and that he was not showing mastery, or only partial mastery, in each of the individual skills areas within these subjects.

### **CONCLUSIONS:**

#### Receptive and Expressive Language Needs

Based on the Findings of Facts, #1 and #7 - #10, the MSDE finds that the August 24, 2018 IEP addressed the student's identified needs in the areas of receptive and expressive language, based on the data in existence at the time, through the skills that he was expected to master within the speech and language articulation IEP goal and the early learning skills – language and literacy IEP goal.

Based on the Findings of Facts #28, #33, #35 and #37, the MSDE finds that, in February 2019, the IEP developed a reading goal requiring the student to answer questions about a text read or read to him, but did not consider the recommendation in the [REDACTED] report for an updated speech and language evaluation, in accordance with 34 CFR §§300.101, .320, .323 and .324. Therefore, this office finds a violation with respect to this aspect of the allegation.

However, based on the Findings of Facts #47, #50, #54 and #55, the MSDE finds that in August 2019, the IEP team considered the results of a speech/language assessment update that was recommended by the team at the May 2019 meeting and added a receptive language goal to the IEP.

#### Math Recognition of Numbers

Based on the Findings of Facts #1 - #4, the MSDE finds that the August 24, 2018 IEP includes an objective within the early learning skills – math goal that requires the student to demonstrate an understanding of quantity.

Based on the Findings of Facts #28, #29, #31, #39 and #41, the MSDE finds that, in February 2019, the IEP team developed two (2) math goals requiring the student to write numbers and demonstrate an understanding of one-to-one correspondence.

Based on the Findings of Facts #47 and #48, the MSDE finds that, in May 2019, the IEP team added a math goal requiring the student to recognize numbers and determined that the student requires a research-based math intervention, in accordance with 34 CFR §§300.101, .320, .323 and .324. Therefore, this office does not find a violation with respect to this aspect of the allegation.

#### Health-Related Needs

Based on the Findings of Facts #16, #19, #21, #21, #23, #24, #27, #34, #42, #43, #46, #51, #52 and #56, the MSDE finds that there is documentation that the student was missing instruction due to problems with his sleeping and a high amount of absences due to medical appointments.

However, based on the Findings of Facts #13 - #61, the MSDE finds that there is no documentation that the IEP team has considered the impact of the student's lack of regular school attendance on his progress and whether additional instruction could be provided in the home when needed, in accordance with 34 CFR §§300.101, .320, .323 and .324. Therefore, this office finds a violation with respect to this aspect of the allegation.

#### Sensory Needs

Based on the Findings of Facts #28, #30 and #39, the MSDE finds that in February 2019, the IEP team considered that the student was "typically in constant motion" and that his level of distractibility interfered with his ability to retain information, and added movement breaks as a supplementary support to the IEP.

Based on the Findings of Facts #47 and #49, the MSDE finds that, in May 2019, the IEP team discussed that the student was seeking sensory input from the school staff through hugs and touch, and recommended a sensory profile.

Based on the Finding of Fact #54, the MSDE finds that, in August 2019, after considering the results of the sensory profile, the IEP team identified that the student has needs in the area of sensory processing, added a monthly consultation by an occupational therapist and decided to trial different sensory strategies and tools with the student, in accordance with 34 CFR §§300.101, .320, .323 and .324. Therefore, this office does not find a violation with respect to this aspect of the allegation.

#### Written Expression Needs

Based on the Findings of Facts #14, #26 and #44, the MSDE finds that there is documentation that the student was demonstrating difficulty with writing during the first (1<sup>st</sup>) and second (2<sup>nd</sup>) quarters but showed some improvement during the third (3<sup>rd</sup>) quarter of the 2018-2019 school year.

Based on the Finding of Fact #40, the MSDE finds that, in February 2019, after obtaining additional data, the IEP team developed a fine motor skills goal requiring the student to produce legible writing, and added weekly occupational therapy services to the IEP.

Based on the Findings of Facts #47 and #48, the MSDE further finds that, in May 2019, the IEP team added a written language mechanics goal to the IEP requiring the student to compose a 3-5 word sentence, in accordance with 34 CFR §§300.101, .320, .323 and .324. Therefore, this office does not find a violation with respect to this aspect of the allegation.

#### Lack of Expected Progress

Based on the Findings of Facts #17 and #18, the MSDE finds that the IEP team met in November 2018 to address the student's lack of progress and determined that additional information was needed about the student's current levels of functioning due to his lack of progress. Based on the Findings of Facts #28 - #37, the MSDE finds that when the IEP team reviewed the new data in February 2019, the team discussed that the student requires constant redirection, continuous prompting, often is not attending to instruction, and is significantly behind in all areas.

However, based on those Findings of Facts, the MSDE finds as stated above, that there is no documentation that the IEP considered the recommendations in the [REDACTED] Report to improve the student's progress, or the impact of the student's lack of regular school attendance on progress, in accordance with 34 CFR §§300.101, .320, .323 and .324. Therefore, this office finds a violation with respect to this aspect of the allegation.

#### Progress Reports Consistent with the Data

Based on the Findings of Facts #58 and #59, the MSDE finds there is data to support the progress reports on the IEP speech and language articulation goals developed during the 2018-2019 school year, and the IEP academic goals for the first (1<sup>st</sup>) and third (3<sup>rd</sup>) quarters of the 2018-2019 school year.

However, based on the Findings of Facts #59 and #60, the MSDE finds that there is no data to support the progress reported during the second (2<sup>nd</sup>) and fourth (4<sup>th</sup>) quarters of the year for the IEP academic goals, and there are no progress reports that were developed for the IEP fine motor skills goals during the 2018-2019 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation with respect to this aspect of the allegations.

**ALLEGATION #2                      ESY SERVICES DURING SUMMER 2019**

**FINDINGS OF FACTS:**

62. At the May 22, 2019 IEP meeting, the team decided that the student was eligible for ESY services for summer 2019. The written summary of the meeting documents the determination by the IEP team that the student requires ESY services one (1) hour long sessions three (3) times per week to address the IEP phonics and math number recognition goals, and thirty (30) minutes once a week to address the IEP speech and language articulation goal. A review of the audio recording of the May 22, 2019 meeting documents that the IEP team decided that the student requires ESY services for six (6) weeks during summer 2019.
63. While the IEP document that was developed following the May 22, 2019 IEP meeting reflects the ESY eligibility decision made by the team, it does not identify the amount of ESY services that the team decided was required.
64. The written summary of the August 23, 2019 IEP meeting documents the team's acknowledgement that the student did not receive the full amount of ESY services during summer 2019, and the decision to continue providing ESY services until they are completed.

**CONCLUSION:**

Based on the Findings of Facts #62 - #64, the MSDE finds that the CCPS did not ensure that the student was provided with the amount of ESY services that the IEP team determined he requires, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds that a violation occurred.

**CORRECTIVE ACTION/TIMELINES:**

**Student-Specific**

The MSDE requires the CCPS to provide documentation by October 18, 2019, of its diligent efforts to obtain all available student medical data from the parent. The efforts must include a request that the parent provide written consent authorizing the CCPS to obtain student's medical information directly from the [REDACTED]. If the parent provides such consent, the CCPS must also provide documentation that the student's medical information has been requested from the [REDACTED].

The MSDE also requires the CCPS to provide documentation by November 15, 2019, that a qualified provider has determined whether the student requires HHT services based on the medical data, and assist the parent with making an application to the Chronic Health Impairment Program for Students (CHIPS).

The MSDE requires the CCPS to provide documentation by December 20, 2019, that the IEP team has convened and taken the following actions:

- a) Reviewed and considered the recommendations in the [REDACTED] Report;
- b) Revised the IEP, as appropriate, based on the data; and
- c) Determined HHT services, if needed; and
- d) If the IEP is revised to add services based on a review of the data, the IEP team must also determine the amount and nature of compensatory services or other remedy for the loss of services during the 2018 – 2019 school year and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

The MSDE also requires the CCPS to provide documentation by the end of the 2019-2020 school year that the student has been provided with the amount of ESY services determined by the team at the May 2019 IEP meeting.

### **School-Based**

The MSDE requires the CCPS to provide documentation by December 1, 2019, of the steps it has taken, including training, to ensure that the [REDACTED] ES staff comply with the IDEA requirements relating to the violations identified in this Letter of Findings.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education 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.

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.



Ms. Jessica Williams  
Dr. Arden Sotomayor  
September 26, 2019  
Page 17

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainants 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 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  
and Special Education Services

MEF/ksa

c:

  
Kimberly Hill

Lewan Jones

  
Dori Wilson

Anita Mandis

K. Sabrina Austin

Nancy Birenbaum