

October 4, 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

Dr. Tia McKinnon  
Director of Special Education  
Charles County Public Schools  
P.O. Box 2770  
LaPlata, Maryland 20646

RE: [REDACTED]  
Reference: #25- 023

Dear Parties:

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

**ALLEGATIONS:**

On August 7, 2024, MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The CCPS did not ensure that the student was provided with the special education instruction, supplementary aids, speech-language services, accommodations and the Behavior Intervention Plan (BIP), as required by the Individualized Education Program (IEP) since the start of the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323.
2. The CCPS did not ensure that the student was provided the special education services and accommodations that allowed the student to participate in extracurricular activities since the start of the 2023-2024 school year, in accordance with 34 CFR § 300.107.
3. The CCPS has not ensured access to the educational record in response to a request made on May 9, 2024, in accordance with 34 CFR § 300.613.
4. The CCPS has not ensured that the IEP team addressed the parent’s concerns regarding the student’s need for a dedicated aid and speech pragmatic needs since the start of the 2023-2024 school year, in accordance with 34 CFR § 300.324.

**BACKGROUND:**

The student is 12 years old and is identified as a student with an emotional disability under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

**ALLEGATIONS #1 AND #2**

**PROVISION OF SPECIAL EDUCATION INSTRUCTION, SUPPLEMENTARY AIDS, SPEECH- LANGUAGE SERVICES, ACCOMMODATIONS, AND IMPLEMENTATION OF THE BIP AND THE PROVISION OF SPECIAL EDUCATION SERVICES AND ACCOMMODATIONS DURING EXTRACURRICULAR ACTIVITIES**

**FINDINGS OF FACT:**

1. The IEP, in effect at the start of the 2023-2024 school year, was developed on March 27, 2023. The IEP requires the student to be provided with:
  - 25-minutes daily of special education instruction outside the general education classroom for check-ins/check-outs provided by the special education teacher or instructional assistant;
  - Three hours and 20-minutes daily of special education instruction inside the general education classroom for literacy, math, and specials provided by the special education teacher or instructional assistant;
  - 60-minutes weekly of psychological services outside the general education classroom for individual and/or group counseling, crisis intervention, social stories, and case management provided by the psychologist; and
  - 30-minutes weekly of speech-language therapy outside the general education classroom provided by the speech-language pathologist or assistant.

The IEP requires the implementation of a BIP.

The IEP requires the provision of supplementary aids:

- As needed use of manipulatives;
- Daily adult proximity;
- Daily scheduled breaks;
- Daily frontload expectation for special areas;
- Weekly social skills training; and
- Quarterly speech-language consult;
- Daily task list;
- Daily small group;
- Daily repetition of directions;
- Daily monitor independent work;
- Daily frequent or immediate feedback;
- Daily change in transition time;
- Daily break down assignments into smaller units;
- Daily use of a behavior chart.
- Daily redirection or planned ignoring;
- Daily rapport building;
- Daily frequent reminder of the rules;
- Daily model peer partner;

- Daily intensive case management;
- As needed social stories/ social scripts;
- Daily home-school communication system;
- Daily encourage/reinforce appropriate behavior in the academic and non-academic areas;
- Daily encourage student to ask for assistance when needed;
- As needed advanced preparation for a schedule change; and
- Daily preferential seating; Daily check-in/ check-out;
- Daily adult support;
- Daily use of positive/concrete reinforcers; and
- Daily strategies to initiate and sustain attention.

The March 27, 2023, IEP included the following accommodations:

- Separate or alternate location;
- Frequent breaks;
- Reduced distractions to others;
- Calculation device (on calculation and non-calculation sections);
- Monitor test responses; and
- Extended time (x1.5).

The March 5, 2024, IEP included the majority of the same supplementary aids and services, and added the following:

- Time based tasks;
- Copies of notes;
- Supplemental math instruction;
- Crisis management;
- Psych consult;
- Break pass;
- Redirection or planned ignoring; and
- Occupational therapy consult.

The March 5, 2024, added the following accommodations:

- Calculation device and mathematics tools on calculation and non calculation sections of the math assessments; and
- Monitor test response.

2. The IEP developed on March 5, 2024, requires the student to be provided with:

- One-hour and 15-minutes weekly of special education instruction in the general education classroom for supplemental math instruction provided by the general, special education teacher, or the instructional assistant;
- Three-hours and 20-minutes weekly of special education instruction in the general education classroom for behavior management provided by the general, special education teacher, or the instructional assistant;
- Two-hours and 30-minutes weekly of special education instruction outside the general education classroom for check-in/check-out provided by the special education teacher or the instructional assistant;
- 22-hours weekly of special education instruction inside the general education classroom for self-management and social-emotional goals provided by the general, special education teacher or the instructional assistant;

- Two-hours and 30-minutes weekly of special education instruction outside the general education classroom for self-management and social-emotional goals provided by the special education teacher, psychologist, guidance counselor, or the instructional assistant;
- Three-hours weekly of special education instruction outside the general education classroom for behavior support provided by the special education teacher, psychologist, guidance counselor, or the instructional assistant;
- 30-minutes weekly of psychological services outside the general education classroom provided by the psychologist; and
- Two-hours monthly of speech-language therapy outside the general education classroom provided by the speech-language pathologist or assistant.

The IEP requires the implementation of a BIP.

The March 5, 2024, IEP requires the provision of the additional supplementary aids and accommodations:

- Periodic time-based tasks;
- As needed copies of notes;
- Daily supplemental math instruction;
- Periodic crisis management;
- Monthly psychological consult;
- Daily break pass;
- Periodic model peer partner;
- Monthly occupational therapy (OT) consult; and
- Monthly speech-language consult.

3. The BIP in effect at the start of the 2023-2024 school year was developed on March 27, 2023, and revised on February 12, 2024. The BIP includes:
  - Target behaviors including work-avoidance/off-task, vocal disruptions, verbal threats of harm towards others, and negative self-talk;
  - Hypothesis of challenging behavior function including antecedents, consequences, and environmental factors;
  - Goals and objectives;
  - Setting events and antecedent interventions including frequent review of rules and behavior expectations, check-in/check-out, rapport building and praise, preferential seating and teacher proximity, model peer partner, redirection or planned ignoring, written task lists, scheduled environmental breaks, and transition warning;
  - Supplementary aids and supports for desired behaviors including a behavior chart, home-school communication, and social stories/scripts;
  - Interventions for functionally equivalent replacement behaviors including coping skills and strengths identification, functional communication, and opportunities to escape appropriately through work completion;
  - Reactive strategies including work-avoidance/off-task, negative self-talk, verbal threats of harm to others, and vocal disruptions;
  - Data collection and review including the behavior, data collection type, who is responsible for implementing the plan, how often the data will be reviewed, and who is responsible for the data analysis; and
  - Modification to the BIP.

4. On February 12, 2024, the IEP team convened to review and revise the IEP. The Prior Written Notice (PWN) generated following this IEP team meeting reflects that the IEP team discussed the student's use of the instructional assistant and case managers support in his academic classes.
5. On July 23, 2024, the IEP team convened to review and revise the IEP and discuss the parent's concern about placement. The PWN generated following this IEP team meeting reflects that the CCPS staff stated that "there was a plan developed to help [the student] with this transition, to include supports for his band class...these supports were not provided... he was involved in a Science Technology Engineering Mathematics (STEM) club, but was told he could not participate due to his behaviors."
6. While there is some documentation of the provision of daily home-school communication, it does not demonstrate consistent provision during the 2023-2024 school year as required by the IEP.
7. There is documentation that the student was provided OT consult during the 2023-2024 school year, as required by the IEP.
8. There is documentation of the provision of the speech-language therapy during the 2023-2024 school year, as required by the IEP.
9. There is no documentation that the student was provided with psychological services and consult during the 2023-2024 school year, as required by the IEP.
10. There is documentation of the provision of special education instruction and the implementation of the BIP, during the 2023-2024 school year, as required by the IEP.
11. While there is some documentation of the provision of the supplementary aids and accommodations, it does not demonstrate consistent provision during the 2023-2024 school year, as required by the IEP.

### **CONCLUSIONS:**

#### **Provision Of Special Education Instruction, OT Consult, Speech- Language Services, and Implementation of the BIP**

Based upon the Findings of Fact #1 through #3, #7, #8 and #10, MSDE finds that the CCPS did ensure that the student was provided with the special education instruction, OT consult, speech-language services, and implementation of the BIP, as required by the IEP since the start of the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office does not find that a violation occurred concerning the allegation.

#### **Supplementary Aids, Psychological Services, Consult, and Accommodations**

Based upon the Findings of Fact #1 and #2, #4, #6, #9, and #11, MSDE finds that the CCPS did not ensure that the student was consistently provided with the supplementary aids, psychological services and consult, and accommodations, as required by the IEP since the start of the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred concerning the allegation.

### **Provision of Special Education Services and Accommodations During Extracurricular Activities**

In this complaint, the complainant alleges that the CCPS school team did not allow the student to participate in band class and afterschool clubs due to "the student's behavior" or a "lack of support."

IDEA mandates that schools provide a free appropriate public education (FAPE), including necessary accommodations and supports for students with disabilities to participate fully in their educational program and FAPE must be available to all children with disabilities (34 CFR § 300.101(a)).

The public agency is required to ensure that the student is provided with the special education services required by the IEP (34 CFR §300.101).

Based upon the Findings of Fact #1 through #3, and #5, MSDE finds that the CCPS did not ensure that the student was provided the special education services and accommodations that allowed the student to participate in extracurricular activities since the start of the 2023-2024 school year, in accordance with 34 CFR § 300.107. Therefore, this office finds that a violation occurred concerning the allegation.

### **ALLEGATIONS #3 AND #4                      ACCESS TO STUDENT'S RECORDS AND ADDRESSING PARENT'S CONCERN**

#### **FINDINGS OF FACT:**

12. On May 9, 2024, the complainant emailed the CCPS, "We have asked in every meeting since [the student] was in 5<sup>th</sup> grade, to include suspension meetings, to have a 1:1 assistant for [the student] .... provide a 1:1 assistant for [the student]." The email further reflects the complainant requesting to be provided various components of the student's educational file including behavior data and the student's discipline file. The email further reflects that the complainant verbally made the request at the May 1, 2024, IEP team meeting but had yet to be provided any of the requested documents.
13. On May 15, 2024, the CCPS emailed the complainant with a possible date of May 20, 2024, to review the student's educational and discipline records. There is documentation that the complainant confirmed the date with the CCPS.
14. On May 21, 2024, the IEP team convened to review and revise the IEP. The PWN generated following this IEP team meeting reflects that the complainant "asked about the pragmatics consult that the student receives" and requested for a 1:1 assessment to be completed. The PWN further reflects that the IEP team agreed to change the speech-language consult to direct services for both individual and group sessions to address the student's pragmatics of speech needs. The PWN reflects that the IEP team agreed to conduct a 1:1 assessment.
15. On July 23, 2024, the IEP team convened to review and revise the IEP and discuss the parent's concern about placement. The PWN generated following this IEP team meeting reflects that the IEP team reviewed the 1:1 assessment and determined the student eligible for a dedicated aid.

## **CONCLUSIONS:**

### **Access to Student Records**

Based upon the Findings of Fact #12 and #13, MSDE finds that the CCPS has ensured access to the educational record in response to a request made on May 9, 2024, in accordance with 34 CFR § 300.613. Therefore, this office does not find that a violation occurred concerning the allegation.

### **Addressing Parent's Concerns**

Based upon the Findings of Facts #12, #14 and #15, MSDE finds that the CCPS has ensured that the IEP team addressed the parent's concerns regarding the student's need for a dedicated aide and speech pragmatic needs since the start of the 2023-2024 school year, in accordance with 34 CFR § 300.324. Therefore, this office does not find that a violation occurred concerning the allegation.

## **CORRECTIVE ACTIONS AND TIMELINES:**

The IDEA requires that State complaint procedures include effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

### **Student Specific**

MSDE requires the CCPS to provide documentation by December 2, 2024, that the IEP team has convened and determined whether the violations identified in this Letter of Finding had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedies to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The CCPS must ensure that the parent is provided with prior written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

<sup>2</sup> MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

**School-Based**

MSDE requires the CCPS to provide documentation by December 2, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the provision of special education services, related services, supplementary aids, services, and accommodations, during the school day and extracurricular activities, under the IDEA. These steps must include staff development, as well as tools developed to monitor compliance.

Monitoring must include a review of at least ten randomly selected student records to review for the provision of special education instruction, related services, supplementary aids, services, accommodations, and implementation of a BIP. The monitoring report must be submitted to MSDE on or before January 6, 2025.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parties maintain the right to request mediation or to file a due process complaint if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Antoine L. Hickman, Ed.D.  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services

ALH/sd

c: Maria Navarro, Superintendent, CCPS  
LeWan Jones, Director of Special Education Compliance, CCPS  
[REDACTED], Principal, [REDACTED], CCPS  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Nicole Green, Compliance Specialist, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Sarah Denney, Complaint Investigator, Dispute Resolution, MSDE