

February 3, 2025

[REDACTED]

Dr. Larry Johnson  
Acting Director of Special Education  
Charles County Public School System  
5980 Radio Station Road P.O. Box 2770  
La Plata, MD 20646

RE: [REDACTED]  
Reference: #25-151

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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 November 26, 2024, the 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 School System (CCPS) 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 CCPS has not followed proper procedures when conducting a reevaluation of the student since September 2024, in accordance with 34 CFR §§ 300.303-.306.
2. The CCPS has not followed proper procedures when responding to a request for an Independent Education Evaluation (IEE) for the student since September 2024, in accordance with 34 CFR § 300.502 and COMAR 13A.05.01.14.
3. The CCPS did not develop and implement an Individualized Education Program (IEP) that addressed the student's identified needs in occupational therapy (OT), speech-language, and physical therapy since November 2023, in accordance with 34 CFR §§ 300.101 and .324.
4. The CCPS has not ensured that the student has been provided with the special education instruction, accommodations, and related services required by the IEP since November 2023, in accordance with 34 CFR §§ 300.101 and .323. Specifically, the complainant alleges that the student has not been provided with assistive technology and his accommodations for mobility, toileting, and feeding.

## **BACKGROUND:**

The student is six years old and is identified as a student with an Intellectual Disability, and OHI ( ), under the IDEA. He attends ( ) and has an IEP that requires the provision of specially designed instruction and related services.

## **FINDINGS OF FACT:**

1. The IEP in effect in November 2023, was created on September 25, 2023, and identifies needs in Communication, Early Literacy, Early Math Literacy, Academic - Foundational Skills, Pre-Writing, Speech-Language Receptive Language, Health/Medical, Fine Motor, and Gross Motor. Goals and supplementary aids and services within the IEP address these areas of concern. The IEP requires seven hours and 30 minutes per week of specialized instruction within the general education classroom, five hours per week of specialized instruction outside the general education classroom, 30 minutes per week of speech-language services outside the general education classroom, 30 minutes per week of physical therapy (PT) services outside of the general education classroom, and 30 minutes per week of OT outside of the general education classroom.
2. The September 25, 2023, IEP required the student to be provided with instructional support, program modifications, social/behavioral support, and physical/environmental support to participate successfully in daily classroom tasks and activities.

The IEP further reflects that the student requires daily adult support from the special education teacher, general education teacher, or classroom staff to implement his supplementary aids, services, program modification, and support. The adult support is to:

- Transition on and off the school bus;
- Transition throughout the school building during lunch, recess, and specials;
- Assist in presenting new academic material;
- Assist with toileting (requires a toileting schedule/ visuals).

Additionally, the IEP requires a Mealtime Plan of Care (MPOC) as a supplementary aid to address feeding difficulties. This plan includes direct adult supervision, additional time for eating and drinking, and adaptive seating in the lunchroom to ensure safety and proper postural support. These supports, along with other program modifications and services, are in place to maintain his well-being during meals at school. There is documentation that the student received support from an adult as required by the IEP.

3. There is documentation that staff implementing the MPOC are trained and are providing the required daily support.
4. The September 25, 2023, IEP, reflects that the student has limited verbal language and requires support to communicate functionally across multiple settings. He needs assistance to develop comprehensive communication skills. The IEP reflects that the student requires an assistive technology (AT) device and AT services. These services may involve addressing the identified devices or conducting additional data collection and trials as necessary. The support provided to him to help communicate may include low-tech devices such as pictures, core vocabulary boards, and manipulative objects, as well as mid-tech devices.

5. There is documentation of the school team collaborating to discuss various options for AT devices implemented for the student, as well as exploring alternative applications on the device to support the student's communication needs.
6. There is documentation of a daily schedule to support the student being taken to the restroom.
7. The IEP reflects the IEP team determined that the least restrictive environment (LRE) for the student, where he can make meaningful educational progress, is his home school in an inclusive kindergarten classroom. The IEP reflects this setting allows him to work toward his goals in language, literacy, and social foundations skills. Additionally, support and services provided outside the classroom will address his gross motor, fine motor, and communication needs, as well as implement a mealtime plan of care. The team determined that the student's IEP can be most effectively implemented in this environment.
8. The September 25, 2023, IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) in the area of Occupational Therapy reflects the student demonstrates ability to pinch small food items using his thumb and index finger and bring them to his mouth. However, he does not turn a cup to dump items, and often pushes containers aside, sometimes causing spills. He can place large items into a container but is inconsistent, and placing small items is challenging as he does not visually guide his actions. The PLAAFP reflects that the student does not currently engage with writing utensils or attempt to scribble.
9. The September 25, 2023, IEP reflects the student's goal in the area of fine motor. The goal states: By September 2024, [Student] will demonstrate bilateral coordination to stabilize his paper with one hand while coloring/writing with the other hand in 80% of opportunities.
10. The report of the student's progress dated November 13, 2023, and April 15, 2024, for the student's annual fine motor goal reflects that the student did not make sufficient progress to meet the goal.

The progress reports reflect that the student requires hand-over-hand assistance to complete any fine motor tasks, including painting, coloring, or finger painting. The student requires maximum supervision due to placing inappropriate items in his mouth and shows limited interest in the task presented to him.

11. The September 25, 2023, IEP's PLAAFP in the area of speech-language reflects that the student demonstrates an inconsistent ability to follow directions, even with gestural support. He uses gestures and vocalizations to communicate but does not use words for communication, help-seeking, or other pragmatic purposes. He indicates wants by pulling someone or crying and can protest or refuse by crying, saying "no," pushing or throwing items.

The student's current instructional grade level performance is between 9-12 months, with scattered skills up to 18 months, based on observations and speech therapy data. The IEP reflects he occasionally responds to greetings with eye contact or a smile and can give a "high five" when prompted. He demonstrates visual attention to communication devices used by others but does not intentionally or functionally use assistive technology devices in the classroom. He resists hand-over-hand modeling and interacts with touch screen devices by swiping or touching with his whole hand. He often explores items by placing them in his mouth.

12. The September 25, 2023, IEP reflects the student's communication goal in the area of speech-language. The goal states: "By September 2024, [student] will use total communication strategies (i.e. gestures, pictures, words, word approximations, etc.) with no more than 2 prompts (i.e. verbal, gestural, physical) per opportunity, for a variety of pragmatic purposes (i.e. to request, refuse, ask for help, comment, ask questions, answer questions, etc.), in 70% of opportunities, across 3 consecutive sessions, as measured by SLP data collection."
13. The report of the student's progress dated November 13, 2023, January 29, 2024, and April 15, 2024, for the student's annual speech-language goal reflects that the student made sufficient progress to meet the goal.
14. The September 25, 2023, IEP PLAAFP in the area of PT reflects the student can roll from supine to prone, transition from prone to sitting, and move from sitting to hands and knees to creep short distances (2–5 feet). He sometimes assumes a modified bear walk position with his right leg extended and prefers bear walking for short distances. He can transition independently from the floor to his adaptive chair and uses a pull-to-stand pattern through bilateral kneeling. He pulls to stand using a table surface or with support from an adult.

In the classroom, he uses a small wooden Rifton chair to support boundaries and focus and an adaptive chair with a tray during meals for safety and proper posture. He needs surface or hand support to maintain standing balance. He can walk 12–13 feet with one or two-hand support but tires after 2–3 repetitions, becoming fussy and wanting to sit. He currently does not use [REDACTED].

15. The September 25, 2023, IEP reflects the student's physical goal in the area of gross motor. The goal states: "By September 2024, [Student] will ambulate with or without an assistive device for a 50-foot stretch with occasional physical assistance for safety and guidance, during 3 of 4 opportunities, as measured by PT data collection."
16. The report of the student's progress dated November 13, 2023, and January 29, 2024, for the student's annual gross motor goal, reflects that the student made sufficient progress to meet the goal and achieved the goal on April 15, 2024.
17. On April 30, 2024, the IEP team convened to conduct the student's annual review. The prior written notice (PWN) reflects that the IEP team reviewed, discussed, and considered all available data, including input from parents and teachers, formal and informal assessments, and the student's performance. The team determined that the student's deficits in communication, pre-academic skills, and social interaction significantly impact his ability to participate independently in activities across various settings. As a result, the IEP team concluded that the student requires support in the areas of pre-writing, early literacy, communication, functional mobility, social interaction, and early math literacy.
18. The IEP team determined that the student requires support to communicate and express his needs and wants, follow directions, complete tasks, manage feeding and toileting, and interact with peers. The IEP team determined that that student requires:
  - Seven hours and 30 minutes a week to address IEP goals inside the general education setting – Reading for 30 minutes daily, Math for 30 minutes daily, and additional transitions and supports: 30 minutes daily. The instruction will be provided by general education with collaboration by the special education teacher and/or instructional assistants;

- Five hours a week of specialized instruction are provided outside of the general education setting. Reading and math instruction are delivered by the special education teacher;
- 30 minutes a week of Physical therapy outside of the general education setting; and
- 30 minutes a week of Speech-Language therapy outside of the general education setting.

The PWN reflects the IEP team reviewed the student's IEP goals, testing accommodations, supplemental aids, services, and supports, service hours, and ESY eligibility.

19. The PWN reflects the IEP team discussed the modification of OT services. During the IEP meeting, the OT discussed the student's skills are significantly below his peers and he is meeting developmental milestones similar to a 12 to 18-month-old. The OT stated that she shares practice activities with the Instructional Assistant working with [the student] to practice hand-eye coordination when he is in the classroom setting. The student does not always want to hold items when presented. She introduced polka-dot books that have a tactile push effect in the book. She said, "[Student] is not getting the cause/effect of writing; he does not move writing implement with intent or purpose yet." The OT proposed modifying the direct OT services to consultation until the student is ready for direct services to resume when he is ready to write. She will continue to work with the teachers and instructional assistants to provide support in the classroom setting.

The student's OT services were modified from direct services to monthly consultative services. These services will focus on providing fine motor strategies, accommodations, modifications, adaptations, and supports to facilitate his ability to access the academic curriculum. The support will be provided through team or teacher discussions, written or verbal communication, and observations of the student.

The PWN reflects that the IEP team members shared that the student is socializing with peers. While he has not demonstrated significant growth in academic tasks, he is making slow progress. The special education teacher reported that the student reaches for large foam letters or numbers to match them. For prewriting, the student has not been successful in matching two letters of his name. He responds to greetings about 50% of the time to acknowledge peers or adults. The student can communicate when he does not want something. He enjoys playing with toys, although he does not always engage with peers during play.

20. During the IEP meeting, the paternal parent inquired about "increasing the rigor in academic skills beyond matching letters in his name." He also inquired about the student breakfast schedule and ESY eligibility requirements.

The student continues to require the use of assistive technology to facilitate his functional communication skills. This may be provided through low-tech devices such as pictures, core vocabulary boards, and manipulative objects or mid-tech devices that have the following features: battery-powered, programmable with recordable voice output, fixed display, and 1-4 large buttons that are easy to press.

21. On September 20, 2024, the IEP team convened per the request of the complainant for a program review. The complainant wanted to discuss current service hours, especially in the areas of speech-language, physical therapy, and OT. The PWN reflects that the complainant's expressed appreciation for the teacher's efforts but emphasizes the importance of seeing work that the student completes independently and not work primarily done by an adult. She noted the student's short attention span.

The complainant expressed concern regarding the level of services that the student is receiving and inquired if his services are adequate for the student's progress. The complainant highlighted the success of summer therapies provided by Humana Healthcare (HH) as private services. The student received two and a half hours of each service; OT, PT, and speech therapy, and expressed dissatisfaction with the limited hours of school-based services outlined in the student's IEP. She disagreed with the current therapy service hours and reported that the private providers stopped outside therapy, stating the school should now provide these services and the complainant requested an increase in the direct services he is currently receiving.

During the IEP meeting, the PWN reflects the Occupational Therapist provided an update on the student. The Occupational Therapist reported that she provides consultative support to work on the student's fine motor skills in the classroom. He practices skills such as puzzles and stacking rings daily. The Occupational Therapist notes when the student was receiving direct OT services, he struggled to understand the "cause-and-effect nature of the activities", often mouthing or throwing items rather than engaging appropriately. The Occupational Therapist has provided two consultations this year, incorporating multi-modal sensory techniques like bright colors, clapping, tapping, and bilateral skills into classroom activities. She noted that the student is "not yet ready for direct skilled practice" and noted that in a school setting, they are focused on the "educational impact of the services."

22. The complainant requested justification for the removal of direct services, as she did not attend the meeting. The complainant stated that she will not share outside diagnostic information and prefers the school to conduct its own testing for treatment. The complainant insisted that the student's fine motor skills are delayed and that direct services should be reinstated.
23. The PWN reflects the complainant requested updated school assessments and an expedited three-year reevaluation, asserting that the student needs more direct services from skilled providers. The complainant also requested an Independent Educational Evaluation (IEE), expressing disagreement with the "current IEP service levels" and emphasizing the importance of early intervention for the student's success. The complainant wanted more intensive and justified services. The complainant also requested therapy notes from the related service providers.

The PWN reflects the IEP team rejected the complainant's request for increased hours of direct services in physical therapy, OT, and speech-language services to be provided two hours per week at a minimum and the provision of the therapy notes.

The complainant was informed about the dispute resolution process outlined in the Parental Rights document. She was also provided with contact information for CCPS staff members she could reach out to if she disagrees with the team, including options for mediation, due process, or filing a state complaint.

24. On September 24, 2024, the complainant signed a "Notice and Consent for Assessment" for the student to receive updated assessments in the area of:
  - Academics;
  - Communication (Expressive/Receptive Language);
  - Motor Skills (fine/gross motor);
  - Observation (Central Mealtime Observation); and
  - Adaptive Physical Education.

25. On October 8, 2024, CCPS conducted an educational assessment;  
On October 14, 2024, CCPS conducted an educational assessment;  
On October 21, 2024, CCPS conducted an OT assessment;  
On December 3, 2024, CCPS conducted a physical therapy assessment;  
On December 6, 2024, CCPS conducted an observation of mealtime skills;  
On December 12, 2024, CCPS conducted a speech-language assessment; and  
On January 15, 2025, CCPS conducted an Adapted Physical Education Performance Report.
26. On December 2, 2024, CCPS issued a Notice of IEP Team Meeting for December 16, 2024, to discuss reevaluation, assess services, and confirm eligibility. Due to a scheduling conflict, the meeting was rescheduled to December 20, 2024, but later canceled by the complainant. On December 18, 2024, CCPS scheduled another meeting for January 14, 2025, but the complainant was unavailable. Subsequently, on January 10, 2025, a meeting was scheduled for January 24, 2025, and later rescheduled to January 28, 2025. On January 21, 2025, CCPS confirmed January 28, 2025, meeting to address reevaluation, services, eligibility, and the complainant's request for additional programming/placement.
27. On January 13, 2025, the complainant received an email with an IEE consent to the release of records, a response granting a request for an IEE, and IEE criteria.
28. While the progress report demonstrates that the student received a progress report noting no progress made, there is limited documentation that the student received OT services as required by the IEP from .
29. There is documentation that the student received speech-language therapy as required by the IEP.
30. There is documentation that the student received PT as required by the IEP.

## **DISCUSSIONS AND CONCLUSIONS:**

### **ALLEGATION #1**

### **REEVALUATION**

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

In this case, CCPS agreed to conduct additional assessments to determine the student's PLAAFP. While the assessments were completed, CCPS failed to meet the required timeline for reviewing the assessments and updating the student's IEP, as mandated by IDEA and COMAR.

Based on the Findings of Fact #21 through #26, MSDE finds that the CCPS has not followed proper procedures when conducting a reevaluation of the student since September 2024, in accordance with 34 CFR §§ 300.303-.306. Therefore, this office finds that a violation has occurred concerning this allegation.

### **ALLEGATION #2**

### **REQUEST FOR AN IEE**

Parents of a student with a disability have the right to obtain one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. Upon request for an IEE, the public agency must, without unnecessary delay, either approve funding for the IEE and provide parents with information about where an IEE may be obtained and the agency criteria applicable for an IEE, or file a due process

complaint to request a hearing to demonstrate that its evaluation is appropriate (34 CFR §300.502).

In addition, when a parent requests an IEE at public expense, the public agency shall provide a written response approving or denying the request within 30 days of the date the request was made (COMAR 13A.05.01.14).

In this case, on September 24, 2024, the complainant requested an IEE due to disagreement with the amount of services outlined in the IEP, despite no specific assessment or evaluation being contested. An IEE request is appropriate only when a parent disagrees with an evaluation. In this case, the complainant requested an IEE, however, there was no disagreement and no evaluation. Although the CCPS agreed to pay for an IEE, it was not under any obligation to do so since there was not an underlying evaluation at dispute. Consequently, there was no harm in the CCPS failing to respond within 30 days. Therefore, this office finds that a violation has not occurred concerning 34 CFR § 300.502 and COMAR 13A.05.01.14.

#### **ALLEGATION #3**

#### **DEVELOPMENT OF IEP TO ADDRESS STUDENT NEEDS**

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR § 300.324).

The student participated in OT services as determined by the IEP team. However, due to the student's disability and difficulty understanding the cause-and-effect relationship of the skills, the services were modified and reduced to consultative support, without data provided to justify the reduction.

Based on the Findings of Fact #1, #8 through #10, #17, #19, #21, and #22, MSDE finds that the CCPS did not develop and implement an IEP that addressed the student's identified needs in occupational therapy, since November 2023, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office finds that a violation has occurred concerning this allegation.

#### **ALLEGATION #4**

#### **PROVISION OF SPECIAL EDUCATION SERVICES, ACCOMMODATIONS AND RELATED SERVICES**

Based on the Findings of Fact #1 through #6, #11 through #18, MSDE finds that the CCPS ensured that the student has been provided with the special education instruction, and accommodations, as required by the IEP since November 2023, in accordance with 34 CFR §§ 300.101 and .323. Specifically, the student has been provided with assistive technology, as well as accommodations required by the IEP including support for toileting and feeding. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation.

Based on the Findings of Fact #1, #8 through #10, #17, #19, #21, and #22, MSDE finds that the CCPS has not ensured that the student has been provided with occupational therapy as required by the IEP from November 2023 through April 30, 2024, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this aspect of the allegation.



## **ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

### **Access to Student's Education Record**

The Family Educational Rights and Privacy Act (FERPA) requires public agencies to permit parents to inspect and review any educational records relating to their children that are collected, maintained, or used by the agency. The public agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing or resolution meeting, and in no case more than forty-five days after the request has been made (34 CFR § 99.10). The IDEA parallels this requirement at 34 CFR § 300.613.

In this case, the complainant requested the student's related services logs on September 20, 2024, and the request was rejected by the IEP team. The public agency must comply with the request as required by IDEA and FERPA.

Based on Finding of Fact #23, MSDE finds the CCPS did not ensure the proper procedures were followed when responding to a request to inspect and review the student's educational record, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation has occurred.

### **CORRECTIVE ACTIONS/TIMELINES:**

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

MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner. This office will follow up with the public agency to ensure that it completes the required actions consistent with 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. Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

### **Student-Specific**

The MSDE requires the CCPS to provide documentation by April 30, 2025, that the IEP team has:

- a. Convened an IEP meeting to review completed assessments, determine eligibility, and reconsider the student's progress across all areas, including the need for direct services and IEP goals in fine motor skills. If direct services are deemed necessary, the team must update the IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) and implement appropriate goals. Current data must be used to revise the PLAAFP and align the IEP goals accordingly;
- b. Provided the complainant with access to the student information requested;
- c. Determined the compensatory services needed to remediate the violations identified in this investigation; and
- d. Developed a plan for the implementation of the services within one year of the date of this

## Letter of Findings.

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

### School-Based

MSDE requires the CCPS to provide documentation by April 30, 2025, of the steps it has taken to ensure that the staff at [REDACTED] properly implements the requirements for conducting assessments in a timely manner, responding to an IEE, responding to a parental request for access to the student's record, and documenting related services support.

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 why the documentation was not made available during the investigation. The written request for reconsideration should be provided to Tracy Givens, Section Chief, Dispute Resolution via email at [Tracy.Givens@maryland.gov](mailto:Tracy.Givens@maryland.gov). Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

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

Sincerely,

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

c: Maria Navarro, Superintendent, CCPS  
Kevin Lowndes, Chief, Teaching and Learning, CCPS  
Lewan Jones, Director of Special Education, Compliance, CCPS  
Larry Johnson, Acting Director for Special Education, CCPS  
[REDACTED], Principal, CCPS  
Alison Barmat, Branch Chief, Chief, Dispute Resolution and Family Support, MSDE  
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Nicole Green, Compliance Specialist, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Stephanie James, Complaint Investigator, MSDE