



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

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June 14, 2013

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Dr. Kim Hoffmann  
Interim Executive Director, Special Education  
Baltimore City Public Schools  
200 East North Avenue, Room 204-B  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #13-078

Dear Parties:

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

**ALLEGATIONS:**

On April 15, 2013,<sup>1</sup> the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Baltimore City Public School (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the following allegations:

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<sup>1</sup> Correspondence containing allegations of violations of the IDEA was received on April 12, 2013. On April 15, 2013, the complainant provided a proposed remedy, which was required in order to initiate the State complaint investigation into those allegations.

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1. The BCPS has not ensured that the student's Individualized Education Program (IEP) addresses his organization, behavioral, handwriting, and assistive technology needs since April 2012,<sup>2</sup> in accordance with 34 CFR §300.324;
2. The BCPS has not ensured that the IEP team has considered the concerns of the complainant about the impact of the student's transportation on his social, emotional, and behavioral needs since April 2012,<sup>1</sup> in accordance with 34 CFR §300.324;
3. The BCPS did not provide the complainant with a written invitation to the October 12, 2012 IEP team meeting that stated the purpose of the meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D;
4. The BCPS has not ensured that the student has been provided with special education instruction in gifted and talented classes, as required by the IEP, since the start of the 2012-2013 school year, in accordance with 34 CFR §300.101;
5. The BCPS did not ensure that the student was provided with the testing accommodations required by the IEP during the 2013 administration of the Maryland School Assessment (MSA), in accordance with 34 CFR §300.101;
6. The BCPS did not ensure that the complainant was provided with a copy of the IEP document within five (5) business days after the IEP team meeting of October 12, 2012, in accordance with Md. Code, Ann., Educ. §8-405(d) (2010) and COMAR 13A.05.01.07; and
7. The BCPS did not ensure that the complainant was provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the January 3, 2013 IEP team meeting at least five (5) business days before the scheduled meeting, in accordance with Md. Code Ann., Educ., § 8-405 (2010) and COMAR 13A.05.01.07.

#### **INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 12, 2013, the MSDE received correspondence from the complainant containing allegations of violations of the IDEA.

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<sup>2</sup> The complaint included allegations of violations dating back to 2010. The complainant was informed, in writing, on April 19, 2013, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

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3. On April 15, 2013, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, contacted the complainant by telephone to clarify the allegations to be investigated and to inform the complainant of the requirement that a State complaint include a proposed remedy that the school system can provide in order to initiate an investigation.
4. On that same date, the complainant provided a proposed remedy and the MSDE sent a copy of the completed complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
5. On April 19, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
6. On May 14, 2013, Ms. Stump and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXXXX) to review the student's educational record, and interviewed the following school staff:
  - a. Ms. XXXXXX, English/language arts teacher;
  - b. Mr. XXXXXXXXXXX, mathematics teacher;
  - c. Ms. XXXXXXXXXXX, special education teacher;
  - d. Mr. XXXXXXXXXXX, Assistant Principal; and
  - e. Mr. XXXXXXXXXXX, world geography teacher.

Ms. Ruley attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

7. On May 16, 2013, Ms. Stump conducted a telephone interview with Ms. XXXXXXXX, IEP Team Chairperson, XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXXXX). Ms. Ruley participated in the telephone conference as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
8. On May 17, 2013, Ms. Stump conducted a telephone interview with Ms. XXXXXXXX, IEP Team Chairperson, XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXXXX) and Dr. XXXXXXXXXXX, Principal, XXXXXXXXXXXXXXXX. Ms. Ruley participated in the telephone conference as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
9. On May 23, 2013, the BCPS provided the MSDE with additional documentation related to the allegations, via e-mail.

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10. On May 23 and 29, 2013, the MSDE requested that the BCPS provide additional information and documentation from the student's educational record.
11. On May 30 and 31, 2013, the BCPS provided the MSDE with additional information and documentation, via e-mail.
12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainant to the MSDE, received on April 12 and 15, 2013;
  - b. *Educational Assessment Report*, dated March 12, 2010;
  - c. *Psychological Assessment Report*, dated March 12, 2010;
  - d. Correspondence from the complainant to XXXXXXXXXXXXXXXX staff, dated November 7, 2011;
  - e. IEP and IEP team meeting notice, dated November 7, 2011;
  - f. *Notice and Consent for Assessment* form, dated November 7, 2011;
  - g. *Student Progress Report* forms, dated between September 19, 2012 and October 11, 2012;
  - h. *Special Education Progress Report* form, dated September 25, 2012;
  - i. IEP team meeting notice for an October 1, 2012 IEP team meeting;
  - j. IEP and IEP team meeting notice, dated October 12, 2012;
  - k. *Receipt of Parental Rights Notice* form, dated October 12, 2012;
  - l. Correspondence from the complainant to XXXXXXXXXXXXXXXX staff, dated October 15, 2012;
  - m. *Special Education Progress Report* form, dated January 2, 2013;
  - n. *Student Progress Report* forms, dated January 3, 2013;
  - o. IEP team meeting notice for a January 3, 2013 IEP team meeting;
  - p. Correspondence from the complainant to XXXXXXXXXXXXXXXX staff, dated January 3, 2013;
  - q. IEP and IEP team meeting notice, dated January 29, 2013;
  - r. *Receipt of Parental Rights Notice* form, dated January 29, 2013;
  - s. Correspondence from the complainant to XXXXXXXXXXXXXXXX staff, dated January 29, 2013;
  - t. *Student Progress Report* forms, dated between April 8 and 17, 2013;
  - u. IEP and IEP team meeting notice, dated April 30, 2013;
  - v. *Receipt of Parental Rights Notice* form, dated April 30, 2013;
  - w. *Notice and Consent for Assessment* form, dated April 30, 2013;
  - x. *Prior Written Notice* form, dated April 30, 2013;
  - y. IEP progress reports for the 2012-2013 school year;
  - z. School communication log for the 2012-2013 school year; and
  - aa. Email correspondence from the BCPS to the MSDE dated May 30, 2013.

**BACKGROUND:**

The student is thirteen (13) years old, is identified as a student with an Other Health Impairment under the IDEA, related to a diagnosis of Attention Deficit/Hyperactivity Disorder, and has an IEP that requires the provision of special education instruction. From the start of the 2012-2013 school year until February 6, 2013, the student attended XXXXXXXXXXXXXXXX. As a result of an administrative transfer requested by the complainant, the student has attended XXXXXX XXXXXX since February 7, 2013. During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a, e, j, k, q, r, u, and v).

**ALLEGATIONS #1-#3: IEP DEVELOPMENT, REVIEW, AND REVISION SINCE APRIL 2012**

**Findings of Facts:**

**April 2012 to the end of the 2011-2012 school year**

**November 7, 2011 IEP**

1. The IEP in effect in April 2012, dated November 7, 2011, identifies written language content as the only area impacted by the student's disability. The IEP states that the student is functioning below grade level and "has difficulty composing detailed, descriptive written assignments." The IEP includes an annual goal for the student to improve written language skills, and requires that the student be provided with special education instruction in language arts in order to assist him with achieving the annual goal (Doc. e).
2. The IEP requires that the student be provided with accommodations, including the use of visual and graphic organizers and extended time to complete assignments in order to assist the student with "expanding and organizing" his writing. The IEP also requires that the student be provided with supplementary aids and services, including repetition of directions, modeling, and preferential seating (Doc. e).
3. There is no documentation that identifies needs in the areas of behavior, handwriting, or organization related to any area other than written language and there is no documentation that concerns were raised about the student's transportation. The IEP indicates that the student was not, at that time, identified with the need for assistive technology (AT) devices or services but that the team recommended that an AT assessment be conducted in response to the complainant's concerns that the student has difficulty processing information provided orally when he has to take notes during instruction. The complainant provided written consent for the assessment (Docs. b-e).

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4. There is no documentation that the AT assessment was conducted (Review of educational record and interview with school staff).

October 12, 2012 IEP

5. There is documentation that the complainant was provided with a written invitation to an IEP team meeting to be held on October 1, 2012. The meeting invitation states that a purpose of the meeting was to conduct a reevaluation. The previous reevaluation of the student occurred on September 21, 2010 (Docs. e and i).
6. The complainant informed school staff that she did not want a reevaluation conducted. As a result, the meeting was rescheduled to October 12, 2012 and another meeting invitation was sent to the complainant that reflected that the purposes of the meeting were to conduct a review of the IEP and to consider the student's need for Extended School Year services (Docs. j and z).
7. Documentation of the October 12, 2012 IEP team meeting indicates that the team considered information that the student is functioning "on-grade-level" in math and written language and "above grade level" in reading. The team also considered information that the student scored "advanced" on the most recent administration of the Maryland School Assessment (MSA) (Docs. g, h, and j).
8. The team also considered information from the student's teachers that he "is an excellent" student who "excels" academically. The teacher reports indicate that the student "displays adequate self-control," respects authority, is courteous and cooperative, has good peer relations, has good organizational skills, has good behavioral management skills, participates in class, accepts responsibility, completes work, remains on task, and "achieves successfully on tasks presented" (Docs. g, h, and j).
9. The team documented that it determined that the student does not require AT devices or services, but there is no documentation of the data upon which the decision was based (Doc. j).
10. There is documentation that the complainant expressed concern that the student's bus does not consistently transport him between home and school at the same time each day and that this disrupts his morning routine. However, there is no documentation that the IEP team considered these concerns (Doc. j).
11. School staff expressed their belief that, while the student requires accommodations, such as extended time to complete assignments, he does not require specialized instruction in order to address his written language needs. The complainant disagreed with school staff and the team recommended that an educational assessment and a classroom observation be conducted, but the complainant refused to provide consent. Therefore, the team

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revised the annual goal based on reports of the student's progress and decided to continue the IEP (Doc. j).

12. The school staff deny the complainant's assertion that the purpose of the IEP team meeting was to determine that the student no longer meets the criteria for identification as a student with a disability. They report that a discussion about "closing" the IEP occurred but that this was a reference to finalizing the draft IEP (Doc. j and interview with school staff).

#### January 29, 2013 IEP

13. The IEP team convened on January 29, 2013 to review the student's program and progress. Progress reports prepared by the student's teachers indicate that the student is performing at or above grade level in all academic areas, has good organizational skills, has appropriate behavioral management skills, completes assignments, employs good work habits, demonstrates an appropriate attitude, and has good peer relationships. The teacher reports also indicate that the student "is an exceptional writer," is "one of the very best students," and is "excelling in class" (Docs. m, n, and q).
14. There is documentation that the complainant expressed concerns that the student's program does not address his social, emotional, and behavioral needs and that the information used to report on his progress toward achieving the annual IEP goal is not "academically motivated" (Docs. s and q).
15. The documentation also indicates that the complainant expressed the following concerns about the length of the student's bus ride:
  - a. Because the student arrives at school after the school day has started, he misses the opportunity to eat breakfast, which he requires in order to take his medication in the morning;
  - b. The student is marked absent and/or tardy on days when the bus arrives after the start of the school day; and
  - c. When the student is unable to take his medication in the morning, he becomes agitated later in the day (Docs. s and q).
16. The complainant requested that the student be transferred to another school and the IEP team decided to reconvene at a later date to consider the complainant's request (Docs. s and q).
17. Following the IEP team meeting, the complainant obtained an administrative transfer of the student to XXXXX ES/MS, which he began attending on February 7, 2013 (Doc. u and interview with school staff).

April 30, 2013 IEP

18. The IEP team reconvened on April 30, 2013 to review the student's program and progress and to consider the concerns of the complainant (Doc. u).
19. At the meeting, the team considered reports from the student's teachers that the student continues to function at or above grade level in all academic areas. The reports indicate that the student "displays adequate self-control," has good organizational skills, participates in class, completes assignments, is prepared for class, has good behavioral management skills, and has good peer relationships. The reports indicate that the student's work is "complete, well written, and shows clear mastery of content and skills, and states that he is adding elements of artistry and extra detail," and he is "a model student" who "works hard at everything he does" (Docs. t and u).
20. The complainant expressed her continuing concern that the student requires breakfast in the morning because of his need to take medication at that time but that he is not eating when he arrives at school. In order to address this concern, the team decided that school staff would ensure that the student is escorted to the cafeteria to eat breakfast when he arrives to school each morning (Doc. u).
21. The complainant also explained that she continues to believe that the student's program does not address his social, emotional, and behavioral needs and requested that the IEP team update the Functional Behavioral Assessment (FBA) and the Behavior Intervention Plan that was developed in 2009 (Doc. u).
22. The team recommended that an FBA be conducted as well as educational and psychological assessments and a classroom observation, and the complainant provided written consent (Docs. u, w, and x).
23. The IEP team decided that the IEP remains appropriate pending review of the evaluation data and the team has not yet convened to consider the assessment results (Doc. x).

**Discussion/Conclusions:**

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).



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To ensure parent participation in IEP team meetings, the school system must provide parents with written notice at least ten (10) days in advance of the meeting. The notice must include a statement of the purpose of the meeting (34 CFR §300.322 and COMAR 13A.05.01.07).

A public agency must ensure that a reevaluation of a student with a disability is conducted if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation. A reevaluation may occur not *more* than once a year, unless the parent and the public agency agree otherwise and must occur at least once every three (3) years (34 CFR §300.303) (emphasis added).

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

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

Allegation #1:            IEP that Addresses the Student's Organization, Behavioral, Handwriting, and Assistive Technology Needs Since April 2012

Based on the Findings of Facts #3, #7, #8, #13, and #19, the MSDE finds that there is no data that identifies needs for the student in the areas of organization, behavior, or handwriting. Therefore, the MSDE finds no violation regarding these aspects of the allegation.

Based on the Findings of Facts #3 and #4, the MSDE finds that, although the IEP team determined that an AT assessment was needed to determine whether the student requires AT devices or services, the assessment was not conducted. Based on the Finding of Fact #9, the MSDE finds that, while the team subsequently determined that the student does not require AT devices and services, it did not document the basis for the decision. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

Allegation #2:            Considering the Concerns of the Complainant Regarding the Impact of the Student's Transportation on his Social, Emotional, and Behavioral Needs Since April 2012

Based on the Findings of Facts #3, #10, #15, and #20, the MSDE finds that, since October 12, 2012, the complainant expressed concerns about the impact of transportation services on the student's needs, but that those concerns were not addressed by the IEP team until April 30, 2012. Therefore, the MSDE finds a violation regarding this allegation between October 12, 2012 and April 30, 2013.

Allegation #3:            Provision of a Written Invitation to the October 12, 2012 IEP Team Meeting

In this case, the complainant asserts that, despite deleting information about conducting a reevaluation from the written notice of the October 12, 2012 IEP team meeting when it was rescheduled from October 1, 2012, the school staff intended to conduct a reevaluation at that time. Therefore, the complainant alleges that she was not provided with the opportunity to fully participate in the meeting. The complainant also alleges that the school system should not have conducted a reevaluation on October 12, 2012 without her consent (Doc. a and interview with the complainant).

Based on the Findings of Facts #5-#12, the MSDE finds that following the review of the student's progress and classroom performance, the team, which included the complainant, discussed whether there was information that the student continues to require special education instruction. However, based on those same Findings of Facts, the MSDE finds that there is no documentation that the IEP team began a reevaluation at the meeting. Therefore, the MSDE finds no violation regarding this allegation.

**ALLEGATIONS #4 AND #5:**        **IEP IMPLEMENTATION FOR THE 2012-2013 SCHOOL YEAR**

**Findings of Facts:**

24.     The IEP in effect since the start of the 2012-2013 school year requires that the student receive special education instruction in language arts in the general education classroom from a general education teacher. The IEP does not require that the student receive specialized instruction in Gifted and Talented classes (Docs. e, q, and u).
  
25.     There is documentation that the student obtained administrative transfers, first to XXXX XXXXXXXXX and then to XXXXXXXXXX to have access to an "advanced academic program," but there is no documentation that the complainant attempted to have the student enrolled in such classes (Docs. e, q, and u).

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26. There is documentation that from the start of the 2012-2013 school year until February 6, 2013, the student received special education instruction in language arts from a general education teacher in the general education classroom at XXXXXXXXXX XXXXXXXX (Docs. g, h, m, n, and y).
27. The IEP in effect in at the time of the administration of the MSA requires that the student be provided with the following testing accommodations:
  - a. Monitoring of test responses;
  - b. Use of visual and graphic organizers;
  - c. Extended time;
  - d. Frequent breaks; and
  - e. Reduced distractions to the student (Doc. q).
28. School staff at XXXXXXXXXX report that there was difficulty obtaining the student's educational records from XXXXXXXXXXXXXXXX in a timely manner. School staff report that they took steps to obtain the record from XXXXXXXXXXXXXXXX and that documents were provided on February 25, 2013 and April 3, 2013. However, there is no documentation of the attempts to obtain the record or the dates of receipt of the record (Doc. aa, interview with school staff, and review of educational record).
29. School staff acknowledge that the student was not provided with the testing accommodations required by the IEP during the March 2013 administration of the MSA (Doc. u, x, and interview with school staff).
30. There is no documentation that the student has received special education instruction as required by the IEP since February 7, 2013 (Doc. t and review of educational record).

**Discussion/Conclusions:**

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). In order to ensure that each student is provided with the special education and related services required by the IEP, the public agency must make the IEP accessible to all school system staff responsible for implementation and make sure that each staff member is informed of his or her role in the implementation of the IEP (34 CFR §300.323). Therefore, each public agency must ensure that student educational records are properly maintained.

In this case, the complainant alleges that the student has not been receiving special education instruction in Gifted and Talented classes as required by the IEP and that he was not provided with the testing accommodations required by the IEP on the March 2013 administration of the MSA (Doc. a and interview with complainant).

Allegation #4: Special Education Instruction in Gifted and Talented Classes

Based on the Findings of Facts #24-#26, the MSDE finds that the student's program does not require that he be provided with special education instruction in Gifted and Talented classes. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

However, based on the Findings of Facts #27-#30, the MSDE finds that there is no documentation that steps were taken by XXXXXXXX staff to obtain the student's educational record in a timely manner and no documentation that the student has been provided with special education instruction in the general education language arts classroom since February 7, 2013. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

Allegation #5: MSA Testing Accommodations

Based on the Finding of Fact #29, the MSDE finds that the student was not provided with the testing accommodations required by the IEP on the March 2013 administration of the MSA. Therefore, the MSDE finds a violation regarding this allegation.

**ALLEGATIONS #6 AND #7: PROVISION OF DOCUMENTS BEFORE AND AFTER IEP TEAM MEETINGS**

**Findings of Facts:**

31. There is no documentation that the complainant was provided with a copy of the completed IEP within five (5) business days after the October 12, 2012 IEP team meeting (Review of educational record and interviews with BCPS personnel).
32. There is documentation that, while an IEP team meeting was scheduled to occur on January 3, 2013, it was rescheduled at the complainant's request (Docs. o, p, and q).

**Discussion/Conclusions:**

Allegation #6: Provision of the IEP after the October 12, 2012 IEP Team Meeting

Not later than five (5) business days after a scheduled IEP team meeting, school personnel must provide a copy of the completed IEP to the parent (Md. Code, Ann., Educ. §8-405 (2010) and COMAR 13A.05.01.07).

In this case, the complainant alleges that school staff did not provide her with a copy of the IEP within five (5) business days after the October 12, 2012 IEP team meeting (Doc. a and interview with complainant). Based on the Finding of Fact #31, the MSDE finds that there is no documentation that the IEP was provided to the complainant as required. Therefore, the MSDE finds a violation regarding this allegation.

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Allegation #7: Provision of Documents Prior to the January 3, 2013 IEP Team Meeting

At least five (5) business days before a scheduled IEP team meeting, the student's parent must receive an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at the meeting (Md. Code Ann., Educ., §8-405 [2010] and COMAR 13A.05.01.07).

In this case, the complainant alleges that school staff did not provide her with copies of the documents to be considered at the January 3, 2013 IEP team meeting at least five (5) business days prior to the meeting (Doc. a and interview with the complainant). Based on the Finding of Fact #32, the MSDE finds that an IEP team meeting was not conducted on January 3, 2013. Therefore, the MSDE finds no violation regarding this allegation.

**CORRECTIVE ACTIONS/TIMELINE:**

**Student-Specific**

The MSDE requires the BCPS to provide documentation by the start of the 2013-2014 school year that the IEP team has convened and reviewed the results of assessment data being obtained, determined whether additional data is needed to decide whether the student requires AT devices and services, and if so, obtained the data. The IEP team must review and revise the student's program, as appropriate, consistent with the data. If the IEP team determines that AT devices and services are not required, it must document the basis for that decision.

In addition, the IEP team must determine if the student's ability to benefit from his program was adversely impacted by the delay in considering the complainant's concerns regarding the student's transportation, the delay in obtaining the student's educational record, and if AT needs are identified, the delay in addressing those needs. If the team determines an adverse impact, then the team needs to determine the nature and amount of *compensatory services*<sup>3</sup> or other remedy necessary to redress the delays.

The MSDE also requires the BCPS to ensure that within the IEP team determines if the student's ability to benefit from his program was adversely impacted by the violation related to provision of accommodations on the assessment after considering the MSA results. If the team determines an adverse impact, then the team needs to determine the nature and amount of *compensatory services*<sup>4</sup> or other remedy necessary to redress the loss of services. If the results are not available

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<sup>3</sup> Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

<sup>4</sup> Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

prior to the start of the 2013-2014 school year, the team must reconvene within thirty (30) days of the availability of the results.

The BCPS must provide the complainant with proper written notice of the determinations made at these IEP team meetings including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

### **School-Based**

The MSDE requires the BCPS to provide documentation by the start of the 2013-2014 school year, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance with the requirements listed below at XXXXXXXXXXXX and XXXXXXXXXXXX.

#### XXXXXXXXXXXXXXXXXX

1. That student educational records are transferred in a timely manner to ensure implementation of the IEP;
2. That the concerns of parents are considered when reviewing and revising a student's IEP;
3. That the basis for every IEP team decision is documented;
4. That assessments are conducted and results considered by the IEP team in a timely manner; and
5. That the IEP is provided to parents within five (5) business days of an IEP team meeting.

#### XXXXXXXXXX

1. That educational records are requested from the former schools of transferring students to ensure implementation of the IEP; and
2. That students are provided with special education instruction and related services required by the IEP.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

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If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the BCPS.

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

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

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

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

Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

XXX  
Dr. Kim Hoffmann  
June 14, 2013  
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The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

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

MEF:ks

cc : Andrés Alonso  
Charles Brooks  
Nancy Ruley  
XXXXXXXXXXXXXX  
XXXXXXXXXXXXXX  
Martha J. Arthur  
Dori Wilson  
Anita Mandis  
Kathy Stump