



June 21, 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: #13-083

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 23, 2013, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student. The MSDE investigated the allegations listed below.

1. The BCPS did not ensure that the IEP team that convened on November 13, 2012 included the required participants, in accordance with 34 CFR §300.321. Specifically, this includes participation by a public agency representative who is knowledgeable about the available resources or who can interpret assessment results. This also includes participation by related service providers invited by the school system in the team’s decision about the setting in which related services will be provided.

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2. The BCPS did not ensure that the complainants were provided with notice of who would be in attendance at the November 13, 2012 IEP team meeting, in accordance with 34 CFR §300.322.
3. The BCPS did not follow proper procedures when developing the Individualized Education Program (IEP) on November 13, 2012, in accordance with 34 CFR §§300.34, .320, and .324. Specifically, the complainants alleged that:
 - a. The IEP team did not consider assessment data and determine levels of functional performance in the area of feeding needs;
 - b. The IEP team did not consider the student's communication needs;
 - c. The IEP team did not consider the complainants' concerns about enhancing the student's education, including concerns about the need for nursing services, services to address feeding needs, and specialized transportation services; and
 - d. The IEP does not include the amount of special education instruction and related services required to assist the student in achieving the annual IEP goals, consistent with the evaluation data.
4. The BCPS did not ensure that the IEP team considered the potential harmful effects of the Least Restrictive Environment (LRE) decision when determining the student's educational placement on November 13, 2012, in accordance with 34 CFR §300.116.
5. The BCPS did not ensure that a copy of the IEP was provided to the complainants within five (5) business days of the November 13, 2012 IEP team meeting, in accordance with Md. Code. Ann. Educ. §8-405 (2010) and COMAR 13A.05.01.07D.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 24, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director, Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On May 2, 2013, Ms. Hartman conducted a telephone interview with the student's mother to clarify the allegations to be investigated.

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4. On May 3, 6, 9, 14, and 31, 2013, the student's mother provided the MSDE with additional information concerning the allegations contained in the complaint, including documentation and audio recordings of an IEP team meeting held on November 13, 2012.
5. On May 9, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the BCPS of the allegations and requested that the BCPS review the alleged violations.
6. On May 14, 2013, Ms. Hartman conducted an additional telephone interview with the student's mother concerning the allegations contained in the complaint.
7. On May 17, 2013, Ms. Hartman reviewed the student's educational record at the BCPS's Central Office. Mr. Darnell L. Henderson, Associate Counsel, BCPS, was present at the record review.
8. On June 4, 2013, Ms. Hartman and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at the BCPS's Central Office and interviewed the following BCPS and Baltimore City Health Department (BCHD) staff:
 - a. Dr. XXXXXXXX, Audiologist, BCPS;
 - b. Ms. Dorothy Freeman, RN, Community Health Nurse Supervisor for the Bureau of School Health, BCHD;
 - c. Ms. XXXXXX, Special Education Liaison, Early Learning Programs, BCPS;
 - d. Mr. XXXXXXXX, Special Educator, Early Learning Programs, BCPS;
 - e. Ms. XXXXXXXX, Occupational Therapist, BCPS;
 - f. Ms. XXXXXXXX, Educational Associate, Early Learning Programs, BCPS;
 - g. Ms. XXXXXXXX, Special Educator, Early Learning Programs, BCPS;
 - h. Mr. XXXXXXXX, Speech/Language Pathologist, Early Learning Programs, BCPS;
 - i. Ms. XXXXXXXX, Physical Therapist, BCPS;
 - j. Ms. XXXXXXXX, General Educator, Early Learning Programs, BCPS;
 - k. Ms. XXXXXXXX, Teacher for the Visually Impaired, BCPS;
 - l. Ms. XXXXXXXX, School Psychologist, BCPS; and
 - m. Dr. XXXXXXXX, Principal/Designee, Early Learning Programs, BCPS.

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

9. On June 4, 5 and 11, 2013, the BCPS provided the MSDE with additional information and documentation regarding the allegations contained in the complaint.

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10. On June 9, 2013, Ms. Hartman requested additional information concerning the allegations contained in the complaint from the BCPS, via email.
11. On June 11, 2013, Ms. Hartman requested additional information, via email, from the student's mother concerning allegations contained in the complaint, which was provided the same day.
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 complainants to the MSDE, received on April 23, 2013;
 - b. Individualized Family Services Plan, dated August 22, 2012;
 - c. Evaluation Report and Determination of Initial Eligibility, dated October 23, 2012;
 - d. IEP, dated November 13, 2012, Notice of IEP Team Meeting, dated October 25, 2012, Prior Written Notice document, dated November 13, 2012, and Notice of Documents Provided to Parent, dated November 19, 2012;
 - e. Audio recording of the November 13, 2012 IEP team meeting, provided by the student's mother;
 - f. Report of Speech-Language Therapy Re-Assessment, dated August 7, 2012;
 - g. Report of Brief Developmental Neuropsychological Evaluation, dated July 31, 2012;
 - h. Special Instruction Progress Note, dated September 10, 2012;
 - i. Summary report from the student's therapeutic day care providers, dated August 15, 2012;
 - j. Daily Information Reports of the student's performance in therapeutic day care, dated April 16 and 19, 2012, and July 5 and 20, 2012;
 - k. Summary report from the student's occupational therapist, dated August 28, 2012;
 - l. Occupational Therapy Progress Updates, dated March 6, 2012 and August 28, 2012;
 - m. Occupational Therapy clinical observations reports, dated August 6, 13, and 27, 2012, September 10, 20, and 27, 2012, and October 11 and 25, 2012;
 - n. Report of Audiometric Testing, dated August 2, 2012;
 - o. Report of Audiological Assessment, dated October 23, 2012;
 - p. Report of Cortical Visual Impairment Assessment, dated August 4, 2012;
 - q. Report of eye assessment from The Maryland School for the Blind, undated;
 - r. Summary report from the student's orthopedic surgeon, dated September 15, 2012;
 - s. Physical Therapy Progress Updates, dated January 1, 2012 and July 10, 2012;
 - t. Physical Therapy clinical observations report, dated August 8, 2012;
 - u. Baltimore City Physical Therapy Review Reports, dated October 20, 2012 and November 12, 2012;
 - v. The complainants' request for revisions to the draft of the initial IEP, undated;

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- w. Summary report from the student's pediatric gastroenterologist outlining the student's feeding protocol, dated August 27, 2012;
- x. Note from the BCPS staff regarding the IEP team members who left the November 13, 2012 IEP team meeting prior to its conclusion, undated;
- y. IEP, dated May 7, 2013, Notice of IEP Team Meeting, dated April 25, 2013, Prior Written Notice document, dated May 7, 2013, and audio recording of the May 7, 2013 IEP team meeting; and
- z. Email correspondence between the BCPS staff and the complainants or their legal counsel, dated March 22, 2013, April 4, 9, 15, 25, and 29, 2013, and May 3 and 6, 2013.

BACKGROUND:

The student turned three (3) years old on November 19, 2012. On October 23, 2012, the student was identified as a student with an Other Health Impairment (OHI) under Part B of the IDEA related to a diagnosis of chromosomal abnormalities. An IEP was developed on November 13, 2012, but the complainants have not, to date, provided consent for the provision of special education services.

Prior to October 23, 2012, the Baltimore City Infants and Toddlers Program (BCITP) identified the student as a toddler with a disability under Part C of the IDEA based on a diagnosis of a physical condition with a high probability of developmental delay. He received early intervention services through an Individualized Family Services Plan (IFSP), which included special instruction, occupational therapy, physical therapy, and speech/language therapy provided in the student's therapeutic day care setting.

The complainants have been provided with written notice of the procedural safeguards (Docs. a-e, and interviews with the student's mother and the BCPS staff).

FINDINGS OF FACTS:

1. On November 13, 2012, the IEP team convened to develop an initial IEP for the student. There is documentation that the BCPS provided the complainants with written notice of this meeting on October 25, 2012. The notice informed the complainants of the purpose, date, time and location of the meeting. It also informed the complainants that the IEP team would include an IEP chairperson, the principal/designee, the BCITP service coordinator, a speech/language pathologist, an audiologist, an occupational therapist, a physical therapist, a school psychologist, a teacher of the visually impaired, a special education teacher, a general educator, and a school nurse (Doc. d).
2. Documentation of the November 13, 2012 IEP team meeting indicates that the team considered assessment data and information about the student's present levels of functional performance from the student's mother, the BCITP teacher, and the service

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providers. The information identified needs in the areas of independent feeding skills, receptive and expressive speech/language and pragmatic skills, inattention, ability to socialize with peers, toileting skills, fine and gross motor skills, as well as hearing, vision, and visual perceptual motor skills. It also indicated that the student had been provided with early intervention services of two (2) thirty-minute sessions of special instruction per week, two (2) thirty-minute sessions of speech/language therapy per week, one (1) thirty-minute session each of occupational therapy and physical therapy per week, and thirty minutes “only” of vision services (Docs. b and d-v).

3. At the meeting, the IEP team also considered a report from the student’s private physician which outlined a feeding protocol that indicates the times of day that the student should be fed. In addition, the IEP team considered reports from staff at the student’s therapeutic day care that the student “needs to be in a full day program where he will have sufficient time for therapies, feeding sessions, rest, and still have a substantial amount of time with his special educator.” The IEP team further considered a the report of a developmental neuropsychological evaluation obtained by the complainants from XXXXXXXXXXXXXXXXXXXX. While the report contains a recommendation for “full-time instruction,” it also states that the student was “doing well” with the services provided by the BCITP, and contains a recommendation that the student’s school placement “provide similar interventions” (Docs. d, i, g and w).
4. The audio recording of the meeting indicates that no questions were raised about the assessment data considered at the meeting (Doc. e).
5. Annual IEP goals were developed for the student to improve his skills in each area of need identified in the data. The IEP team determined that the student will be provided with a hour of special education instruction per day from a special education teacher, and a half hour of special education instruction from a teacher of the visually impaired per month to assist him in achieving the goals. The team also decided that the student will continue to receive the same amount of speech/language therapy and physical therapy as he received through the IFSP, an increase in occupational therapy to two (2) thirty-minute sessions per week, and annual audiological services, to assist him in achieving the annual goals (Doc. d).
6. The IEP also requires that the student be provided with adaptive feeding utensils, prompts and hand over hand assistance, instructional materials that are singularly colored with reflective materials that help outline images, pairing of verbal and visual information, and low visual clutter and auditory distractions. It also requires the provision of transitional objects and pictures, predictable daily routines, chunking of tasks into small steps, repetition of directions, assistance with remaining on-task when completing work independently, reduced distractions, and social stories. Based on information from the complainants, the IEP also requires the provision of brief intensive learning periods

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interspersed with sensory breaks and other desired physical activities to assist him with remaining focused on the completion of tasks. (Doc. d).

7. The IEP further requires the provision of consultation between a teacher of the visually impaired with the student's teacher regarding the use of strategies to assist the student in the classroom, as well as a nursing care plan for cleaning/flushing of the student's g-tube and feeding (Doc. d).
8. The audio recording of the November 13, 2012 IEP team meeting documents that the complainants requested that the IEP require that the student receive instruction from staff members who do not have a foreign accent, or that all instruction be provided to the student using clear and easily understandable language. The IEP team declined this request based on the determination that the use of clear and easily understandable language is implicit in the IEP (Docs. d and e).
9. The student's mother requested that more special education instruction and speech/language therapy be provided than was recommended by other team members. The student's mother also expressed concern that there would not be enough time for the provision of the special education services and the feeding protocol in a half day program. The IEP team denied the request because the amount of special education instruction and related services that were recommended were more than the amount of special instruction and related services provided in the day care program by the BCITP, and the student made progress on the IFSP outcomes with the provision of those services. The IEP team also determined that the amount of special education instruction and related services that were recommended could be provided in a half day program while ensuring the implementation of the feeding protocol (Docs. d and e).
10. The IEP team considered the complainants' request for a full day program with instruction in a small group with no more than a three-to-one ratio of students to the teacher. The IEP team denied the request based on a determination that the student can be provided with a temporary support assistant in order to ensure that he receives sufficient adult support (Docs. d and e).
11. The IEP team determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented with the provision of supplementary aids and services is a "regular early childhood program for at least 10 hours per week" with "the majority of special education and related services in that setting." The team discussed that the setting is available in a *Discover with Me* program, which is a BCPS "Citywide" program that operates on the grounds of several schools. However, because the required services are not available in the school the student would attend if not disabled, the team decided that the student would be placed in the *Discover with Me* program located at the school nearest to his home (Docs. d and e).

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12. The audio recording of the meeting further documents that the complainants expressed concerns about whether the IEP can be implemented in the *Discover with Me* program because they had visited one of the locations where the *Discover with Me* program is offered and observed that it did not provide an environment with low visual clutter and low auditory distractions, as required by the IEP. The team decided that the complainants should meet with staff from the *Discover with Me* program to determine whether the *Discover with Me* program is offered in a location with an environment where distractions can be reduced (Doc. e).
13. The audio recording of the meeting reflects that the complainants reported that the student requires transportation on a bus with a lift that can be used to board the student while strapped in his stroller, and that the bus also needs to be fitted with equipment to secure the stroller in a stable position during transportation. The audio recording documents that the IEP team accepted the complainants' request for specialized transportation to be provided in this manner. However, the written IEP states that the student will be transported on the bus using a car seat, and that he will receive adult assistance with finding his seat and being buckled into the seat. The BCPS staff report that, after the IEP team meeting, they discovered that the student could not be safely transported in his stroller, as agreed to by the IEP team (Docs. d and e, and interviews with the BCPS staff).
14. A review of the written notice of the meeting and of the audio recording of the meeting reflect that the student's mother questioned why the BCPS Special Education Liaison for Early Learning Programs was participating in the meeting when the written notice of the meeting did not indicate that she would participate. The BCPS staff indicated that this individual was invited after the written notice of the meeting was issued in order to address concerns expressed by the complainants to school system staff prior to the meeting (Docs. d and e).
15. The BCPS staff acknowledges that some of the related service providers and the nurse left the meeting before it was concluded (Docs. e and x).
16. There is documentation that an IEP that was drafted following the November 13, 2012 IEP team meeting was sent to the complainants on November 19, 2012, four (4) business days following the meeting. The student's mother reports that she received a copy of the draft IEP within five (5) business days of the meeting (Doc. d and interview with the student's mother).
17. On May 7, 2013, the IEP team reconvened to review decisions made on November 13, 2012 and revisit the complainants' concerns in order to obtain consent for the initiation of special education services. There is documentation that the school-based members of the team participated in the meeting, but that the complainants refused to participate despite attempts

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by school staff to convince them to do so. The written notice of the meeting reflects the titles of all of the IEP team participants (Docs. y and z).

18. At the May 7, 2013 IEP team meeting, the team documented that it reviewed the program and educational placement and determined the student's need for Extended School Year services. Staff from the *Discover with Me* program participated in this meeting, but there is no documentation that the team determined whether the *Discover with Me* program is offered in a location with an environment where distractions can be reduced, as required by the IEP (Doc. y).

DISCUSSION/CONCLUSIONS:

ALLEGATIONS #1 AND #2: PARTICIPANTS AT THE NOVEMBER 13, 2012 IEP TEAM MEETING AND NOTICE OF WHO WOULD BE IN ATTENDANCE AT THE MEETING

In this case, the complainants assert that the student's related service providers were required members of the IEP team because they were invited by the school system to participate in a meeting in which decisions were made in their service provision areas. The complainants allege that the BCPS did not ensure their participation in the IEP team meeting because they were permitted to leave prior to the completion of the meeting without the agreement of the complainants.

The complainants also allege that the BCPS did not ensure that that the IEP team included participants who could interpret assessment results because the individuals who conducted those assessments did not attend the meeting. They also allege that there was no participation by staff who were knowledgeable about the early learning program available at different schools in order to ensure that there was sufficient information to make a decision about the student's educational placement.

The complainants further allege that the BCPS did not follow proper procedures when inviting school system staff without including her on the written notice of the IEP team meeting.

In addition, the complainants assert that the BCPS was required to provide them with written notice of the names of individuals who would attend the meeting, and not just their titles (Doc. a and interviews with the student's mother).

Legal Requirements

The IEP team must include the student's parent, at least one (1) regular education teacher of the student if the student is, or may be, participating in the regular education environment, and at least one (1) special education teacher of the student. It must also include a representative of the

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public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency, an individual who can interpret the instructional implication of evaluation results, at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, and the student when appropriate (34 CFR §300.321).

In order to ensure that a parent is provided with the opportunity to participate in the IEP team meeting, the public agency must provide parents with written notice of the meeting at least ten (10) days before the meeting. The content of that notice must include the purpose, time and location of the meeting, and who will be in attendance. However, in providing notice of who will be in attendance at the meeting, the public agency need only indicate the positions of the individuals, and need not identify them by name (34 CFR §300.322, COMAR 13A.05.01.07, and *Letter to Livingston*, 21 IDELR 1060 [Office of Special Education Programs (OSEP) 1994]).

The members of the IEP team may be excused from attending an IEP team meeting, in whole or in part, if the parent and the public agency consent to the excusal in writing. If the parent does not agree to the excusal of the IEP team member, the meeting must be conducted with the IEP team member in attendance, even if the meeting must be continued to a later time (34 CFR §300.321 and *Analysis of Comments and Changes*, Federal Register, Vol. 71, No. 156, p. 46675, August 14, 2006).

Allegation #1(a): Participation by Related Service Providers

Based on the Findings of Facts #1 and #15, the MSDE finds that some school-based members of the IEP team were permitted to leave the November 13, 2012 IEP team meeting prior to the completion of the meeting without the consent of the complainants. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #17 and #18, the MSDE finds that the BCPS reconvened the IEP team on May 7, 2013 and reviewed the decisions made on November 13, 2012, and that the school-based members of the IEP team participated in the meeting. Based on the Finding of Fact #17, the MSDE finds that the complainants were provided with the opportunity to participate in this IEP team meeting. Therefore, this office does not require additional student-specific corrective action to remediate this violation.

Allegation #1(b): Participation by a Public Agency Representative Who Can Interpret Assessment Results

The IEP team must include an individual who can interpret the instructional implications of evaluation results (34 CFR §§300.321). The United States Department of Education, OSEP, has explained that this does not mean that the individual must be qualified to conduct the assessment,

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but only that the individual be qualified to interpret the instructional implications of the assessment (*Analysis of Comments and Changes*, Federal Register, Vol. 71, No. 156, p. 46670, August 14, 2006).

Based on the Findings of Facts #1-#11, the MSDE finds that, while the individuals who conducted the assessments considered by the team were not members of the team, there is no requirement to ensure that the IEP team includes the individuals who conducted the assessments. Based on these same Findings of Facts, the MSDE further finds that there is no documentation that questions arose about the assessment results that could not be addressed by members of the IEP team. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Allegation #1(c): Participation by a Public Agency Representative Who is Knowledgeable About the Available Resources

Based on the Finding of Fact #12, the MSDE finds that the November 13, 2012 IEP team did not include a participant who was knowledgeable about the available resources in order for the team to determine whether the *Discover with Me* program recommended by the team is offered in a location with an environment where distractions can be reduced, as required by the IEP. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Allegation #2: Notice of IEP Team Participants

Based on the Finding of Fact #1, the MSDE finds that, while the written invitation of the November 13, 2012 IEP team meeting did not include the names of the individuals who would be in attendance at the meeting, there is no requirement that the names be included on the notice. Therefore, this office does not find that a violation occurred with regard to this aspect of the allegation.

However, based on the Findings of Facts #1 and #14, the MSDE finds that the written notice of the November 13, 2012 IEP team meeting did not include information that staff from the BCPS Early Learning Programs who participated in the meeting would be attending. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #17 and #18, the MSDE finds that the BCPS reconvened the IEP team on May 7, 2013 and reviewed the decisions made on November 13, 2012, and that the written notice of the meeting reflects the titles of all of the IEP team participants. Based on the Finding of Fact #17, the MSDE finds that the complainants were provided with the opportunity to participate in this IEP team meeting. Therefore, this office does not require additional student-specific corrective action to remediate this violation.

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ALLEGATION #3: DEVELOPMENT OF THE IEP

The development of the initial IEP must be conducted through an IEP team meeting. When 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 (34 CFR §300.324).

In order to provide a Free Appropriate Public Education (FAPE) to a student with a disability, the public agency must ensure that the IEP includes a statement of the student's present levels of academic achievement and functional performance. This includes information about how the student's disability affects the student's involvement and progress in the general curriculum. Based on that information, the team must develop annual goals designed to meet the needs that result from the disability to enable the student to be involved in and make progress in the general education curriculum and to meet any other educational needs that result from the student's disability (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes, Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006).

The IEP must also include a statement of the special education instruction and related services to be provided to assist the student in achieving the annual goals. Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to be involved in and make progress in the general education curriculum, the annual IEP goals must be aligned with the student's present levels of performance (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes, Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006).

Based on the Findings of Facts #2-#4, the MSDE finds that there is documentation that the IEP team considered the assessment data and information from the complainants, the BCITP providers, and the student's private service providers and developed an IEP that includes a statement of current levels of performance consistent with the data.

Based on the Findings of Facts #5-#10, the MSDE finds that there is documentation that the IEP team developed annual goals for the student to increase skills in the areas of need identified in the evaluation data, and determined the special education and related services needed to assist him in achieving the goals, consistent with the data.

However, based on the Finding of Fact #13, the MSDE finds that decisions were made unilaterally by school system staff about the transportation services to be provided to the student subsequent to the November 13, 2012 IEP team meeting. Therefore, this office finds that a violation occurred with regard to the allegation.

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Notwithstanding the violation, based on the Findings of Facts #17 and #18, the MSDE finds that the BCPS reconvened the IEP team on May 7, 2013 and reviewed the decisions made on November 13, 2012 about the student's program and placement. Based on the Finding of Fact #17, the MSDE finds that the complainants were provided with the opportunity to participate in this IEP team meeting. Therefore, this office does not require additional student-specific corrective action to remediate this violation.

ALLEGATION #4: EDUCATIONAL PLACEMENT DECISION

To the maximum extent appropriate, students with disabilities are to be educated with students who are nondisabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment may occur only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. In determining the LRE in which the IEP can be implemented, the IEP team must consider any potential harmful effect on the student or on the quality of services that the student needs (34 CFR §§300.114 and .116).

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP team that includes someone who is knowledgeable about the placement options. The decision must be made in conformity with the LRE provisions, based on the student's IEP, and located as close as possible to the student's home (34 CFR §300.116 and COMAR 13A.05.01.10).

The OSEP has explained that the term "educational placement" refers to points along the continuum of placement options, and that the term "location" refers to the physical surrounding, such as the classroom in which a student with a disability receives special education instruction. The OSEP indicates that a public agency may have two or more equally appropriate locations that can meet the student's needs, and that school administrators should have the flexibility to assign the student to a particular school or classroom so long as it is consistent with the IEP team's educational placement decision (*Analysis of Comments and Changes, Federal Register*, Vol. 71, No. 156, p. 46588, August 14, 2006).

The United States Court of Appeals, Fourth Circuit, has provided additional clarification of the matter. The Court has indicated that the determination of a specific school could amount to an educational placement decision if the location of the services "results in a dilution of the quality of a student's education or a departure from the student's least restrictive environment-compliant setting" (*A.K. v. Alexandria*, 484 F. 3d 672, April 26, 2007).

Based on the Findings of Facts #10, #11, and #18, the MSDE finds that, when making the educational placement decision, the IEP team determined the LRE in which the IEP can be implemented with the provision of supplementary aids and services. Based on the Findings of Facts #11 and #18, the MSDE finds that the IEP team determined that the services required by

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the student are not available in the school he would attend if not disabled, and that they would be provided at the location closest to the student's home where those services are available.

However, based on the Findings of Facts #12 and #18, the MSDE finds that the IEP team has not determined whether the *Discover with Me* program in which the student is to be provided with special education services is offered in a location with an environment where distractions can be reduced, as required by the IEP. Therefore, the MSDE finds that a violation occurred with respect to the determination of the educational placement.

ALLEGATION #5: PROVISION OF A COPY OF THE IEP WITHIN FIVE (5) BUSINESS DAYS OF THE IEP TEAM MEETING

The public agency must ensure that parents are provided a copy of the student's IEP within five (5) business days of the IEP team meeting at which the program was reviewed. If the IEP is not completed, the parents must be provided with the draft copy of the IEP (Md. Code Ann., Educ., §8-405 (2010) and COMAR 13A.05.01.07D(3)).

Based on the Findings of Facts #1 and #16, the MSDE finds that there is documentation that the complainants were provided with a copy of the draft IEP within five (5) business days of the November 13, 2012 IEP team meeting. Therefore, the MSDE does not find that a violation has occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student Specific

The MSDE requires the BGCPS to provide documentation by the start of the 2013-2014 school year that an IEP team that includes the required participants has considered the complainants' concerns and determined whether the IEP can be implemented in the proposed educational placement, consistent with the data. The IEP team must also determine the amount and nature of *compensatory services*¹ or other remedy to redress the delay in determining an appropriate educational placement since November 13, 2012, to be provided if the complainants consent to the initiation of special education and related services.

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

¹Compensatory services, for the purposes of this letter, means the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR § 300.151).

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Systemic

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 related to the development of an initial IEP for the provision of early childhood services are unique to this case or if they represent a pattern of noncompliance within the school system.

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.

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 verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the BCPS.

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

TECHNICAL ASSISTANCE:

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

Please be advised that both the complainants and the BCPS 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

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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 complainants 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 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 Special Education/
Early Intervention Services

MEF/ch

cc: Andrés Alonso
 Charles Brooks
 Charlene Iannone-Campbell
 Darnell L. Henderson
 Rosalyn Wiley
 Allison Layland
 Nancy Vorobey
 Dori Wilson
 Anita Mandis
 Martha J. Arthur
 Christine Hartman