



August 19, 2013

XXX
XXX
XXX
XXX

Mr. Russell Gray
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: XXXXX
Reference: #13-106

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 June 20, 2013, the MSDE received a complaint from Mr. XXXXXXXXX and Mrs. XXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants alleged that the Carroll County Public Schools (CCPS) 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 CCPS has not ensured that proper procedures have been followed to conduct a reevaluation of the student that began on February 6, 2013, as indicated below, in accordance with 34 CFR §§300.300, .304, .305, and .324, and COMAR 13A.05.01.06.
 - a. The CCPS has not ensured that the reevaluation has been completed within the required timelines.

- b. The CCPS has not ensured that assessment tools have been utilized to provide relevant information to assist in the identification of the student's vision, assistive technology, and reading needs, and in her ability to fade out adult support.
 - c. The CCPS has not ensured that the educational and assistive technology assessments were administered in accordance with instructions provided by the producer of the assessments, in the form most likely to yield accurate information, or by trained and knowledgeable personnel.
 - d. The CCPS has not ensured that written parental consent has been obtained to conduct assessments of the student's needs in the areas of close adult supervision, physical education and motor skills, and math performance skills, that were conducted on January 25, 2013.
 - e. The CCPS has not ensured that the decisions regarding the additional data needed to conduct a reevaluation have been based on a review of the existing data.
- 2. The CCPS did not ensure that the complainants were provided with copies of the documents considered by the Individualized Education Program (IEP) team on March 20, 2013 and July 1, 2013 at least five (5) business days before the meetings, in accordance with Md. Code. Ann. Educ. §8-405 (2010) and COMAR 13A.05.01.07D.
 - 3. The CCPS did not ensure that proper procedures were followed when responding to the complainants' April 16, 2013 request for an amendment of the student's educational record, in accordance with 34 CFR §§300.618-.620.
 - 4. The CCPS has not ensured that proper procedures have been followed to determine appropriate measurable post secondary goals based upon age appropriate transition assessments, and services needed to assist the student in achieving the goals, and to address the student's need to increase her independence, in accordance with 34 CFR §§300.320, .321, and .324, and COMAR 13A.05.01.07 and .09.
 - 5. The CCPS has not ensured that the student has been provided with the special education services required by the IEP, as indicated below, since June 20, 2012, in accordance with 34 CFR §§300.18, .101, .156, and .323.
 - a. The CCPS has not ensured that the plan to "fade out" adult supervision has been implemented.
 - b. The CCPS has not ensured that the student has been provided with the assistive technology device required by the IEP.

- c. The CCPS has not ensured that the student has been provided with large print materials required by the IEP.
 - d. The CCPS has not ensured that the student has been provided with preferential seating, as required by the IEP.
 - e. The CCPS has not ensured that the student has been provided with special education instruction in math and reading by a highly qualified special education teacher in the educational placement required by the IEP.
 - f. The CCPS has not ensured that the student has been permitted to participate in non-academic activities, such as lunch with nondisabled peers, as required by the IEP.
 - g. The CCPS has not ensured that the student has been provided with the amount of special education instruction required by her IEP because of early dismissals from school.
 - h. The CCPS has not ensured that the student has been provided with the special education instruction in physical education to address her motor needs in the educational placement required by the IEP.
 - i. The CCPS has not ensured that the student has been provided with the behavioral supports required by the IEP, including social stories.
 - j. The CCPS has not ensured that the student has been provided with the services of a “peer buddy” as required by the IEP.
6. The CCPS has not ensured that the complainants were provided with written notice of the July 1, 2013 IEP team meeting that included information that a purpose of the meeting was to continue the reevaluation planning and information that the school psychologist was expected to attend, in accordance with COMAR 13A.05.01.07.
7. The CCPS has not ensured that the complainants have been provided with reports of the student’s progress towards achievement of the annual IEP goals on a quarterly basis, as required by the IEP, in accordance with 34 CFR §§300.101, .320, and .323.
8. The CCPS has not ensured that proper procedures have been followed in determining the student’s educational placement for the 2013-2014 school year, in accordance with 34 CFR §300.116 and COMAR 13A.05.01.10.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 21, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Gray, Director of Special Education, CCPS.
3. On June 24, 2013, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the student's mother to clarify the allegations to be investigated.
4. On June 24, 25, 26, 27, and 28, 2013, and July 3, 2013, the complainants provided the MSDE with additional documentation, via electronic mail (email), alleging additional violations. On July 5, 2013, the MSDE sent a copy of these email correspondences to Mr. Gray and Mr. Wayne Whalen, Coordinator of Compliance, CCPS.
5. On July 8, 2013, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and the additional email correspondence, and identified the allegations subject to this investigation based on the information provided. On the same date, the MSDE notified the CCPS of the allegations and requested that the CCPS review the alleged violations.
6. On July 12, 2013, Ms. Hartman conducted a telephone interview with the student's mother regarding the allegations contained in the complaint.
7. On July 12, 14, 15, and 16, 2013, the MSDE received additional information and documentation from the student's mother alleging additional violations to be included in the complaint.
8. On July 16, 2013, the MSDE sent correspondence to the complainants that acknowledged receipt of the additional correspondence and identified the additional allegations subject to this investigation. On the same date, the MSDE notified the CCPS of the additional allegations and requested that the CCPS review the alleged violations.
9. On July 18, 19, 20, 21, 24, and 25, 2013, and August 1, 5, and 6, 2013, the MSDE received additional information and documentation from the student's mother regarding the allegations contained in the complaint, via email.
10. On July 24, 2013, Ms. Hartman conducted a telephone interview with Ms. Lisa Frank, the complainants' educational consultant.

11. On August 2, 2013, Ms. Hartman and Ms. Mandis conducted a site visit at XXXXXXXX XXXXX to review the student's educational record, and interviewed the following school system staff:
 - a. Ms. XXXXXXXXXX, Occupational Therapist, CCPS (via telephone);
 - b. Ms. Christine Bechtel, Supervisor of Secondary Special Education, CCPS;
 - c. Ms. XXXXXX, Special Education Case Manager, XXXXXXXXXXXXXX, CCPS;
 - d. Ms. XXXXXXXXXX, General Education Teacher, XXXXXXXXXXXXXX, CCPS;
 - e. Mr. XXXXXX, Adaptive Physical Education Teacher, CCPS;
 - f. Ms. XXXXXX, Assistive Technology Specialist, CCPS;
 - g. Mr. XXXXXXXXXXXX, Special Educator, XXXXXXXXXXXX, CCPS;
 - h. Mrs. XXXXXXXXXX, School Psychologist, CCPS;
 - i. Ms. XXXXXXXXXXXX, Assistant Principal, XXXXXXXXXXXX, CCPS; and
 - j. Mrs. XXXXXX, Speech/Language Pathologist, CCPS.

Mr. Whalen attended the site visit as a representative of the CCPS and to provide information on the CCPS policies and procedures, as needed. Ms. Rochelle Eisenberg, legal counsel for the CCPS, also attended the meeting.

12. On August 9, 12, 13, 14 and 15, 2013, the MSDE received additional information and documentation from the CCPS regarding the allegations contained in the complaint, via email.
13. On August 13, 2013, Ms. Hartman conducted a telephone interview with Ms. XXXXXXXXXXXX, Physical Education Teacher, XXXXXXXXXXXXXX, CCPS, regarding the allegations contained in the complaint.
14. 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 June 20, 2013;
 - b. IEP, dated February 6, 2012;
 - c. IEP, dated February 4, 2013;
 - d. Reevaluation report and written summary of the March 20, 2013 IEP team meeting;
 - e. Audio recording of the March 20, 2013 IEP team meeting;
 - f. Written summary of the May 29, 2013 IEP team meeting;
 - g. Audio recording of the May 29, 2013 IEP team meeting;
 - h. Written summary of the July 1, 2013 IEP team meeting;
 - i. Audio recording of the July 1, 2013 IEP team meeting;
 - j. Written summary of the August 14, 2013 IEP team meeting;

- k. Notice of Consent for Assessment signed by the student's mother at the February 4, 2013 IEP team meeting;
- l. Report of the results of a Gray Diagnostic Reading Test, dated February 11, 2013;
- m. Report of the results of a Woodcock Johnson-III educational assessment, dated February 11, 2013;
- n. Report of the classroom observation conducted by a teacher of the visually-impaired, dated February 25, 2013;
- o. Report of a classroom observation conducted by school staff, dated March 1, 2013;
- p. Report of a classroom observation conducted by school staff, dated March 8, 2013;
- q. Report of the results of a Carroll County Augmentative/Assistive Technology Evaluation, dated February 11, 2013;
- r. Report of the Student Access to Close Adult Supervision assessment, dated March 8, 2013;
- s. Report of a speech/language assessment, dated March 7, 2013;
- t. Report of a physical education inventory assessment, dated March 1, 2013;
- u. Report of an adaptive behavior assessment, dated March 4, 2013;
- v. Report of a transition skills assessment, dated March 11, 2013;
- w. Report of classroom observations conducted by the complainants' educational advocate, dated May 14, 2013;
- x. Email correspondences between the student's mother and school staff, dated February 4, 2013;
- y. Email correspondence from the school staff to the student's mother, dated February 1, 2013;
- z. Email correspondence between the school staff and the complainants, dated March 13, 14, and 15, 2013;
- aa. Notice of Consent for Assessment sent to the student's mother following the February 4, 2013 IEP team meeting;
- bb. Notice of Consent for Assessment, dated January 4, 2010;
- cc. Draft IEP, with handwritten notation that it was received by the complainants on March 13, 2013;
- dd. Email correspondences between the school staff and the student's mother, dated April 16, 2013;
- ee. Email correspondence from the school staff to the complainants, dated July 18, 2013;
- ff. Email correspondence from the complainants to the school staff, dated July 14, 2013;
- gg. Email correspondence from the school staff to the complainants, dated August 15, 2013;
- hh. Email correspondence from the complainants to the school staff, dated July 25, 2013;

- ii. Email correspondence from the school staff to the complainants, dated August 14, 2013;
- jj. Amendment/Modification to Current IEP form, dated October 26, 2012;
- kk. Reports of the student's progress towards achievement of the annual IEP goals generated during each quarter of the 2012-2013 school year;
- ll. Screenshots of the student's desktop files;
- mm. Email correspondence from the student's special education teacher to the student's mother, dated December 4, 2012;
- nn. Email correspondences between the student's mother and the student's special education teacher, dated March 18, 2013 and March 19, 2013, respectively;
- oo. Samples of the student's work provided by the school staff;
- pp. Samples of the student's work provided by the complainants;
- qq. Email correspondences between the student's mother and the school staff, dated April 19, 2013 and April 21, 2013;
- rr. CCPS Middle School Program of Studies;
- ss. Email correspondence between the student's mother and the student's special education teacher, dated April 12, 2013;
- tt. Email correspondence from the student's special education teacher to the student's mother, dated August 21, 2012;
- uu. Adaptive Physical Education Log for the 2012-2013 school year;
- vv. Email correspondence between the student's mother and the student's chorus teacher, dated November 2, 2012;
- ww. Email correspondence from the student's mother to the school staff, dated December 17, 2012;
- xx. Attendance and grading information maintained by the physical education teacher during the 2012-2012 school year;
- yy. Written notice of the July 1, 2013 IEP team meeting;
- zz. Revised reports of the student's progress towards achieving the annual IEP goals for the 2012-2013 school year;
- aaa. Schedule of the student's classes for the 2013-2014 school year; and
- bbb. Recommendations for assignment of the student to classes for the 2013-2014 school year made by her teachers.

BACKGROUND:

The student is fourteen (14) years old and is identified as a student with an Other Health Impairment under the IDEA related to diagnoses of XXXXXXXX, XXXXXXXX, XXXXXXXX, XXXXXXXX (XXXXXX). During the 2012-2013 school year, she attended XXXXX XXXXXXXX, where she received special education and related services. She will be attending XXXXXXXXXXXXXXXX during the upcoming 2013-2014 school year. During the period of time addressed by this investigation, the complainants were provided with written notice of the procedural safeguards (Docs. a-j).

**ALLEGATION #1(a): COMPLETION OF THE REEVALUATION WITHIN THE
REQUIRED TIMELINES**

FINDINGS OF FACTS:

1. On February 4, 2013, the IEP team began a reevaluation of the student. At the IEP team meeting, the team determined that the student continues to meet the requirement for identification as a student with an Other Health Impairment related to XXXXXXXX, XXXXX,XXXX,XXXXX. The IEP team also reviewed and revised the IEP based on teacher reports of the student's classroom performance and progress (Doc. c).
2. At the February 4, 2013 IEP team meeting, the team recommended that additional data be obtained because it suspected that the student may be a student with a cognitive disability. This recommendation was based on reports by the school staff that the student struggles to make inferences and can only follow concepts presented in the classroom at a simpler level and with considerable support. Because the complainants would not consent to cognitive testing, the team decided to obtain data using other assessment tools to determine whether a cognitive disability could be ruled out without conducting cognitive testing. The team recommended assessments in the areas of memory and learning, functional and adaptive skills, and expressive, receptive, and pragmatic language skills. It also recommended an educational assessment to identify any changes in skill development over time (Docs. c and k).
3. On March 20, 2013, the IEP team considered the assessment results. Based on their review of the data, the team continued to suspect that the student has a cognitive disability, but the complainants continued to refuse to consent to a cognitive assessment. Based on the existing data, the team decided that the student continues to meet the criteria for identification as a student with an Other Health Impairment under the IDEA, and began reviewing and revising the IEP. However, the team was unable to complete the IEP review due to time constraints, and agreed to continue the meeting to another date in order to provide the complainants with additional time to review the assessment data (Docs. d, e, and k-w).
4. On May 29, 2013, the IEP team reconvened to continue the IEP review. At the meeting, the complainants' expressed concern that the classroom observation conducted in order to obtain additional data about the student's visual-motor needs was conducted by a teacher of the visually impaired and not by an occupational therapist. Based on the complainants' concerns, the team agreed to have an occupational therapist review the report of the observation conducted by the teacher of the visually impaired to ensure that the supports provided to the student are based on information from all perspectives (Docs. f and g).

5. At the May 29, 2013 IEP team meeting, the team again requested that the complainants provide consent to cognitive testing and offered to fund an independent cognitive assessment at public expense. The school-based members of the IEP team expressed concern that the student may not be able to successfully demonstrate the academic skills required by the high school curriculum if she has a cognitive disability. The complainants indicated that they needed time to consider the offer of an independent cognitive assessment, and the team agreed to continue the meeting to a later date (Docs. f and g).
6. On July 1, 2013, the IEP team reconvened to continue the IEP review. The team again requested that the complainants provide consent to an independent cognitive assessment, but the complainants refused. Because the report of the review by the occupational therapist that was recommended on May 29, 2013 was not yet complete, the team decided to reconvene on another date to complete the IEP review (Docs. h and i).
7. On August 14, 2013, the IEP team reconvened and completed its review of the IEP (Doc. j).

DISCUSSION/CONCLUSIONS:

When conducting a reevaluation, the public agency must ensure that the IEP team reviews the existing data, considers input from the parents, and identifies additional data needed to determine whether the student continues to meet the criteria for identification as a student with a disability under the IDEA and the educational needs of the student (COMAR 13A.05.01.06). If the IEP team determines the need for additional data, it must ensure that assessment procedures are conducted and that the results of assessment procedures are considered by the IEP team in reviewing, and as appropriate, revising the IEP within ninety (90) days of the IEP team meeting in which the team identifies the additional data needed to complete the reevaluation (COMAR 13A.05.01.06).

In this case, the complainants allege that the reevaluation that began on February 4, 2013 has not been completed within the required timelines because the IEP team has not yet considered assessment results in reviewing the IEP to ensure that all of the needs that arise out of the disability have been addressed (Doc. a and interviews with the student's mother).

Based on the Findings of Facts #1 and #2, the MSDE finds that the CCPS has ensured that a determination was made about the student's continued eligibility and that the IEP was reviewed and revised based on the existing data. However, based on the Findings of Facts #1 - #7, the MSDE finds that the CCPS has not ensured that the IEP has been reviewed and revised, as appropriate, based on the results of assessment within the required timelines. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Notwithstanding the violation, based on the same Findings of Facts, the MSDE finds that the delay in completing the IEP review resulted from the school system's attempts to address all of the complainants' concerns. Therefore, this office finds that the violation resulted in no negative impact and does not require that corrective action be taken to redress the violation.

ALLEGATION #1(b): ASSESSMENT TOOLS UTILIZED TO PROVIDE RELEVANT INFORMATION TO ASSIST IN THE DETERMINATION OF THE STUDENT'S NEEDS IN THE AREAS OF VISION, ASSISTIVE TECHNOLOGY, READING, AND ADULT SUPPORT; AND

ALLEGATION #1(c): ADMINISTRATION OF THE EDUCATIONAL AND ASSISTIVE TECHNOLOGY ASSESSMENTS ADMINISTERED BY TRAINED AND KNOWLEDGEABLE PERSONNEL IN THE FORM MOST LIKELY TO YIELD ACCURATE INFORMATION

FINDINGS OF FACTS:

Reading Needs

8. The documentation of the March 20, 2013 IEP team meeting reflects that the IEP team considered the results of an assessment of reading skills that had been administered using the Gray Diagnostic Reading Test. The assessment report states that the student was fourteen (14) years and one (1) month old at the time of the assessment, and that the assessment is appropriate for students up to thirteen (13) years and eleven (11) months old. It states that the scores should, therefore, be interpreted with caution. The report further states that it is a reliable and valid tool for the purpose of determining strengths and weaknesses, documenting progress, and assisting with the diagnosis of specific reading problems (Docs. d, e, and l).
9. A review of the audio recording of the March 20, 2013 IEP team meeting, as well as written documentation of the meeting, indicates that the team discussed the reasons that this assessment tool was chosen. The stated reasons were that the assessor determined it would provide the team with more accurate information about the student's abilities because it utilizes multiple choice questions, and because the student would not need to struggle with having to generate her own answers. The documentation also indicates that, when the complainants expressed concern about using the results of this assessment, the school-based members of the team explained that they were using it for diagnostic purposes, rather than for purpose of obtaining a standardized score to determine the grade level at which the student performs (Docs. d and e).

10. At the March 20, 2013 meeting, the IEP team also considered the results of a Woodcock Johnson-III educational assessment that had been conducted. A review of the documentation of the meeting reflects that the data obtained from this assessment were used to identify the grade level at which the student is performing in the area of reading (Docs. d, e, and m).
11. At the March 20, 2013 meeting, the complainants expressed concern about the fact that the student was not provided with the accommodations she receives in the classroom when the assessments were administered. The school-based members of the IEP team explained that this is because the purpose of the testing is to obtain information about the student's performance without the provision of accommodations in order to accurately determine her abilities (Docs. d and e).

Visual-Motor Needs

12. A review of the audio recording of the March 20, 2013 IEP team meeting reflects that the team discussed that, at the previous IEP team meeting held on February 4, 2013, the student's teachers reported that the student struggles when working with diagrams, maps, and charts, despite the provision of accommodations. The audio recording documents that the IEP team recommended a consultation with a vision specialist to ensure that there are no additional services required, such as those provided to students with a vision disorder, in addressing the visual-motor needs that arise from esotropia, a condition which the student has that affects the eye muscle (Doc. e).
13. The documentation of the March 20, 2013 IEP team meeting reflects that the team considered the results of the classroom observation conducted by a teacher of the visually impaired, the report of which notes that the student has visual tracking issues that make visual planning difficult, especially with respect to writing. The teacher noted that the student does not have a visual impairment that requires the provision of specialized vision instruction, and recommended accommodations to address her needs. Based on the assessment results, the team decided that the student continues to require accommodations such as enlarged print and the use of white space. There is no documentation in the observation report, the written summary of the meeting, or in a review of the audio recording of the meeting, that the teacher for the visually impaired recommended that an assessment be conducted by an occupational therapist (Docs. d, e, and n).
14. A review of the audio recording of the May 29, 2013 IEP team meeting reflects that the complainants indicated that, because the team had acknowledged that the student's difficulty is with visual-motor processing, they believe that only an occupational therapist could identify needs in this area. The audio recording also reflects that the team decided to have an occupational therapist review the observation findings of the vision teacher in

order to assure the complainants that information was obtained from all possible perspectives (Doc. g).

Assistive Technology and Educational Assessments

15. At the February 4, 2013 meeting, the IEP team also recommended that an assistive technology assessment be conducted to ensure that the proper tools are identified to assist the student with her communications, motor, and visual processing needs (Docs. c and k).
16. There is no indication in the documentation of the IEP team meetings, or in the audio recordings of the meetings, that the IEP team decided that the assistive technology assessment would be conducted in a classroom setting by an assistive technology specialist (Docs. c-i).
17. There is correspondence from the complainants to the school staff indicating their desire that multiple assessments not be conducted on the same date. However, there is no indication in the documentation of the IEP team meetings or a review of the audio recordings of the meetings that the IEP team made such a decision (Docs. c-i and x).
18. There is documentation that information about the student's assistive technology needs was obtained both from an assessment conducted by the special education teacher, during the administration of the educational assessment, and by the assistive technology specialist (Docs. d, e, q, y, and z).

Need for "Close Adult Support"

19. At the February 4, 2013 IEP team meeting, in response to the complainants' concerns about the student not being provided with sufficient opportunity to work without "close adult support," the team recommended that data be obtained to identify areas in which peer support or other strategies can be utilized in place of the adult support being provided. The documentation of the meeting reflects that the IEP team decided to do "informal observations to evaluate [the student's] level of independence including collecting data on situations in which adult support is removed or limited." It also reflects the decision to "collect data on independence to find areas where peer support or other methods can be used instead of adult support" (Doc. c).
20. At the March 20, 2013 IEP team meeting, the team considered a report entitled, "Student Access to Close Adult Supervision," which indicates that it was developed by a CCPS special education instructional consultant. The report also indicates that it is based on a review of IEP documentation and information provided by the student's special education teacher, dedicated assistant, and the special education chairperson. The report includes a description of the student's behavior when she is not provided with "close adult support,"

and a recommendation for the fading of adult support “if the student is placed in small, structured classes where the curriculum and pace is modified to suit her needs” (Docs. d, e, and r).

21. The documentation of the meeting reflects that the student’s mother disagreed with the characterization of the student’s behavior. It also reflects that the school staff provided information about the student’s behavior that was not consistent with the findings in the report, and provided clarification of information contained in the report (Docs. d and e).

DISCUSSION/CONCLUSIONS:

Reading Needs

When conducting a reevaluation, the public agency must ensure that assessment tools and strategies are used to provide relevant information that directly assists in determining the educational needs of the student. The public agency must also ensure that assessments are used for the purposes for which the results are valid and reliable, and that they are administered by trained and knowledgeable personnel in the form most likely to produce accurate information (34 CFR §300.304).

The complainants allege that data obtained from the Gray Diagnostic Reading Test were used to identify the grade level at which the student is performing in the area of reading, despite the IEP team’s decision that the data would not be used for this purpose (Doc. a and interviews with the student’s mother).

Based on the Findings of Facts #7 - #11, the MSDE finds that there is documentation that results of the Woodcock Johnson-III were used to determine the grade level at which the student is performing in the area of reading. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Visual-Motor Needs

The complainants allege that the IEP team did not recommend an appropriate assessment to obtain information about how to address the student’s visual-motor needs in February, 2013, because it did not ensure that the assessment was to be conducted by an occupational therapist. The complainants report that, on March 20, 2013, the teacher of the visually-impaired recommended that the IEP team obtain additional information from an occupational therapist in order to ensure that the student’s needs are addressed, but that an assessment was not recommended by the IEP team until they advocated for one at the May, 2013, IEP team meeting (Doc. a and interviews with the student’s mother).

Based on the Findings of Facts #12 - #14, the MSDE finds that there is no documentation that the information obtained as a result of the observation conducted by the teacher of the visually impaired was not sufficient to identify the student's needs in this area. Based on the Finding of Fact #13, the MSDE find that there is no documentation that the teacher of the visually impaired recommended that an occupational therapy assessment be conducted. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Assistive Technology and Educational Assessments

The complainants allege that the information obtained from an assistive technology assessment was not designed to obtain relevant information about the student's needs because it was not conducted by an assistive technology specialist in a classroom setting, as determined by the IEP team, but as part of the educational assessment that was conducted by a special education teacher (Doc. a and interviews with the student's mother).

The complainants also assert that the IEP team determined that multiple assessments would not be conducted in one day so that the student would not be overwhelmed. They allege that information obtained from the assistive technology and educational assessments conducted at the same time is, therefore, not reliable (Doc. a and interviews with the student's mother).

Based on the Findings of Facts #15 - #18, the MSDE finds that there is no documentation to support the complainants' allegations about the team's determinations regarding how assessments were to be conducted. In addition, based on the Finding of Fact #18, the MSDE finds that information about the student's assistive technology needs was collected by an assistive technology specialist in addition to the information obtained by the special education teacher during the administration of the educational assessment. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Need for "Close Adult Support"

The complainants allege that the IEP team determined that additional data is needed to identify areas where adult support can be decreased. The complainants further allege that the data collected is not designed to obtain such information because it does not include information from a general education teacher, because it focuses on the areas of need instead of where the support can be decreased, and because classroom observations were not conducted in enough different settings (Doc. a and interviews with the student's mother).

Based on the Findings of Facts #19 - #21, the MSDE finds that there is conflicting information about the student's behavior when not provided with "close adult support." However, based on the Finding of Fact #20, the MSDE finds that there is documentation that information was gathered about the student's performance when adult support is not provided. Based on the same Findings of Facts, the MSDE finds that there is documentation that a recommendation was made

regarding the decreasing of adult support consistent with the IEP team's decision about the need for additional data in this area. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

The complainants are reminded that, if they disagree with an assessment conducted by the school system, they maintain the right to request an Independent Educational Assessment (IEE) at public expense.

ALLEGATION #1(d): WRITTEN PARENTAL CONSENT TO CONDUCT ASSESSMENTS IN THE AREAS OF "CLOSE ADULT SUPPORT," MATH SKILLS, AND PHYSICAL EDUCATION/MOTOR SKILLS

FINDINGS OF FACTS:

Need for "Close Adult Support"

22. The handwritten "Notice of Consent and Assessment" form signed by the student's mother at the February 4, 2013 IEP team meeting contains a notation that an "evaluation of dependence on adult support" will be conducted, to "include data on performance when support is reduced in a variety of settings." The written summary of the meeting states that data will be collected "on independence to find areas where peer support or other methods can be used instead of adult support" (Docs. c and k).
23. At the March 20, 2013 IEP team meeting, the team considered the report of the student's need for "close adult support" (described more fully in the Finding of Fact #20). The documentation of the meeting reflects that the student's mother disagreed with the characterization of the student's behavior, and that the school staff provided information about the student's behavior that was not consistent with information in the report (Docs. d, e, and r).

Math Needs

24. The IEP states that the student was "informally assessed" on January 25, 2013 to "determine her proficiency on previous math objectives without the practice and scaffolding that she receives on a daily basis" (Doc. c).
25. There is no documentation that a formal standardized assessment of the student's math performance was administered on January 25, 2013 (Review of the student's educational record).

Physical Education/Motor Skills

26. Following the February 4, 2013 IEP team meeting, the school staff contacted the student's mother by email correspondence, explaining that the physical education teacher, who did not participate in the meeting, was recommending that a physical education inventory be conducted. Because this assessment was not included on the handwritten "Notice of Consent and Assessment" for which the student's mother had provided consent, the school staff requested her agreement to have the assessment conducted. The student's mother responded that she was in agreement to the physical education inventory being conducted, but expressed concerns about how it would be conducted. In response, school staff indicated that her concerns would be shared with the physical education teacher (Doc. x).
27. Following the email communication, the school staff created a typewritten consent form that included all of the recommended assessments, including the physical education inventory assessment. To this typewritten consent form, the school staff attached the signature page from the handwritten consent form that had been signed by the student's mother. While a cover letter indicates that the school staff requested that the complainants consent to the assessments listed on the typewritten consent form, there is no documentation that the complainants provided the school system with written consent to conduct the physical education inventory assessment (Docs. k and aa, and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

Need for "Close Adult Support"

Informed parental consent must be obtained prior to conducting assessments as part of a reevaluation. If the parent refuses to provide consent, the public agency may, but is not required to, file a due process complaint in order to seek approval to conduct the assessments (34 CFR §300.300).

In this case, the complainants allege that the school system staff conducted an assessment for which they did not provide consent, because the information that was obtained focused on the student's need for adult support, instead of where the support could be decreased, as was recommended by the IEP team (Doc. a and interviews with the student's mother).

Based on the Findings of Facts #22 and #23, the MSDE finds that the IEP team was presented with information about the student's behavior that conflicts with information contained in the report. However, notwithstanding the conflicting information, the documentation reflects that parental consent was provided for the assessment to be conducted. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Math Needs

Informed parental consent is not required prior to conducting assessments as part of a reevaluation if the public agency made reasonable efforts to obtain the consent and the parent has failed to respond. In addition, parental consent is not required before administering a test or other evaluation administered to all students, unless consent is required from the parents of all students (34 CFR §300.300).

Appropriate instruction depends on repeated assessments of a student's progress, which allows teachers to make informed decisions about the need to change their instruction to meet the needs of the student, and also provide parents with information about the student's progress. The United States Department of Education, Office of Special Education Programs (OSEP) has clarified that such testing does not constitute a formal assessment conducted as part of the evaluation and reevaluation process for which consent is required (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, pp. 46657 and 46658, August 14, 2006).

In this case, the complainants allege that an assessment was administered on January 25, 2013 to determine the student's proficiency on math objectives without their knowledge and consent (Doc. a and interviews with the student's mother).

Based on the Findings of Facts #24 and #25, the MSDE finds that there is no documentation that an assessment of the student's math performance, which would have required the provision of informed parental consent, was conducted on January 25, 2013. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Physical Education/Motor Skills

The complainants acknowledge providing information in writing to the school system staff that they would consent to the addition of the physical education inventory to the list of assessments to be conducted as part of the reevaluation. However, they report that they expected to receive a separate consent form on which to provide consent for this testing and believed that they had time to change their minds about the testing while waiting to receive the additional consent form. The complainants allege that attaching the signature page of the consent provided for the other assessments to a list that included the physical inventory denied them the opportunity to revoke the verbal agreement after having more time to consider the request (Doc. a and interviews with the student's mother).

The OSEP has clarified that informed parental consent is not the same as an agreement by a parent to an activity. Informed written consent requires that the parent agree in writing to the activity and the written consent be provided on a document that describes the activity. It also requires that the parent be permitted to revoke the consent at any time (34 CFR §300.9 and

Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 71, No. 156, p. 46629, August 14, 2006).

Based on the Findings of Facts #26 and #27, the MSDE finds that, while the student's mother agreed to the physical education inventory being conducted, the CCPS did not ensure that written parental consent was provided on a document that described the activity for which consent was being given. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

**ALLEGATION #1(e): ENSURING THAT THE DETERMINATION OF THE
ADDITIONAL DATA NEEDED WAS BASED ON THE IEP
TEAM'S REVIEW OF EXISTING DATA**

FINDINGS OF FACTS:

28. The documentation of the February 4, 2013 IEP team meeting states that the IEP team considered information from the student's teachers about her classroom performance. This information includes reports that the student is making "steady, albeit slow, progress on reading comprehension objectives," that she "does not have the ability to extend her [math] computational skills to solve the novel problem," and that she "follows concepts in the class but at a simpler level and with considerable support." The teachers reported that, while the student answers "basic" questions, she struggles when required to make inferences or when "higher level question forms are presented" (Doc. c).
29. The team documented that, while the student continues to show progress on modified grade level curriculum, there were concerns about her progress in basic math, reading, and written language skills, and that additional data was needed, including in the area of intellectual/cognitive functioning. The complainants reported that the student understands more than she is able to express, and informed the team that they would not consent to intelligent quotient (IQ) testing because they do not believe that it would provide instructionally relevant data. Because the parents would not consent to IQ testing, the team agreed to obtain additional data using other assessment tools to determine whether the data would rule out a cognitive disability, including those in the areas of memory and learning, functional and adaptive skills, and expressive, receptive, and pragmatic language skills. The team also recommended an educational assessment to identify any changes in skill development over time (Doc. c).
30. On March 20, 2013, the IEP team considered the assessment results. Based on the data, the team continued to suspect that the student has a cognitive disability, and continued to seek consent from the complainants to conduct an assessment of the student's cognitive abilities (Docs. d, e, and l-w).

31. At the July 1, 2013 IEP team meeting, the team documented that the school-based members explained to the complainants that critical thinking “is an area of difficulty” for the student. They explained that the student will continue to be required to demonstrate critical thinking skills in order to be academically successful with the general high school curriculum (Docs. d and e).
32. The school staff report that technical assistance was sought from the CCPS Central Office staff about how to obtain sufficient data to address the student’s slow rate of skill development. However, they deny that the Central Office staff requires that the IEP team recommend cognitive assessments for all students with Down syndrome without consideration of the individual student data (Interviews with the CCPS staff).
33. There is documentation that the IEP team previously attempted to obtain parental consent to conduct cognitive testing during the 2009-2010 school year, but was unsuccessful (Doc. bb).

DISCUSSION/CONCLUSIONS:

When conducting a reevaluation, the public agency must ensure that the IEP team reviews existing data, and on the basis of that review, identifies what additional data, if any, are needed to determine the student’s continuing eligibility and educational needs (COMAR 13A.05.01.06).

In this case, the complainants allege that the IEP team’s recommendation for cognitive testing was based on a directive from the CCPS Central Office staff following the February 4, 2013 IEP team meeting, and not on a review of the existing data. They assert that the CCPS requires that cognitive assessments be conducted for all students with Down syndrome, without consideration of the data for each individual student (Doc. a and interviews with the student’s mother).

Based on the Findings of Facts #28 - #33, the MSDE finds that the IEP team documented that it is recommending that a cognitive assessment be conducted in order to appropriately identify and address the student’s needs based on the existing data. Based on the same Finding of Fact, the MSDE further finds that there is no documentation that the CCPS requires that cognitive assessments be conducted based on a particular diagnosis, rather than being based on individual student data. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

**ALLEGATION #2: PROVISION OF DOCUMENTS AT LEAST FIVE (5) BUSINESS
DAYS PRIOR TO THE MARCH 20, 2013 AND JULY 1, 2013
IEP TEAM MEETINGS**

FINDINGS OF FACTS:

March 20, 2013 IEP Team Meeting

34. There is documentation that, on March 13, 2013, the complainants were provided with an evaluation report that included the results of assessments in the areas of math, reading, and speech/language skills. It also included the results of a classroom observation conducted by a teacher of the visually impaired, and data from the school staff for the student's transition assessment. These data were to be considered at the March 20, IEP team meeting (Docs. d and z).
35. There is also documentation that, on March 13, 2013, the complainants were provided with a partial proposed IEP (Docs. z and cc).
36. There is documentation that, on March 14, 2013, the complainants provided the school staff with data for the transition skills assessment. On the same date, the school staff incorporated the complainants' data into the transition skills assessment report and provided the completed report to the complainants (Doc. z).
37. There is documentation that, on March 15, 2013, the complainants were provided with the SETT (Student, Environment, Tasks and Tools) framework report, which is a portion of the assistive technology assessment, and additional assessment data regarding the student's reading skills (Doc. z).
38. The IEP team did not complete the review and revision of the IEP at the March 20, 2013 IEP team meeting (Docs. d and e).

July 1, 2013 IEP Team Meeting

39. A review of the audio recording of the July 1, 2013 IEP team meeting reflects that the student's special education teacher reported to the team on the student's levels of independence. When the student's mother asked why she had not been provided with a copy of the document that the special education teacher had at the meeting, it was explained that he was reading from personal notes he had drafted to assist him with making the oral report (Doc. i).
40. At the IEP team meeting, the team also discussed that the complainants had not provided consent for cognitive testing, and the school-based members explained why they believe

the testing is needed. There is no documentation that the team considered a report or other documents related to this discussion (Docs. h and i).

DISCUSSION/CONCLUSIONS:

In order to ensure that parents are provided with the opportunity to fully participate in discussions during an IEP team meeting, the public agency must ensure that they are provided with a copy of each assessment, report, data chart, and draft IEP (to the extent one has been developed) which is to be discussed at a scheduled IEP team meeting. These documents must be provided to the parents at least five (5) business days prior to the meeting, unless there are extenuating circumstances that prevent the public agency from doing so. An extenuating circumstance is any unforeseen event that occurs for which delivery of the document would not be possible prior to five (5) business days before the meeting, which can include documents that were created within the five (5) day window. However, failure to provide parents with copies of documents at least five (5) business days prior to an IEP team meeting without the presence of an extenuating circumstance does not constitute a substantive violation of the requirement to provide a student with a Free Appropriate Public Education (FAPE) (Md. Code Ann., Educ., §8-405 (2010), COMAR 13A.05.01.07D(3), and MSDE's *Technical Assistance Bulletin #20*, dated September 2012).

While the public agency is encouraged to come to an IEP team meeting prepared to discuss evaluation findings and preliminary recommendations, it is not required to develop a proposed IEP for consideration by the IEP team (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46678, August 14, 2006).

March 20, 2013 IEP Team Meeting

In this case, the complainants allege that they were not afforded an opportunity to fully participate in the IEP team meeting conducted on March 20, 2013 because they received some of the assessment reports less than five (5) business days prior to the meeting, and because the school system did not provide them with a complete proposed IEP (Doc. a and interviews with the student's mother).

Based on the Finding of Fact #35, the MSDE finds that there was no requirement for the CCPS to develop a complete proposed IEP for the IEP team's consideration. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Based on the Findings of Facts #34 and #36, the MSDE finds that there is documentation that the CCPS provided the complainants with the school staff-generated portion of the transition skills assessment report within the required timelines. Based on the same Findings of Facts, the MSDE finds that, while the revised transition skills assessment report was not provided within the required timeline, the additional information contained in the report was ***provided by the complainants***. Accordingly, the MSDE finds that the complainants had this report within the

required timelines. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

However, based on the Findings of Facts #34, #37, and #38, the MSDE finds that the complainants were not provided with all of the assessment results within the required timeline. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Notwithstanding the violation, because the violation did not result in a denial of a FAPE, no student-specific corrective action is required.

July 1, 2013 IEP Team Meeting

The complainants further allege that they were not afforded an opportunity to fully participate in the IEP team meeting conducted on July 1, 2013 because they were not provided with a copy of the special education teacher's notes or a consent form requesting permission to conduct a cognitive assessment of the student prior to the meeting (Doc. a and interviews with the student's mother).

Based on the Finding of Fact #39, the MSDE finds that the special education teacher did not produce a written report based for consideration by the IEP team. Based on the Finding of Fact #40, the MSDE finds that the IEP team did not consider a report or other document related to the discussion regarding consent to conduct a cognitive assessment at the July 1, 2013 IEP team meeting. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

ALLEGATION #3: RESPONSE TO REQUEST FOR AMENDMENT OF RECORD

FINDINGS OF FACTS:

April 16, 2013 Request Regarding the Summary of the March 20, 2013 IEP Team Meeting

41. On April 16, 2013, the complainants sent correspondence to the school staff complaining that the written summary of the March 20, 2013 IEP team meeting contained "misleading" information, and providing them with a report of what occurred at the meeting consistent with their recollection. The complainants asked that their report be included in the educational record (Doc. dd).
42. On July 18, 2013, the school staff informed the complainants, in writing, that their report of what occurred at the March 20, 2013 IEP team meeting had been added to the educational record (Doc. ee).

April 16, 2013 Request Regarding a February, 2010, Physician's Report

43. On April 16, 2013, the complainants also sent correspondence to the school staff complaining that a February, 2010 physician's report was included in the documentation of the March 20, 2013 IEP team meeting, despite the fact that the data were not considered by the IEP team at the meeting (Doc. dd).
44. At the July 1, 2013 IEP team meeting, the school-based members of the IEP team informed the complainants that the February, 2010 physician's report had been removed from the documentation of the March 20, 2013 IEP team meeting (Docs. h and i).

July 14, 2013 Request Regarding the Summary of the May 29, 2013 IEP Team Meeting

45. On July 14, 2013, the complainants sent correspondence to school staff complaining that the written summary of the May 29, 2013 IEP team meeting was inaccurate, and submitting their corrections to be included in the educational record (Doc. ff).
46. On August 15, 2013, the school staff informed the complainants, in writing, that their report of what occurred at the May 29, 2013 IEP team meeting had been added to the educational record, in response to their request (Doc. gg).

July 25, 2013 Request Regarding the Summary of the July 1, 2013 IEP Team Meeting

47. On July 25, 2013, the complainants sent correspondence to the school staff complaining that the written summary of the July 1, 2013 was inaccurate, and submitting their corrections to be included in the educational record (Doc. hh).
48. On August 14, 2013, the school staff informed the complainants, in writing, that their report of what occurred at the July 1, 2013 IEP team meeting had been added to the educational record, in response to their request (Doc. ii).

DISCUSSION/CONCLUSIONS:

A parent who believes that information in the student's educational record is inaccurate or misleading or violates the privacy or other rights of the student may request that the public agency amend the information. Upon receipt of such a request, the public agency must decide, within a reasonable period time of the receipt of the request, whether to amend the information. If the public agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing to challenge the information (34 CFR §§300.618 and .619).

If, as a result of a hearing, the public agency decides that the information *is* inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it must amend the information

and inform the parent in writing. If the public agency decides that the information *is not* inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it must inform the parent of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the public agency in the education record (34 CFR §300.620).

Based on the Findings of Facts #43 and #44, the MSDE finds that there is documentation that the CCPS amended the student's educational record with respect to the request to remove the physician's letter from the student's current reevaluation packet. Based on the Findings of Facts #41, #42, and #45 - #48, the MSDE finds that there is documentation that the school system responded to the requests to amend the record to include written summaries of the March 20, 2013, May 29, 2013, and July 1, 2013 IEP team meetings developed by the complainants. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION #4: TRANSITION PLANNING

FINDINGS OF FACTS:

49. The IEP in effect when the student turned fourteen (14) years old was developed on February 6, 2012. The documentation of this meeting reflects that the IEP team did not conduct transition planning for the student (Doc. b).
50. On October 26, 2012, the school staff requested that the complainants agree to amend the IEP to include post-secondary goals and services without convening an IEP team (Doc. jj).
51. There is no documentation that the complainants agreed to amend the IEP to include post-secondary goals and services without convening an IEP team (Doc. jj and review of the student's educational record).
52. The documentation of the IEP team meeting held on February 4, 2013 indicates that transition planning was conducted based on information obtained from the complainants and the student about her interests and preferences. The post-secondary goals were developed in the areas of employment, training, education, and independent living based on the student's interests and preferences. The team determined the transition services needed in all areas except for independent living (Doc. c).

DISCUSSION/CONCLUSIONS:

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, and younger if appropriate, the IEP must include appropriate post-secondary goals related to

training, education, employment, and independent living, if appropriate. It must also include the transition services required to assist the student to achieve the post-secondary goals (COMAR 13A.05.01.09). Changes to the IEP may be made either by the IEP team, or after the annual IEP team meeting for a school year, through agreement of the parties (34 CFR §300.324).

Based on the Findings of Facts #49 - #52, the MSDE finds that the CCPS did not ensure that transition planning was conducted within the required timelines. Based on the Finding of Fact #52, the MSDE further finds that, when transition planning was conducted, the CCPS did not ensure that the IEP team determined the transition services required to assist the student to achieve all of the post-secondary goals that were developed. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

ALLEGATION #5(a): IMPLEMENTATION OF THE PLAN TO “FADE OUT” CLOSE ADULT SUPPORT

FINDINGS OF FACTS:

53. The IEP requires that the student be provided with close adult support from a “1:1 assistant” throughout the entire school day “with a fade plan giving [the student] opportunities for independence when available.” The IEP does not indicate who will develop the plan or specify the manner in which it will be developed (Doc. c).
54. There is no documentation that a plan was developed for the fading of “close adult support.” The school staff report that the complainants had proposed that specific data be collected in order to develop a plan, but that the IEP team did not make a determination as to whether specific data would be used. There is documentation that the student requires significant adult support during instruction. The school staff report that, for this reason, there have not been opportunities to fade adult support during instruction (Docs. b-i, l-w, and kk, interviews with the CCPS staff, and review of the student’s educational record).
55. There is documentation that the student has been provided with the opportunity to engage in non-academic activities with reduced adult support, including the opportunity to independently pack-up and prepare to board the bus at the end of the school day (Doc. t).
56. On February 4, 2013, the IEP team recommended that data be collected to identify areas in which peer support or other strategies can be utilized in place of the “close adult support” in response to the complainants’ concern that the student has not been provided with sufficient opportunities in this area. The documentation of the meeting states that “[t]his will be part of the assessments ordered so that a real fade plan can be developed by the team as required by [the student’s] IEP” (Doc. c).

57. A report of classroom observations, conducted by the complainants' educational advocate on May 14, 2013, documents that the student is provided with praise, redirection, verbal prompts, modified class work, the use of assistive technology devices, and other supports during instruction. The educational advocate reported that, due to the amount of 1:1 accommodations and modifications being provided by the special education teacher, the student is not required to complete her work independently. The educational advocate recommended that a plan be developed to fade the 1:1 adult support, since the student appeared to be dependent upon the prompts provided (Doc. t).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students are provided with the special education services required by the IEP. In order to ensure that the IEP is appropriately implemented, it must include a statement of the services to be provided in a manner that is clear to all those involved in the development and implementation of the IEP (34 CFR §§300.320 and .323).

In this case, the complainants assert that the IEP team decided that the "close adult support" would be faded in accordance with a plan that is based on data about the student's performance, which did not occur (Doc. a and interviews with the student's mother).

Based on the Finding of Facts #53 - #57, the MSDE finds that the IEP does not include a clear statement of how close adult supervision is to be faded in order to ensure implementation in accordance with the IEP team's decisions. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

ALLEGATION #5(b): PROVISION OF THE ASSISTIVE TECHNOLOGY DEVICES AND OCCUPATIONAL THERAPY CONSULTATION REQUIRED BY THE IEP

FINDINGS OF FACTS:

Assistive Technology Devices

58. The IEP requires that the student be provided with access to a computer with specialized software for reading comprehension and writing, as well as the use of a calculator. The IEP revised on February 4, 2013 clarifies that the student is to be provided with "a dedicated computer with specialized software," such as a word processor, text-to-speech software, text prediction software, and concept mapping software. The IEP does not require the use of specific specialized software or require that the student use a laptop at home, but states that she "will be allowed to take her laptop home on weekends" (Docs. b and c).

XXX

XXX

Mr. Russell Gray

August 19, 2013

Page 27

59. A review of the student's desktop files reflects that the student has created documents on a laptop computer at school during the 2011-2012 and 2012-2013 school years (Doc. ll).
60. An email message from the student's special education teacher to the student's mother, dated December 4, 2012, documents that the special education teacher was investigating specific software programs for use on the student's computer that had been suggested by the student's mother (Doc. mm).
61. The teacher reports of the student's classroom performance, which were considered by the IEP team on February 4, 2013, document that the student uses a computer in the classroom in order to produce written work (Doc. c).
62. On March 18, 2013, the student's mother sent an email correspondence to the student's special education teacher stating that "we got [the student's] laptop home for the first time, thank you," and referencing a project they were working on using the laptop. The student's special education teacher responded that the class had been working on the project in school and that he had wished to include the student in the classroom activity, but that it was acceptable for her to complete it at home (Doc. nn).
63. At the March 20, 2013 IEP team meeting, the IEP team considered a report of an assistive technology assessment that states that the student "is experiencing success with the use of a dedicated computer with word processing and graphic organization software" (Docs. d, e, and q).
64. The reports of the student's progress towards achievement of the annual IEP goals, generated in April 2013, document that she uses specialized software in the classroom (Doc. kk).
65. A report of classroom observations, conducted by the complainants' educational advocate on May 14, 2013, documents that the student works in the math and English/Language Arts classroom with the special education teacher using a laptop computer (Doc. w).
66. The written summary of the May 29, 2013 IEP team meeting documents the team's discussion that the student uses text-to-speech software to assist her with reading comprehension (Doc. f).

Occupational Therapist Consultation

67. The IEP also requires that the occupational therapist consult with the school staff on how to assist the student with her writing needs in the classroom. From the start of the 2012-2013 school year until February 4, 2013, the IEP required that this service be

provided on a quarterly basis. The IEP revised on February 4, 2013 requires that it be provided as a “recheck periodically” (Docs. b and c).

68. The CCPS staff acknowledges that no consultation was conducted until the occupational therapist was requested to do so for the pending reevaluation (Interviews with the CCPS staff).
69. At the July 1, 2013 IEP team meeting, the IEP team considered data from the occupational therapist consultation reflecting that the student does not require occupational therapy as a related service (Doc. h).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §300.323).

Assistive Technology Devices

The complainants allege that the laptop was made available for the student to take home on only one occasion (Doc. a and interviews with the student’s mother). Based on the Findings of Facts #58 and #62, the MSDE finds that, while there is documentation of only one occasion when the student took the laptop home, there is no documentation that the laptop was not available for the student to take home on other occasions, as well.

The complainants also allege that the school staff did not ensure that appropriate computer software was available for the student’s use at school prior to February 2013 (Doc. a and interviews with the student’s mother). Based on the Finding of Fact #58, the MSDE finds that the IEP does not require the use of specific software. Based on the Findings of Facts #58 - #66, the MSDE further finds that there is documentation that the student is provided with the use of assistive technology devices at school in accordance with the IEP. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Occupational Therapy Consult

Based on the Findings of Facts #67 and #68, the MSDE finds that the occupational therapist did not provide consultation services to the school staff with the frequency required by the IEP from the start of the 2012-2013 school year until February 4, 2013, and that a violation occurred with regard to this aspect of the allegation.

Based on the Finding of Fact #67, the MSDE finds that, since February 4, 2013, the IEP has required that an occupational therapy consultation occur only if requested by the school staff.

Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Based on the Finding of Fact #69, the MSDE finds that, notwithstanding the violation with regard to the time period from the start of the 2012-2013 school year until February 4, 2013, the IEP team subsequently determined that the student does not require occupational therapy. Therefore, the MSDE finds that the violation did not have a negative impact on the student's ability to benefit from her education program and that no student-specific corrective action is required to remediate the violation.

ALLEGATION #5(c): PROVISION OF LARGE PRINT MATERIALS REQUIRED BY THE IEP

FINDINGS OF FACTS:

70. The IEP requires the provision of many different supports to assist the student to access instruction, including the ability to dictate responses to a scribe, and when necessary, modify her class work. The IEP describes various different methods that can be used to modify the student's work. These include focusing the work on core concepts; allowing the student to respond in various formats, including multiple choice; providing work sheets with key concepts of a task in bold print, large font, adequate white space, and six to eight problems per page; breaking down work into single step components; providing word banks; using scaffolding to show the student the desired outcome; providing fewer answer choices; reducing the length and complexity of the assignments; and modifying concepts to include information related to the student's areas of interests and personal experience, when possible. The IEP does not require that all methods of modification be used with every class assignment (Doc. c).
71. Samples of the student's class work, which were provided by the school staff and reviewed at the school, demonstrate that it was modified using large print materials, as well as other methods described in the IEP (Doc. oo and review of samples of the student's class work).
72. The complainants provided samples of the student's work that were not modified using large, bold print. However, some of the samples provided were not worksheets to be completed by the student, and some of the samples provided reflect that a scribe was used to assist the student in completing the worksheets (Doc. pp).
73. A report of classroom observations, conducted by the complainants' educational advocate on May 14, 2013, documents that the student is provided with modified class work and other supports during instruction. The educational advocate reported that, due to the amount of 1:1 accommodations and modifications provided by the special education

teacher, the student is being trained to be dependent on those supports, and is not required to complete her work independently (Doc. w).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §300.323).

The complainants allege that, because the student was not provided with large print material for each assignment, her work was not modified as required by the IEP (Doc. a and interviews with the student's mother).

Based on the Findings of Facts #70 - #73, the MSDE finds that there is documentation that the student was provided with large print material, along with other methods of modification for her work. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

ALLEGATION #5(d): PROVISION OF PREFERENTIAL SEATING AS REQUIRED BY THE IEP

FINDINGS OF FACTS:

74. The IEP requires that the student receive special education instruction in math and English/Language Arts from the special education teacher in the general education classroom. It also requires that she be provided with "preferential seating facing the board head-on with close proximity to [the] teacher during whole-group and small-group instruction for comprehension and focus," and states that she should be provided with "seating near [a] preferred peer role model when available" (Doc. c).
75. A report of classroom observations, conducted by the complainants' educational advocate on May 14, 2013, documents that the student was observed in math class to sit "in the back of the room with the special education [teacher]," who provided her with praise, redirection, verbal prompts, and assistance locating numbers and points on a graph. The report also indicates that the student was observed in English/Language Arts class to be working with the special education teacher using a laptop computer. The report reflects that the special education teacher reminded the student to scroll up and down the computer to follow along with a book that had been downloaded onto the laptop, which was to be used to complete a worksheet. The report also reflects that the student was listening to instruction provided by the general education teacher and following along with the class discussion. However, it also notes that the student could not interact with her classmates during instruction due to the amount of 1:1 adult support that was provided. The educational advocate recommended that a plan be developed to fade the

1:1 adult support since she appeared to be dependent upon the prompts provided (Doc. w).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §300.323).

Based on the Findings of Facts #74 and #75, the MSDE finds that there is documentation that the student is provided with seating near the special education teacher in a location in the classroom in which she can follow along with the instruction provided by the general education teacher while receiving intensive supports from the special education teacher.

Based on the same Findings of Facts, the MSDE finds that, while there is no documentation that the student is provided with seating near a preferred role model, there is documentation that the student's need for continuous prompting by an adult makes the use of a peer role model unavailable to the student. Therefore, this office does not find that a violation occurred with regard to this aspect of the allegation.

ALLEGATION #5(e): PROVISION OF THE SPECIAL EDUCATION INSTRUCTION IN THE GENERAL EDUCATION CLASSROOM;

PROVISION OF SPECIAL EDUCATION INSTRUCTION BY A HIGHLY QUALIFIED TEACHER DURING THE ASSIGNED TEACHER'S ABSENCE; AND

PROVISION OF THE AMOUNT OF SPECIAL EDUCATION INSTRUCTION DUE TO THE ADMINISTRATION OF ASSESSMENTS

FINDINGS OF FACTS:

Absence of Special Education Teacher

76. There is documentation that, on sixteen (16) non-consecutive days during the 2012-2013 school year, the student's special education teacher was on leave and was absent from school. There is documentation that, on each day, substitute teachers were assigned who meet the school system's education requirements (Review of personnel information).
77. A review of the special education teacher's work space reflects that he maintains a binder that includes information regarding the requirements of each student's IEP that is accessible to substitute teachers (Review of the special education teacher's workspace).

78. Samples of the student's class work, which was completed on the days when the special education teacher was on leave, document that the work was modified using materials developed by the special education teacher for use by substitute teachers (Doc. pp).

Participation in Assessments

79. In response to the complainants' concerns regarding the loss of instruction during the administration of assessments, the complainants were informed by electronic mail that the student missed approximately five classes in which she would have received special education instruction. The correspondence reflects that the complainants were informed that they could request that the IEP team consider whether the loss of instruction negatively impacted the student's ability to benefit from her education program (Doc. qq).

Provision of Special Education Instruction in the General Education Classroom

80. The IEP states that the student is to be provided with special education instruction from a special education teacher in the general education setting during her math and English/Language Arts classes and during math and reading resource classes. In middle schools within the school system, resource classes are offered to provide specific academic interventions for students with disabilities and nondisabled students (Docs. b, c, and rr).
81. On April 12, 2013, the student's mother informed the special education teacher that the student had reported working with him on math in his classroom, and that the school principal had conducted an observation of the instruction. The student's mother asked why the student was removed from the general education classroom to participate in this activity. The special education teacher responded that the student was not removed from the general education classroom, but was working with him on math, "during pride/flex time"¹ (Doc. ss).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §300.323).

¹ The CCPS website describes this as a separate, specified block of time embedded into the school day to provide students with support to meet the demands of increased rigor and to enrich their complete learning experience (<http://www.carrollk12.org>).

XXX

XXX

Mr. Russell Gray

August 19, 2013

Page 33

Absence of Special Education Teacher

The IDEA requires that each person employed as a public school special education teacher is highly qualified as a special education teacher. This means that the teacher must have obtained full State certification as a special education teacher or passed a State special education teacher licensing exam, and have a license to teach in the State as a special education teacher. The teacher must also meet any additional requirements specified in the Elementary and Secondary Education Act (ESEA).

School personnel other than those employed as teachers must meet the qualifications established by the State and must be appropriately trained and supervised in meeting the requirements of the IDEA (34 CFR §200.56 and §300.156). The CCPS requires that its substitute teachers have earned at least thirty (30) undergraduate credits from an institute of higher education (<http://www.carrollk12.org/admin/hr/substitute.asp>).

In this case, the complainants allege that the student has not been provided with special education instruction from a highly qualified special education teacher when the assigned teacher has been absent from school, but that she worked exclusively with her 1:1 assistant on those days (Doc. a and interviews with the student's mother).

Based on the Findings of Facts #76 - #78, the MSDE finds that there is documentation that the substitute teachers meeting the school system's education requirements were assigned to teach the student during the special education teacher's absences. Based on the same Findings of Facts, the MSDE finds that there is documentation that the special education teacher provided the substitute teachers with assistance in ensuring that the student received work that was modified consistent with the IEP during his absences. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Participation in Assessments

The complainants also allege that the student was not provided with the amount of special education instruction required due to her participation in the assessment process which occurred as a part of the pending reevaluation (Doc. a and interviews with the student's mother).

Based on the Finding of Fact #79, the MSDE finds that the student did not receive the amount of special education instruction required as a result of her participation in assessments conducted as part of the pending reevaluation. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Provision of Special Education Instruction in the General Education Classroom

In this case, the complainants allege that because the student has received instruction in the special education teacher's classroom, she has been removed from the general education classroom to work with the special education teacher in a separate special education setting (Doc. a and interviews with the student's mother). Based on the Findings of Facts #80 and #81, the MSDE finds that there is no documentation that special education instruction was provided to the student in the separate special education classroom. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION #5(f): PARTICIPATION IN NON-ACADEMIC ACTIVITIES WITH NONDISABLED PEERS, AS REQUIRED BY THE IEP

FINDINGS OF FACTS:

82. The IEP reflects that the student is to participate in lunch with nondisabled peers (Docs. b and c).
83. An email message from the student's special education teacher to the student's mother, dated December 4, 2012, indicates that there was a "situation" in the lunch room, but that it had "settled down" (Doc. mm).
84. The school staff reports that the student was relocated to another lunch table after students at the table where she typically sat requested that she move to another table. The school staff further reports that, when the student returned to her regular table and was redirected back to another table, she left the cafeteria. However, the school staff reports that the student was able to quickly adjust to sitting with another group of students (Interviews with the school staff).
85. There is no documentation that the student was required to eat outside of the cafeteria (Review of the student's educational record).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §300.323).

The complainants allege that the student informed them that she had been removed from the cafeteria to the special education teacher's classroom for lunch because another student was being mean to her (Doc. a and interviews with the student's mother). Based on the Findings of Facts #82 - #85, the MSDE finds that there is no documentation that the student was required to

have lunch outside of the cafeteria. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

ALLEGATION #5(g): PROVISION OF THE AMOUNT OF SPECIAL EDUCATION INSTRUCTION REQUIRED BY THE IEP DUE TO EARLY DISMISSALS FROM SCHOOL

FINDING OF FACT:

86. A report of a classroom observation, dated March 1, 2013, states that the student is dismissed from her last period class while the end of the day announcements are being made. The report indicates that the student is dismissed during announcements for the purpose of permitting her sufficient time to independently pack up her things at the end of the day and prepare for boarding the school bus (Docs. d and t).

DISCUSSION/CONCLUSION:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §300.323).

Based on the Finding of Fact #86, the MSDE finds that there is no documentation that the student is dismissed from school prior to the end of the instructional day. Based on the same Finding of Fact, the MSDE finds that this scheduling adjustment provides the student with the opportunity to decrease her need for “close adult support,” as required by the IEP. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

ALLEGATION #5(h): SPECIAL EDUCATION INSTRUCTION IN PHYSICAL EDUCATION IN THE EDUCATIONAL PLACEMENT REQUIRED BY THE IEP

FINDINGS OF FACTS:

87. The IEP requires that the student be provided with special education in physical education (adaptive physical education) in the general education classroom for two hours per month (Docs. b and c).
88. An email message from the student’s special education teacher to the student’s mother, dated August 21, 2012, indicates that the adaptive physical education would be provided during the second period of the day, which was the time scheduled for the “resource” classroom in which she worked on math and reading (Doc. tt).

XXX

XXX

Mr. Russell Gray

August 19, 2013

Page 36

89. The “Adaptive Physical Education Log” documents that the student has been provided with special education instruction to address her motor needs throughout the 2012-2013 school year, but that she was sometimes removed from the general education classroom for the provision of these services (Doc. uu).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §300.323).

The complainants assert that the student was not provided with the adaptive physical education required by the IEP throughout the school year because she was not scheduled to participate in a physical education class for the first half of the year. The complainants also assert that the student reports that she has been removed from the classroom for the provision of these services (Doc. a and interviews with the student’s mother).

Based on the Findings of Facts #87 - #89, the MSDE finds that there is documentation that adaptive physical education was provided to the student throughout the school year. However, based on the same Findings of Facts, the MSDE finds that the special education instruction in physical education was not always provided in the general education classroom, as required by the IEP, and that a violation occurred with regard to this aspect of the allegation.

ALLEGATION #5(i): PROVISION OF BEHAVIORAL SUPPORTS, INCLUDING SOCIAL STORIES, REQUIRED BY THE IEP

FINDINGS OF FACTS:

90. The IEP requires that the student be provided with behavioral supports, including “clearly defined behavioral limits and correlating social stories whenever possible to support desired behavior;” frequent and immediate positive reinforcement to support desired behaviors; provision of reasonable choices after verbal redirection; and breaks, as needed. It also requires that the student be provided with the “opportunity to work with [a] peer buddy during [physical education] to support compliance prior to the use of the instructional assistant.” The IEP in effect at the start of the school year states that these supports will be provided by “the IEP team.” The IEP was revised on February 4, 2013 to require that the behavioral supports be provided by the general and special education teachers (Docs. b and c).
91. The IEP also states that the 1:1 adult support staff will provide supports to the student and assistance to the teachers with instruction in the classroom (Docs. b and c).

XXX

XXX

Mr. Russell Gray

August 19, 2013

Page 38

92. On November 2, 2012, the student's chorus teacher sent the student's mother an email correspondence indicating that the student earned a zero on an assignment for refusing to participate. The correspondence was in response to an inquiry by the student's mother about the grade. The correspondence between the teacher and the student's parent documents that this was an "isolated event" that "seemed to resolve very quickly." It also documents that the student's mother requested that she be informed of the student's behavior so that the complainants can reward appropriate behavior at home and avoid reinforcing inappropriate behaviors that might be occurring of which they are unaware (Doc. vv).
93. At the March 20, 2013 IEP team meeting, the team considered information, including teacher reports of the provision of behavioral supports in the classroom. The team also considered teacher reports and the results of a speech/language assessment that indicate that the student has learned a variety of listening and recall strategies, that she practices using them during "small group time," and that she is more successful with following verbal and written directions after reviewing these strategies. The team considered the complainants' concern that the student does not verbalize when she is in pain or discomfort. In response to that concern, the speech/language therapist indicated that "the use of social stories may be helpful for specific situations related to this area" (Docs. d, e, and ww).
94. In addition, the IEP team considered teacher reports that there is "constant encouragement and prompting" in the classroom, as well as frequent breaks, to keep the student engaged. The teachers reported that they are able to obtain compliance from the student by explaining to her why she needs to follow directives. However, they indicated that her focus and attention "wane from time to time (especially with academic tasks), so directions must be repeated several times," and that her "progress varies when speaking of school appropriate social skills" (Docs. d and e).
95. A report of classroom observations, conducted by the complainants' educational advocate on May 14, 2013, documents that the student is provided with praise, redirection, verbal prompts, and other supports during instruction (Doc. w).
96. On July 1, 2013, the IEP team clarified that, while the special education teacher oversees the provision of special education instruction to the student, the general education teacher and 1:1 assistant assist in the provision of special education instruction and supports (Doc. h).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP, and that the IEP includes a statement of the services to be provided in a manner that is clear to all those involved in the development and implementation of the IEP (34 CFR §§300.320 and .323).

The complainants allege that the IEP requires the provision of social stories to address the student's behavioral and communication needs, but that she has not been provided with such support. They also allege that the IEP requires that the behavioral supports be provided by the student's teachers, but that many of these supports are provided by the 1:1 assistant (Doc. a and interviews with the student's mother).

Social Stories

Based on the Findings of Facts #90 and #91, the MSDE finds that the IEP requires the use of many different behavioral supports, but does not require the use of all of the supports during every situation. Based on the Findings of Facts #90 - #95, the MSDE finds that there is documentation that the student was provided with several different behavioral supports, and that in response to the complainants' concerns, the IEP team is currently considering the use of social stories specifically to encourage the student to seek assistance when she does not feel well. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Provision by a 1:1 Assistant

Based on the Findings of Facts #90, #91, and #96, the MSDE finds that it wasn't until July 1, 2013 that the IEP team clarified which school staff are responsible for providing behavioral supports to the student. Accordingly, the MSDE finds that the CCPS could not ensure that the services were provided consistent with the IEP team's decisions from the start of the 2012-2013 school year until July 1, 2013. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation for this period of time.

ALLEGATION #5(j): PROVISION OF A "PEER BUDDY," AS REQUIRED BY THE IEP

FINDINGS OF FACTS:

97. The IEP requires that the student be provided with close adult support from a "1:1 assistant" throughout the entire school day. It also requires that the student be provided with the opportunity to work with a "peer buddy" during physical education "prior to use

of the instructional assistant.” The IEP does not require that a peer be assigned to replace the adult support that is required by the IEP (Docs. b and c).

98. The Adaptive Physical Education Log and documentation of activities maintained by the student’s physical education teacher reflect that the student has been provided with physical education instruction in groups where she interacts with peers (Docs. uu and xx).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §300.323).

The complainants allege that because the school staff providing adult support to the student was present during the provision of physical education, the student was not provided with the opportunity to work with peers, as required by the IEP (Doc. a and interviews with the student’s mother). Based on the Findings of Facts #97 and #98, the MSDE finds that the IEP does not require a “peer buddy” to replace the adult support, and that the student has had the opportunity to work with other students during physical education. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

ALLEGATION #6: WRITTEN NOTICE OF THE JULY 1, 2013 IEP TEAM MEETING

FINDINGS OF FACTS:

99. On June 4, 2013, the complainants were provided with written notice of the IEP team meeting to be held on July 1, 2013. The written notice includes information about the purposes of the meeting and who would be in attendance. It does not indicate that the school psychologist would be in attendance or that one of the purposes of the meeting was to continue reevaluation planning (Doc. yy).
100. The IEP team that convened on July 1, 2013 included the school psychologist (Docs. h and i).
101. At the meeting, the school-based members of the team explained that critical thinking is “an area of difficulty” for the student, and that she will be required to demonstrate critical thinking skills in order to be academically successful with the high school curriculum. Based on this information, the team reiterated a request, made since March 20, 2013, that the complainants provide written consent for cognitive testing to be conducted, but the complainants refused (Docs. h and i).
102. There is documentation that the IEP team, which included the complainants, considered the student’s need for cognitive testing at meetings held on February 4, 2013,

March 20, 2013, and May 29, 2013. There is no documentation that the IEP team reconsidered the need for cognitive testing at the July 1, 2013 meeting (Docs. c-i).

DISCUSSION/CONCLUSIONS:

In order to ensure that parents are provided with the opportunity to participate as members of the IEP team, they must be provided with written notice of each IEP team meeting that includes the purposes of the meeting and who will be in attendance (COMAR 13A.05.01.07).

In this case, the complainants allege that they were unaware that a purpose of the July 1, 2013 IEP team meeting was to consider the student's need for cognitive testing and that the school psychologist would participate, and thus were not able to fully participate in the meeting (Doc. a and interviews with the student's mother).

Based on the Findings of Facts #99 and #100, the MSDE finds that the written notice of the July 1, 2013 IEP team meeting did not include information that the school psychologist would be in attendance. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Based on the Findings of Facts #99, #101, and #102, the MSDE finds that the IEP team did not consider the student's need for cognitive testing on July 1, 2013, but reiterated a request that was made at previous IEP team meetings upon consideration by the team at those meetings. Thus, this office does not find that a purpose of the July 1, 2013 meeting was to consider the student's need for cognitive testing. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation. Accordingly, notwithstanding the violation that occurred with regard to notice that the school psychologist would participate, this office finds that there was no impact on the complainants' ability to participate in the decisions made by the IEP team.

ALLEGATION #7: PROVISION OF PROGRESS REPORTS

FINDINGS OF FACTS:

103. The IEP requires that the complainants be provided with reports of the student's progress towards achievement of the annual IEP goals on a quarterly basis (Docs. b and c).
104. There is documentation that the complainants were provided with reports of the student's progress towards achievement of the annual IEP goals on a quarterly basis, with the exception of a report on her progress towards achievement of the goal to improve her math skills for the fourth quarter of the 2012-2013 school year (Doc. kk).
105. The narrative sections of the reports of the student's progress towards achieving the other goals for the fourth quarter of the school year included language that is identical to that

which is contained in the narrative sections of the reports made for the third quarter. However, the fourth quarter progress reports also included information that is not contained in the reports of the student's progress for the third quarter (Doc. kk).

106. The school staff acknowledges that some of the language from the third quarter progress reports was inadvertently "cut and pasted" into the fourth quarter progress reports (Interviews with the school staff).
107. There is documentation that, on August 7, 2013, in response to the complainants' concerns regarding the fourth quarter progress reports, the CCPS provided them with revised progress reports, including a report on the student's progress toward achieving the goal to improve her math skills (Doc. zz).

DISCUSSION/CONCLUSIONS:

The IEP must include, among other things, a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parents (34 CFR §300.320). As stated above, the public agency is required to ensure that the IEP is implemented (34 CFR §§300.101 and .324).

In this case, the complainants allege that, because the June, 2013 progress report contained incorrect information, the school system did not provide them with information related to the student's progress toward achieving the annual IEP goals (Doc. a and interviews with the student's mother).

Based on the Findings of Facts #103 and #104, the MSDE finds that the complainants were not provided with a report of the student's progress toward achieving the annual goal to improve her math skills during the fourth quarter of the school year, and that a violation occurred. Based on the Findings of Facts #103, #105, and #106, the MSDE finds that, while some of the language from the third quarter progress reports was inadvertently included in the fourth quarter progress reports, there is documentation that the complainants were provided with progress reports on all but the math goals for the fourth quarter of the school year.

Based on the Finding of Fact #107, the MSDE finds that, because the CCPS has provided the complainants with a report on the student's progress toward achieving the goal related to improving her math skills, no corrective action is required.

**ALLEGATION #8: DETERMINATION OF THE EDUCATIONAL PLACEMENT
FOR THE 2013-2014 SCHOOL YEAR**

FINDINGS OF FACTS:

108. The 2012-2013 school year was the student's last year in middle school. She is scheduled to begin attending XXXXXXXXXXXXXXXX at the start of the 2013-2014 school year (Doc. aaa).
109. During the 2012-2013 school year, the IEP required the provision of special education instruction in math and English in the general education classroom for five (5) hours per week. The student's schedule contained six (6) periods each day, including one (1) in which she was to receive instruction in math, and one (1) in which she was to receive instruction in English/Language Arts. It also included a "resource period," in which the student was to receive assistance with math and reading (Docs. b, c, and tt).
110. The CCPS staff report that, in middle school, the "resource period" is used to assist students with the remediation of skills, and that the class includes both students with disabilities and nondisabled students. However, in high school, "resource classes" are separate special education classrooms in which only nondisabled students receive instruction (Interviews with the school staff).
111. The school system has provided the complainants with a schedule of classes for the 2013-2014 school year, which reflects that she has been assigned to the math and English classes that were recommended by her middle school teachers for two (2) of the four (4) marking periods. However, similar to the middle school schedule, the high school schedule also includes two marking periods of a "resource" class for math and English (Docs. aaa and bbb).
112. The CCPS staff report that the high school staff schedules incoming middle school students for classes similar to those in which the student participated in middle school, and that the class schedule will be reviewed and revised, if needed, following the IEP team's completion of the IEP review and determination of the educational placement (Interviews with the school staff).
113. The IEP developed in preparation for the July 1, 2013 IEP team meeting states that the educational placement will be determined by the IEP team (Docs. h and i).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the educational placement decision is made by the IEP team (COMAR 13A.05.01.10). In this case, the complainants assert that, although the IEP team has

not completed the IEP review, the school system has assigned the student to separate special education classes in math and English for the 2013-2014 school year. The complainants further allege that this demonstrates that a change in educational placement has been made unilaterally by the school system (Doc. a and interviews with the student's mother).

Based on the Findings of Facts #108 - #113, the MSDE finds that, while the student's schedule currently reflects that she will receive some instruction in math and English in a separate special education classroom, there is no documentation that a decision was made by the school staff to change her educational placement. Based on the Finding of Fact #113, the MSDE further finds that there is documentation that the IEP team intends to consider the student's educational placement for the 2013-2014 school year. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the CCPS to provide documentation, by October 1, 2013, that the IEP team has convened and taken the actions listed below.

1. Determined the transition services required to assist the student in achieving the post-secondary goal in independent living;
2. Reviewed and revised the IEP, as appropriate, based on the additional data determined necessary by the IEP team;
3. Reviewed and revised the IEP, as appropriate, to ensure that it includes a clear statement of how "close adult support" is to be faded and of which staff will be responsible for the provision of the special education and related services required;
4. Determined whether the violation related to not providing adaptive physical education instruction in the general education classroom had a negative impact on the student's ability to benefit from her educational program. If a negative impact is found, the IEP team must determine the amount and nature of the *compensatory services*² or other remedy for the violation;
5. Determined whether the violation related to the IEP not having a clear statement of the staff responsible for implementing the behavioral supports had a negative impact on the student's ability to benefit from her educational program. If a negative impact is found,

² 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).

the IEP team must determine the amount and nature of *compensatory service*² or other remedy for the violation;

6. Determined whether the violation related to the loss of instruction due to the student's participation in assessments had a negative impact on the student's ability to benefit from her educational program. If a negative impact is found, the IEP team must determine the amount and nature of *compensatory services*² or other remedy for the violation; and
7. Determined the amount and nature of *compensatory services*² or other remedy for the violations related to the delay in conducting timely and appropriate transition planning and implementation of a plan to fade adult support.

The CCPS must ensure that the results of the physical education inventory are not used as part of the reevaluation unless the complainants agree that the data will be included.

The CCPS must also ensure that the complainants are provided with proper written notice of the IEP team's decisions. If the complainants disagree with the IEP team's decisions, they maintain the right to request mediation or to file a due process complaint to resolve the dispute.

School-Based

The CCPS must provide documentation, by January 1, 2014, that the actions listed below have been taken.

1. Steps have been taken to ensure that assessments are not conducted for XXXXXXXX XXXX students without written parental consent, which is provided on a document that describes the activity for which consent is given.
2. Steps have been taken to determine whether the violations related to the requirements listed below constitute a pattern of noncompliance at XXXXXXXXXXXX, including:
 - a. The provision of documents at least five (5) days before the IEP team meeting;
 - b. Timely and appropriate transition planning;
 - c. The provision of services with the frequency and in the educational placement required by the IEP; and
 - d. Clearly written statements in the IEP of the staff responsible for implementation of special education and related services and the manner in which the services are to be provided.

XXX
XXX
Mr. Russell Gray
August 19, 2013
Page 45

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 Office of Special Education Programs. 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 CCPS.

The 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 CCPS 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 CCPS 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 of facts, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants and the school system

XXX

XXX

Mr. Russell Gray

August 19, 2013

Page 46

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: Stephen H. Guthrie

Wayne Whalen

XXXXXXXXXX

Dori Wilson

Anita Mandis

Martha J. Arthur

Christine Hartman