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August 12, 2013

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

RE: XXXXX  
Reference: #13-107

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 21, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the following allegations:

**IEP Development, Review and Revision**

1. The BCPS has not ensured that a reevaluation has occurred at least every three (3) years, in accordance with 34 CFR §300.303;
2. The BCPS has not ensured that the assessments recommended by the Individualized Education Program (IEP) team have been completed and the results considered by the IEP team within the required timelines since June 2012,<sup>1</sup> in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06;

XXX

Dr. Kim Hoffmann

August 12, 2013

Page 2

3. The BCPS has not ensured that proper procedures were followed when reviewing and revising the student's IEP since June 2012,<sup>1</sup> in accordance with 34 CFR §§300.303-.311, 320, .323, and .324. Specifically the complainant alleged that:
  - a. The IEP team did not convene to review the student's IEP before April 13, 2013, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324;
  - b. The IEP team did not convene to address the lack of achievement of the annual goals within one (1) year of their development;
  - c. The IEP team did not consider the complainant's input and concerns; and
  - d. The student's IEP does not include present levels of academic achievement and functional performance in order to properly identify and address all of the needs that arise from his disability.
4. The BCPS did not provide the complainant with an opportunity to participate in IEP team meetings, held since June 2012,<sup>1</sup> in accordance with 34 CFR §300.322, COMAR 13A.05.01.07D, and the MSDE policy guidance on the audio recording of IEP team meetings, dated February 7, 2006;

### **Parental Rights**

5. The BCPS did not provide the complainant with access to the student's educational record within the required timelines in response to the complainant's February 27, 2013 request, in accordance with 34 CFR §§300.501 and .613;
6. The BCPS did not provide the complainant with a written invitation at least ten (10) days in advance of IEP team meetings held on May 29, 2013 and June 21, 2013, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D;
7. The BCPS did not ensure that the complainant was provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the March 7, 2013 IEP team meeting at least five (5) business days before the scheduled meeting, in accordance with Md. Code Ann., Educ., § 8-405 (2010);
8. The BCPS did not provide the complainant with a copy of the completed IEP document within five (5) business days after the IEP team meeting of March 7, 2013, in accordance with Md. Code, Ann., Educ. §8-405(d) (2010) and COMAR 13A.05.01.07;

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<sup>1</sup> The complaint included allegations of violations dating to 2008. The complainant was informed, in writing, on July 1, 2013, that this office has the authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

XXX

Dr. Kim Hoffmann

August 12, 2013

Page 3

9. The BCPS has not provided the complainant with prior written notice of the IEP team's decisions in her native language since June 2012,<sup>1</sup> in accordance with 34 CFR §300.503; and

### **IEP Implementation**

10. The BCPS has not ensured that the student has been provided with the transition services required by the IEP since June 2012,<sup>1</sup> in accordance with 34 CFR §300.101.

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 24, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Executive Director, Special Education, BCPS; and Ms. Nancy Ruley, Associate General Counsel, BCPS.
3. On June 27, 2013, Ms. Stump conducted a telephone conference with the complainant and Ms. XXXX XXXX, the complainant's educational advocate, to clarify the allegations to be investigated.
4. On July 1, 2013, the MSDE sent correspondence to the complainant, in English, that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
5. On July 10, 2013, Ms. Stump reviewed the student's educational record at the BCPS Central Office. Ms. Ruley was present at the record review.
6. On July 16, 2013, the MSDE resent the July 1, 2013 correspondence to the complainant, translated into Spanish.
7. On July 24, 2013, Ms. Stump and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXX/XXXXXXXX to review the student's educational record, and interviewed the following school staff:
  - a. Ms. Pamela Montgomery, Education Specialist, Special Education Parent Response Unit, BCPS; and
  - b. XXXXXXXX, Assistant Principal, XXXXXXXXXXX/XXXXXXXX.

Ms. XXXXX XXX for, Special Education Teacher, XXXXXXXXXXXXXXXXXXX/XXX XXXXX, participated in the site visit by telephone. Ms. Ruley attended the site visit as a

XXX

Dr. Kim Hoffmann

August 12, 2013

Page 4

- representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
8. On July 30 and 31, 2013, and August 1, 5, and 7, 2013, the BCPS provided the MSDE with additional documentation from the student's educational record, via e-mail.
  9. On August 5, 2013, the complainant's educational advocate provided the MSDE with documentation to be considered in the investigation, via e-mail.
  10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
    - a. Correspondence and attachments from the complainant to the MSDE, received on June 21, 2013;
    - b. IEP and Team Meeting Notice, dated November 11, 2008;
    - c. IEP and Team Meeting Notice, dated April 15, 2011;
    - d. IEP and Team Meeting Notice, dated April 13, 2012;
    - e. BCPS *Student Records* procedures, revised August 2012;
    - f. Correspondence from the complainant to school staff, dated January 28-29, 2013;
    - g. Electronic mail (e-mail) correspondence from the complainant, through her educational advocate, to the BCPS personnel, dated February 1, 2013;
    - h. E-mail correspondence between the complainant's educational advocate and the BCPS personnel, dated between February 27, 2013 and April 12, 2013;
    - i. IEP and Team Meeting Notice, dated March 7, 2013;
    - j. IEP Team Meeting sign-in sheet, dated March 7, 2013;
    - k. Notice and Consent for Assessment form, dated March 7, 2013;
    - l. Consent for Release of Information, dated March 7, 2013;
    - m. Psychosocial Assessment report, dated March 22, 2013;
    - n. Psychological Assessment report, translated into Spanish, dated April 15, 2013;
    - o. Psychological Assessment report, dated April 23, 2013;
    - p. Observation report, translated into Spanish, dated April 23, 2013;
    - q. Observation report, dated April 23, 2013;
    - r. Speech and Language Assessment report, dated May 6, 2013;
    - s. Educational Assessment report, dated May 7, 2013;
    - t. Assistive Technology Assessment report, dated May 20, 2013;
    - u. IEP Team Meeting Notice in Spanish, signed May 22, 2013;
    - v. IEP Team Meeting Notice, dated May 29, 2013;
    - w. IEP Team Meeting sign-in sheet, dated May 29, 2013;
    - x. IEP and Team Meeting Notice, dated June 10, 2013;
    - y. IEP Team Meeting sign-in sheet, dated June 10, 2013;
    - z. Receipt of Parental Rights Document form, dated June 10, 2013;
    - aa. E-mail correspondence from the complainant's educational advocate to the BCPS personnel, dated June 18, 2013;
    - bb. IEP Team Meeting Notice, dated June 21, 2013;

XXX

Dr. Kim Hoffmann

August 12, 2013

Page 5

- cc. IEP Team Meeting Notice for the July 18, 2013 IEP team meeting, translated into Spanish, with Certified mail Receipt, dated July 2, 2013;
- dd. IEP Team Meeting Notice, dated July 18, 2013;
- ee. IEP Team Meeting sign-in sheet, dated July 18, 2013;
- ff. IEP Team Meeting summary, dated July 18, 2013;
- gg. Prior Written Notice form, dated July 24, 2013;
- hh. Student work samples and *Data Sheets* for the 2012-2013 school year;
- ii. IEP Progress Reports for the 2011-2012 school year;
- jj. IEP Progress Reports for the 2012-2013 school year;
- kk. BCPS Parent Contact Log for the 2012-2013 school year.

### **BACKGROUND:**

The student is seventeen (17) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires that he be provided with special education instruction and related services. The student attends XXXXXXXXXXXXXXX/XXXXXXX (XXXXXX/XX).

During the time period covered by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a-d, i, x, z).

### **ALLEGATIONS #1-#4: IEP DEVELOPMENT, REVIEW AND REVISION**

#### **Findings of Facts:**

##### **Reevaluation**

1. There is documentation in the student's educational record that reevaluations were conducted on November 11, 2008 and April 15, 2011 (Docs. b and c).

##### **IEP in Effect in June 2012**

2. The IEP in effect in June 2012 was developed at an IEP team meeting on April 13, 2012. There is no documentation that the complainant attended the meeting or provided information about any concerns that she wished to have addressed at the meeting.<sup>2</sup> The documentation of the meeting indicates that the IEP team considered the results of classroom assessments conducted on March 26, 2012 and April 11, 2012, and reports of the student's progress provided by his teachers and service providers. The team determined the student's present levels of academic achievement and functional performance and revised the annual goals in each area of identified need, consistent with the data (Doc. d).

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<sup>2</sup> Since the MSDE has authority to investigate allegations of violations of the IDEA that occurred not more than one (1) year from the date that the complaint is received, in accordance with 34 CFR §300.152, this office did not investigate whether the parent was provided with the opportunity to participate in this meeting.

XXX

Dr. Kim Hoffmann

August 12, 2013

Page 6

### **The IEP Progress Reports**

3. The IEP progress reports, dated June 13, 2012 and October 26, 2012 indicate that the student was making sufficient progress to achieve the annual goals. The IEP progress reports, dated January 15, 2013, indicate that the student had achieved several of the annual goals and was continuing to make sufficient progress to achieve the remaining goals (Docs. ii and jj).

### **March 7, 2013 IEP Team Meeting**

4. On January 29, 2013, the complainant requested an IEP team meeting and notified the school staff of the intent to audio record the meeting (Doc. f).
5. The BCPS has no written policy or procedure regarding a parent's ability to audio record an IEP team meeting. The BCPS personnel report that a parent may audio record an IEP team meeting if they provide advance notice to school staff so that school staff may also audio record the meeting. The BCPS personnel also report that if a parent wants to audio record a meeting but has not provided advance notice, and school staff is unprepared to record the meeting, it will be rescheduled (Interview with the BCPS personnel).
6. On February 1, 2013, the complainant's educational advocate also made a request on behalf of the complainant, for an IEP team meeting and for a Spanish language interpreter to be provided for the complainant at the meeting. The complainant's educational advocate also requested that assessments be conducted in order to address the complainant's concerns regarding the appropriateness of the IEP team's decision that the student is working toward a Maryland High School Certificate of Program Completion rather than a Maryland High School Diploma (Doc. g).
7. On March 7, 2013, the IEP team, including the complainant, convened in response to the complainant's request. A Spanish language interpreter was present for the meeting in response to the request of the complainant's advocate. At the meeting, the team recommended that educational, psychosocial, psychological, speech-language, and assistive technology assessments be conducted in addition to a classroom observation based on teacher reports of the student's progress, classroom performance, and the complainant's concerns (Docs. i-k).
8. The team determined the student's present levels of academic achievement and functional performance based on the data and revised the annual goals in each area of identified need, consistent with the data (Doc. i).
9. Despite the notice to the school staff, the complainant did not audio record the meeting (Review of educational record and interview with parties).

XXX

Dr. Kim Hoffmann

August 12, 2013

Page 7

### **May 29, 2013 and June 10, 2013 IEP Team Meetings**

10. The recommended assessments were conducted between March 22, 2013 and May 20, 2013 (Docs. m-t).
11. On May 29, 2013, the IEP team convened to review the results of the assessments. At the meeting, the complainant indicated her intent to audio record the meeting. Since school staff were unprepared to conduct their own audio recording, the team decided to continue the meeting on June 10, 2013 (Docs. u-w and interview with the complainant and school staff).
12. On June 10, 2013, the IEP team, including the complainant, reviewed the results of the assessments. There is documentation that a Spanish language interpreter was made available to the complainant at the meeting. There is also documentation that the team addressed questions raised by the complainant raised about each assessment and reviewed with her decisions made at previous IEP team meetings. The documentation of the meeting indicates that the team determined that the student continues to meet the criteria for identification as a student with a disability under the IDEA and determined that his educational needs remained unchanged from the previous reevaluation (Docs. x and y).
13. The IEP team determined the student's present levels of academic achievement and functional performance based on the evaluative data. Because the IEP team did not have sufficient time to complete the review and revision of the student's program at the meeting, it agreed to reconvene to complete the process. An IEP team meeting was scheduled for June 21, 2013, but was rescheduled to July 18, 2013 at the complainant's request (Doc. x).

### **July 18, 2013 IEP Team Meeting**

14. On July 18, 2013, the IEP team, including the complainant reconvened to complete the review and revision of the student's program. There is documentation that a Spanish language interpreter was made available to the complainant at the meeting. The documentation of the meeting indicates that team again reviewed the results of the assistive technology assessment in order to address concerns raised by the complainant that assistive technology was not being recommended for the student (Docs. cc-gg).
15. At the meeting, the team also considered the complainant's concerns that the student be provided with the opportunity to earn a Maryland High School Diploma and to receive special education instruction in a general education classroom with his nondisabled peers. The team agreed to reconsider the decision that the student will pursue a Maryland Certificate of Program Completion and to consider the supports needed to implement the student's IEP in the general education classroom. However, the team did not complete the IEP review because the complainant requested that the meeting be continued on a later date because she was not feeling well (Docs. ff and gg).

XXX

Dr. Kim Hoffmann

August 12, 2013

Page 8

16. The parties are working to schedule the next IEP team meeting at a mutually convenient time (Interview with school staff).

### **The IEP Progress Reports**

17. There is no information in the third (3<sup>rd</sup>) or fourth (4<sup>th</sup>) quarter IEP progress reports that indicates that the student is not making sufficient progress to achieve the goals that were developed on March 7, 2013 (Doc. jj).

### **Discussion/Conclusions:**

#### **Allegation #1:           Reevaluation Every Three (3) Years**

The public agency must ensure that a reevaluation is conducted at least once every three (3) years, unless the parent and the public agency agree that it is unnecessary (34 CFR §300.303).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parent, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parent, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP. However, there is no requirement that additional data, including assessments, be obtained each time a reevaluation is conducted (34 CFR §300.305 and COMAR 13A.05.01.06).

In this case, the complainant alleges that a reevaluation has not been conducted at least every three (3) years because additional data, including assessments, was not obtained during reevaluations that occurred in 2008 and 2011 (Doc. a and interview with the complainant).

Based on the Findings of Facts #1, #7, #10, and #12, the MSDE finds that there is documentation that reevaluations occurred in 2008, 2011, and 2013. Therefore, the MSDE finds no violation regarding this allegation.

#### **Allegation #2:           Conducting Assessments and Reviewing Results within Timelines**

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

Based on the Findings of Facts #7, #10, and #12 - #16, the MSDE finds that the BCPS has not ensured that the assessment results have been considered by the IEP team in reviewing and



revising the IEP within the required timelines. Therefore, the MSDE finds a violation regarding this allegation since June 10, 2013.

**Allegations #3a and #3b:     **Reviewing the IEP Before April 13, 2013 to Ensure that the IEP was Reviewed at Least Annually and Addressing Lack of Expected Progress Since June 2012****

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324).

Allegation #3a:             Review of IEP at Least Annually

Based on the Findings of Facts #2, #7, and #8, the MSDE finds that there is documentation that the IEP team has reviewed the IEP at least annually. Therefore, the MSDE finds no violation regarding this allegation.

Allegation #3b:             Review of IEP to Address Lack of Expected Progress

Based on the Findings of Facts #3 and #17, the MSDE finds that there is no documentation that the student demonstrated a lack of expected progress toward achieving the annual IEP goals. Based on the Finding of Fact #8, the MSDE further finds that the IEP team revised the annual IEP goals based on reports of the student's progress. Therefore, the MSDE finds no violation regarding this allegation.

**Allegation #3c:             **Considering the Complainant's Input and Concerns since June 2012****

In reviewing the IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

In this case, the complainant alleges that the IEP team has not addressed her concerns regarding the team's decision that the student would receive a Maryland High School Certificate of Program Completion rather than a Maryland High School Diploma and the student's educational placement (Doc. a and interview with the complainant).

Based on the Findings of Facts #6, #7, and #12 - #15, the MSDE finds that there is documentation that, since June 2012, the IEP team considered the complainant's input at the IEP team meetings held on March 7, 2013, June 10, 2013, and July 18, 2013 and is continuing to address her concerns about the student's educational program. Therefore, the MSDE finds no violation regarding this allegation.

**Allegation #3d: IEP that Includes Present Levels of Academic Achievement and Functional Performance in order to Properly Identify and Address all of the Needs that Arise from the Student's Disability Since June 2012**

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

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

In this case, the complainant alleges that the IEP does not include a statement of the student's levels of academic achievement and functional performance because it has not included information obtained from assessments prior to March 2013 (Doc. a and interview with the complainant).

Based on the Findings of Facts #2, #8, and #13, the MSDE finds that there is documentation that since June 2012, the student's IEP has contained a statement of the student's present levels of academic achievement and functional performance that is based on current data and that it is continuing to review and revise the program to ensure that it addresses the student's needs and the complainant's concerns. Therefore, the MSDE finds no violation regarding this allegation.

**Allegation #4: Parental Participation in IEP Team Meetings**

In this case, the complainant alleges that the BCPS has not ensured that she has been provided with an opportunity to participate in the IEP team meetings because the BCPS has not ensured that she has access to the services of a Spanish language translator during the IEP team meetings. She further alleges that her ability to participate was impacted by school staff's insistence on her educational advocate to communicate in English at an IEP team meeting, and their insistence that audio recording of the IEP team meetings occur only when school system staff were able to record the meetings as well (Doc. a and interview with complainant).

### Attendance and Participation

In order to ensure that the concerns of the parents for enhancing the education of the student are considered, the public agency must provide parents with the opportunity to participate in the IEP team meetings. This includes taking whatever action is necessary to ensure that the parent understands the IEP team proceedings, including arranging for an interpreter, if needed (34 CFR §300.322). Based on the Findings of Facts #7, #12, and #14, the MSDE finds that the BCPS has made an interpreter available for the complainant during the IEP team meetings convened since June 2012 in response to the request made by the educational advocate in February 2013.

The public agency's obligation to ensure that parents understand the proceedings not only includes the requirement to obtain an interpreter when needed, but also includes the requirement to make sure that the interpreter understands special education terminology so that information is translated accurately. Therefore, the MSDE finds that school staff maintained the right to determine that interpreter services provided at the IEP team meeting would be delivered solely by the interpreter obtained by the school system and not by the complainant's educational advocate.

The complainant asserts that her educational advocate was not acting as her Spanish language interpreter during the IEP team meeting, but was merely engaging the complainant in discussion about the information being considered by the team in Spanish, her native language. Regardless of the content of the exchanges between the complainant and her educational advocate in Spanish during the IEP team meeting, the MSDE finds that the BCPS maintained the right to ensure that discussion that occurred during the IEP team meeting did not limit the involvement of required members of the team which could impact the accuracy of information provided to the complainant. Therefore, the MSDE does not find a violation regarding this aspect of the allegation.

### Audio Recording of IEP Team Meetings

Neither the IDEA nor the COMAR specifically addresses the use of audio recording devices at IEP team meetings. The United States Department of Education, Office of Special Education Programs (OSEP) has stated that a State Educational Agency (SEA) or public agency has the **option** to require, prohibit, limit, or otherwise regulate the use of recording devices at the IEP team meetings. However, if a public agency has a policy that prohibits or limits the use of recording devices at the IEP team meetings, the policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP team process or to implement other parental rights guaranteed under the IDEA (OSEP *Letter to Anonymous*, 40 IDELR 70, June 4, 2003).

Pursuant to the IDEA, the SEA is responsible for ensuring that each public agency carries out the requirements of the IDEA and that each public agency's educational program for students with disabilities meets the educational standard of the SEA (34 CFR §300.149). In February 2006, the MSDE issued guidance to public agencies regarding the recording of the IEP team meetings.

The guidance indicates that the MSDE does not have a policy that limits or prohibits the use of audio recording devices, and that each public agency may develop such a policy.

The MSDE guidance further states that if the public agency determines that the audio recording of the IEP meeting will be limited, it is required to ensure that it develops a **written** policy that is consistent with the intent of the IDEA and submits the **written** policy to the MSDE (Memorandum to Local Directors of Special Education, *Audio Recording of Individualized Education Program (IEP) Team Meetings*, February 7, 2006).

Based on the Findings of Facts #4, #5, #9, and #11, the MSDE finds that the BCPS limits the ability of parents to audio record the IEP team meetings, but has not developed a written policy that addresses the matter. Therefore, the MSDE finds that the BCPS has not taken the steps necessary to ensure that its practice of limiting the audio recording of the IEP team meetings is consistent with the intent of the IDEA and that a violation has occurred with respect to this aspect of the allegation.

Notwithstanding the violation, as found above, the complainant has not been prohibited from attending and participating in the IEP team meetings. Therefore, the MSDE requires no student-specific corrective action to redress the violation.

**ALLEGATION #5:**                    **ACCESS TO THE STUDENT’S EDUCATIONAL RECORD**

**Findings of Facts:**

18. The BCPS had developed written procedures that require a parent to submit a written request to the school’s principal in order to obtain access to a student’s educational record. The procedures further indicate that, upon receipt of the request, the school principal will make arrangements for access and notify the parent of the date, time, and place the records may be inspected (Doc. e).
19. On February 27, 2013, the complainant and her educational advocate attempted to review the student’s educational record while visiting the school, and were informed that a written request had to be made to the principal before access would be provided. There is no information or documentation that the complainant made a written request to the principal to review the record (Doc. h, review of educational record, on-site review of the XXXXXX/XX *Visitor’s Log* and interview with both parties).
20. There is documentation that on the same date, the complainant and her educational advocate met with school system personnel from the BCPS Central Office and made arrangements to review the student’s educational record on March 1, 2013. There is documentation that this date was rescheduled to March 4, 2013 at the request of the complainant’s educational advocate. However, there is no documentation that the complainant or her educational advocate appeared to review the record on that date as scheduled (Docs. h and l).

21. There is documentation that between March 24, 2013 and April 12, 2013, several additional dates were scheduled for the complainant and her educational advocate to review the student's educational record, but that they were rescheduled at the request of the complainant and her advocate. There is documentation that the complainant and her educational advocate reviewed the record on April 12, 2013 (Docs. h and l).

**Discussion/Conclusions:**

A public agency must permit parents to inspect and review any educational records relating to their student that are collected, maintained, or used by the agency. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP. The right to inspect and review educational records includes the right to a response from the public agency to reasonable requests for explanations and interpretations of the records, the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records, and the right to have a representative of the parent inspect and review the records (34 CFR §300.613).

In this case, the complainant alleges that the school staff were required to provide her with access to her son's educational record when she arrived at the school and made the request to review the record on February 27, 2013 (Doc. a and interview with the complainant).

Based on the Finding of Fact #18, the MSDE finds that there was no requirement for the BCPS to provide the complainant with access to the student's educational record on the date she made the request. In addition, based on the Findings of Facts #19 - #21, the MSDE finds that there is documentation that the complainant was provided with the opportunity to access the student's educational record within the required timelines. Therefore, the MSDE finds no violation regarding this allegation.

**ALLEGATION #6:**                      **WRITTEN NOTICE OF THE MAY 29, 2013 AND  
JUNE 21, 2013 IEP TEAM MEETINGS**

**Findings of Facts:**

22. There is documentation that on May 22, 2013, the complainant was provided with written notice, translated into Spanish, of the May 29, 2013 IEP team meeting, and that after arriving at the meeting, the complainant and school staff agreed to continue the meeting on June 10, 2013 (Docs. u, w, and interviews with the complainant and school staff).
23. There is documentation that the complainant participated in the June 10, 2013 IEP team meeting and that the BCPS took steps to ensure that the complainant understood the proceedings at that meeting by ensuring access to a Spanish language interpreter (Docs. x-z).

XXX

Dr. Kim Hoffmann

August 12, 2013

Page 14

24. There is documentation that on June 15, 2013, the complainant was provided with written notice of an IEP team meeting scheduled for June 21, 2013 which was rescheduled, at the complainant's request, to July 18, 2013 (Docs. aa-dd and review of educational record).
25. There is documentation that on July 2, 2013, the complainant was provided with written notice, translated into Spanish, of the July 18, 2013 IEP team meeting (Doc. cc).

**Discussion/Conclusions:**

As stated above, the public agency must take steps to ensure that a parent of a student with a disability is present at each IEP team meeting or is afforded the opportunity to participate, including notifying the parent of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place (34 CFR §300.322). The public agency must provide a parent with written notice of the IEP team meeting at least ten (10) days in advance of the meeting (COMAR 13A.05.01.07).

Based on the Findings of Facts #22 and #24, the MSDE finds that there is documentation that the complainant was provided with written notice of the May 29, 2013 and the June 21, 2013 IEP team meetings less than ten (10) days in advance of the meeting. Therefore, the MSDE finds a violation regarding this allegation.

Notwithstanding the violation, based on the Findings of Facts #23 and #25, the MSDE finds that neither meeting was conducted and that the complainant was provided with an opportunity to attend and participate in each of the subsequently rescheduled meetings. Therefore, the violation did not impact the complainant's ability to participate in the IEP team meetings. As a result, no student-specific corrective action will be required.

**ALLEGATIONS #7 and #8:                    PROVISION OF DOCUMENTS BEFORE AND AFTER THE MARCH 7, 2013 IEP TEAM MEETING**

**Findings of Facts:**

26. On March 4, 2013, the complainant received copies of the documents to be considered at the March 7, 2013 IEP team meeting, which was three (3) business days prior to the meeting. There is no documentation that the school staff offered to reschedule the meeting (Doc. i).
27. On March 12, 2013, school staff provided the complainant with a copy of the final IEP from the March 7, 2013 meeting, which was three (3) business days after the meeting (Doc. kk).

**Discussion/Conclusions:**

**Allegation #7: Provision of Documents before the IEP Team Meeting**

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

Based on the Finding of Fact #26, the MSDE finds that the BCPS did not ensure that the complainant was provided with copies of the documents to be considered at the meeting at least five (5) business days before the meeting. Therefore, the MSDE finds a violation regarding this allegation.

**Allegation #8: Provision of the IEP after the IEP Team Meeting**

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

Based on the Finding of Fact #27, the MSDE finds that there is documentation that the final IEP was sent to the complainant within the required timeframe. Therefore, the MSDE finds no violation regarding this allegation.

**ALLEGATION #9: PROVISION OF PRIOR WRITTEN NOTICE IN THE  
COMPLAINANT'S NATIVE LANGUAGE SINCE  
JUNE 2012**

**Findings of Facts:**

28. School staff acknowledge that the complainant has not been provided with prior written notice of the IEP team's decisions in Spanish since June 2012 (Review of educational record and interview with school staff).

**Discussion/Conclusions:**

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student. The notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so (34 CFR §300.503).

Based on the Finding of Fact #28, the MSDE finds that the BCPS has not ensured that the complainant has been provided with prior written notice in her native language since June 2012. Therefore, the MSDE finds a violation regarding this allegation.

**ALLEGATION #10:**                    **PROVISION OF TRANSITION SERVICES SINCE**  
**JUNE 2012**

**Findings of Facts:**

29. The IEP in effect since June 2012 requires that the student be provided with transition services, including training in researching information, following directions, counting money, reading schedules, and developing paragraphs (Docs. d and i).
30. The IEP progress reports for the annual goal related to written language expression and work samples and data sheets from the 2012-2013 school year document that the student was provided with the transition services required by the IEP (Docs. hh and jj).

**Discussion/Conclusions:**

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). Based on the Findings of Facts #29 and #30, the MSDE finds that there is documentation that the student was provided with the transition services required by the IEP for the 2012-2013 school year. Therefore, the MSDE finds no violation regarding this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the BCPS to provide documentation by September 15, 2013 that the IEP team has completed the review and revision of the student's IEP based on the assessment results. In addition, the IEP team must determine if the student's ability to benefit from his program was adversely impacted by the delay in completing the review and revision of the program. If the team determines that there was an adverse impact, it must also determine the nature and amount of *compensatory services*<sup>3</sup> or other remedy necessary to redress the delay.

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

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



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Dr. Kim Hoffmann

August 12, 2013

Page 17

In addition, the MSDE requires the BCPS to provide documentation by October 31, 2013, that school staff has provided the complainant with prior written notice, in Spanish, of the IEP team's decisions made at the March 7, 2013, June 10, 2013, and July 18, 2013 IEP team meetings.

### **School-Based**

The MSDE requires the BCPS to provide documentation by November 15, 2013, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXX/XX.

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

### **Systemic**

The MSDE requires the BCPS to provide documentation by January 15, 2014 that a written policy has been developed, consistent with the limitations placed on audio recording the IEP team meetings, and that parents have been notified of the policy.

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

### **TECHNICAL ASSISTANCE:**

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

Please be advised that the complainant and the school system have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the Findings of Facts or Conclusions reached in this Letter of Findings.

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Dr. Kim Hoffmann

August 12, 2013

Page 18

The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the Conclusions is necessary.

Upon consideration of this additional documentation, this office may leave its Findings and Conclusions intact, set forth additional Findings and Conclusions, or enter new Findings and Conclusions. Pending the decision on a request for reconsideration, the school system must implement any Corrective Actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:ks

cc : Tisha Edwards  
Charles Brooks  
Nancy Ruley  
XXXXXXXXXX  
XXXXXXXXXX  
Martha J. Arthur  
Dori Wilson  
Anita Mandis  
Kathy Stump