



January 6, 2014

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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: #14-038

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 November 7, 2013<sup>1</sup>, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX. 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 allegations listed below.

1. The BCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his social/emotional/behavioral needs since November 7, 2012<sup>2</sup>, in accordance with 34 CFR §§300.101, .320, and .324.

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<sup>1</sup> On November 1, 2013, the complainant provided the MSDE with correspondence containing allegations of violations of the IDEA, which did not include all of the necessary information to initiate a State complaint investigation. On November 7, 2013, the complainant provided the required information and a complaint investigation was initiated (34 CFR §300.153).

<sup>2</sup> The complaint included allegations of violations that occurred more than a year before the date it was received. The complainant was advised, in writing, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

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2. The BCPS has not ensured that proper procedures have been followed when determining the student's educational placement for the 2013-2014 school year, in accordance with 34 CFR §§300.114-.116 and .321 and COMAR 13A.05.01.10(C)(1)).
3. The BCPS has not ensured that the student's parent has been provided with access to the student's educational record since November 7, 2012<sup>1</sup>, in accordance with 34 CFR §300.613.
4. The BCPS did not ensure that the parent was provided with the opportunity to participate in the August 13, 2013 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
5. The BCPS did not ensure that the parent was provided with prior written notice of the decisions made at the August 13, 2013 IEP team meeting in her native language, in accordance with 34 CFR §300.503.
6. The BCPS did not ensure that the student was provided with the special education instruction and related services required by the IEP from the start of the 2013-2014 school year until October 30, 2013, in accordance with 34 CFR §§300.101 and .323.
7. The BCPS has not followed proper procedures when disciplinarily removing the student from school, since the start of the 2013-2014 school year, in accordance with 34 CFR §300.530 and COMAR 13A.08.03.
8. The BCPS has not ensured the confidentiality of the student's educational record when disclosing personally identifiable information about the student to school staff since the start of the 2013-2014 school year, in accordance with 34 CFR §99.30 - .39 and 34 CFR §300.610.
9. The BCPS did not ensure that general and special education teachers of the student participated in the October 30, 2013 IEP team meeting, in accordance with 34 CFR §300.321 and COMAR 13A.05.01.07.
10. The BCPS did not ensure that written notice of the October 30, 2013 IEP team meeting was provided to the parent, in accordance with COMAR 13A.05.01.07.
11. The BCPS did not ensure that documents considered by the IEP team, including reports of the student's progress, were provided to the parent at least five (5) business days prior to the October 30, 2013 IEP team meeting, in accordance with Md. Code, Ann., Educ. §8-405(d) (2010) and COMAR 13A.05.01.07D(3).

**INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 1, 2013, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE conducted a telephone interview with the complainant to clarify the allegations to be investigated and discussed the need for the complainant to provide a proposed remedy in order for a State complaint investigation to be initiated.
3. On November 7, 2013, the MSDE received a proposed remedy from the complainant. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
4. On November 19, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
5. On November 7, 2013, Ms. Moyo conducted a telephone interview with the complainant regarding allegations being investigated.
6. On November 23 and 25, 2013, the student's mother sent additional information and documentation to the MSDE staff, via electronic mail (email), related to the allegations being investigated.
7. On December 4 and 6, 2013, the MSDE received correspondence, via email, from the student's mother with additional information related to the allegations being investigated.
8. On December 20, 2013, Ms. Moyo and Ms. Mandis conducted a site visit at the XXXXXXXXXXXXXXXXXXXX XXXXXXXX to conduct a review of the student's educational record, and interviewed Mr. XXXXXXXXXXXX, Assistant Principal and Mr. XXXXXXXXXXXX, IEP Chairperson. Mr. Darnell Henderson, Legal Counsel, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
9. On the same day, Ms. Moyo and Ms. Mandis conducted a site visit at the XXXXXXXX XXXXXXXXXXXXXXXXXXXX (XXXX), and interviewed Ms. XXXXXXXXXXXXXXX, Educational Associate; and Mr. XXXXXXXXXXXX, XXXXXXXX (XXXXX) Teacher. Mr. Darnell Henderson, Legal Counsel, BCPS, attended this site visit as well.

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 November 1 and 7, 2013;
  - b. XXXXX log of receipt of the student's IEP, dated August 26, 2012, January 4, 2013, and April 16, 2013;
  - c. IEP and IEP team meeting documents, dated February 2, 2012;
  - d. Special education teacher service log from November 15, 2012 to June 7, 2013;
  - e. XXXX teacher progress reports, dated January 14, 2013;
  - f. Communication log maintained by XXXX staff from January 18, 2013 to May 2, 2013;
  - g. XXXX IEP team trimester progress reports, dated January 22, 2013 and April 12, 2013;
  - h. IEP and IEP team meeting documents, dated February 1, 2013;
  - i. Reports of the student's progress towards achieving the IEP goals, dated February 22, 2013;
  - j. XXXX teacher progress reports, completed by April 17, 2013;
  - k. Education Assessment, dated April 17, 2013
  - l. Psychological assessment, dated April 19, 2013;
  - m. IEP and IEP team meeting documents, dated May 2, 2013;
  - n. Reports of the student's progress towards achieving the IEP goals, dated June 12, 2013;
  - o. XXXX report card for the 2012-2013 school year;
  - p. XXXX attendance log for the 2012-2013 school year;
  - q. XXX enrollment documents, dated August 8, 2013;
  - r. XXX request for student educational record, dated August 8, 2013;
  - s. Amendment to the IEP, dated August 13, 2013;
  - t. XXX log of receipt of the student's IEP, dated August 26, 2013, October 31, 2013, and December 4, 2013;
  - u. NAF teacher progress reports, dated October 11, 2013;
  - v. IEP team meeting notice, dated October 15, 2013;
  - w. IEP and IEP team meeting documents, October 30, 2013;
  - x. Transfer of the education record forms, dated October 30, 2013;
  - y. XXX attendance log from August 26, 2013 to October 31, 2013; and
  - z. XXX report card from the 2013-2014 school year.

**BACKGROUND:**

The student is sixteen (16) years old and is identified as a student with an Other Health Impairment related to Attention Deficit Hyperactivity Disorder (ADHD) under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

During the 2012-2013 school year, the student attended the XXXXXXXXXXXXXXXXXXXX, which serves students between the ages of 14 and 21 who are at risk of dropping out of school (XXXXXXXXXXXXXXXXXXXX). During the Spring of 2013, the student stopped regularly attending school.

Since the start of the 2013-2014 school year, the student has attended the XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX (known as XXX). This BCPS school focuses on the mission of the XXXXXXXXXXXXXXXXXXXX to prepare students for college and careers. All BCPS students are provided with the option to attend this school ( a, c, d, h – j, m – t, v – z, and XXXXXXXXXXXXXXXXXXXX and interview with the BCPS staff).

**ALLEGATIONS #1 AND #2:**

**IEP THAT ADDRESSES SOCIAL,  
EMOTIONAL, AND BEHAVIORAL NEEDS  
SINCE NOVEMBER 2012 AND  
EDUCATIONAL PLACEMENT  
DETERMINATION FOR THE 2013-2014  
SCHOOL YEAR**

**FINDINGS OF FACTS:**

**November 2012 to the End of the 2012-2013 School Year**

**February 2, 2012 IEP**

1. The IEP in effect in November 2012 was developed on February 2, 2012 by the IEP team at XXXXXXXXXXXXXXXXXXXX (XXXX). At the February 2, 2012 IEP team meeting, the student’s teachers reported that they observed that the student’s classroom performance “improved significantly” when he was able to increase his focus on the work, but that he was resistant to engage in class work and was not attending school regularly. The teachers further indicated that as a result of his poor attendance, the student was not making progress toward achieving the annual IEP goals and was jeopardizing his ability to pass his classes and move on to the next grade. The student’s mother also expressed concern about the student’s attendance and indicated that the student often refuses to go to school despite her encouragement (Doc. c).
2. At the February 2, 2012 IEP team meeting, the team added an annual goal for the student to begin attending school regularly and determined that the student would be provided with incentives and supports. The team revised the IEP to require collaboration between the general and special education teachers, on a monthly basis, to assist the student with achieving the goals. The IEP team revised the IEP to require that the student be provided with modified assignments. The team also revised the IEP to include instruction from a special education teacher in addition to general education teacher (Doc. c).

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3. Documentation of the February 2, 2012 IEP team meeting reflects that the IEP team decided that the least restrictive environment in which the IEP could be implemented was the general education classroom due to the small class sizes at the school in which intensive supports are provided (Doc. c).

#### February 1, 2013 IEP

4. On February 1, 2013, the IEP team convened to conduct the annual review of the student's IEP. At the meeting, the team considered information, including the student's attendance record, which indicated that his attendance had improved. The team also considered reports from the student's teachers that the student was making sufficient progress towards achieving the annual IEP goals. The student's mother expressed concern that while his attendance had improved, he was falling asleep in class. The student's teachers noted that student "has made significant growth across the board in his academic skills" when he makes an effort to learn (Docs. g and h).
5. At the February 1, 2013 IEP team meeting, the student's XXXXXXXXXXXXXXXXXXXX (XXXXXX) teacher reported that the student had been receiving these services for several years and that he XXXX XXXX XXX. Based on this information, the XXXXX teacher expressed the belief that the student's learning difficulty was related to his disability and not due to a language barrier. The teacher reported that the XXXXX services could be discontinued to add time to the student's schedule for additional special education instruction if the IEP team determined that this would be appropriate (Doc. h).
6. At the meeting, the team determined that additional assessments were necessary to determine if the student continued to be a student with a disability under the IDEA and decided that a classroom observation and assessments in the areas of cognitive ability, education, adaptive skills, and social/emotional functioning would be conducted (Doc. h).

#### May 2, 2013 IEP

7. On May 2, 2013, the IEP team convened to complete the reevaluation. At the meeting, the team considered the results of the psychological assessment which indicate that the student is functioning at a "low level overall," and that his nonverbal skills are stronger than his verbal skills. The report indicates that the student displays processing issues, which are demonstrated by weaknesses with his short-term memory and perceptual reasoning. It also identifies "significant" problems with impulsivity and executive functioning and it suggests the student be provided with instruction in small chunks, receive assistance with organization of his work and getting started on tasks, and learn in small groups when he is in a large class (Doc. m).
8. At the IEP meeting, the team also considered information from the educational assessment that the student has "attention deficit hyperactive disorder/specific learning disability" which impacts his performance in reading, mathematics, and written language. The report further states the student struggles to remain on task for extended periods of time and will rush through tasks to finish them quickly which can lead to "rash

- decisions.” The report indicates that the student has made improvements with his reading and can continue to make progress, if his “positive behaviors” continue (Docs. k and m).
9. At the May 2, 2013 IEP team meeting, the XXXXX teacher also reported that assessment data from the XXXXXX XXXXXX (XXXX) that had been administered reflected that the student continued to struggle with reading in both English and Spanish, and was making only “marginal growth” with the provision of XXXXX services. The teacher indicated that because the student was not benefitting from the XXXXX services, they would be discontinued, but that he would continue to monitor the student’s progress (Doc. m and interview with school staff).
  10. Based on its review, the IEP team determined that the student met the criteria for identification as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder. The team revised the IEP to include additional supports to “address the student’s hyperactivity and lack of focus,” such as assisting the student with organization, frequent eye contact, checks for understanding, and preferential seating. Based on the student’s reported improvement in attendance, the team decided that the goal to improve attendance was no longer needed. The team determined that the student would receive special education instruction in both the general and the special education classrooms with increased instruction provided by the special education teacher (Doc. m).
  11. The meeting summary from the May 2, 2013 IEP team meeting documents that while the student attended the meeting, his mother did not. There is documentation that she contacted school staff, on the day of the meeting, and indicated that she “could not attend the meeting and expressed no concerns.” The communication log further indicates that the student’s mother gave verbal permission for the IEP team meeting to move forward in her absence. However, there is no documentation that school staff offered an alternative date or alternative means for the mother to participate in the meeting (Docs. m and f).
  12. The school staff report that in the Spring of 2013, the student reported being too fearful to return to the school after he and his peers were robbed and threatened by other students at the school while on the bus stop. While the school staff further report that the perpetrators were arrested and that action was taken to ensure the safety of the students in the school, there is no information or documentation that the school staff informed the student or the mother of the steps that were taken (Doc. a, audio recording of the IEP team meeting, and interviews with school staff and the complainant).
  13. There is no documentation that the IEP team convened to address the student’s refusal to return to school during the Spring of 2013 (Review of the educational record).
  14. On August 8, 2013, the student’s mother obtained a transfer of the student to the XXXX XXXXXXXXXXXXXXX for the 2013-2014 school year. There is no documentation that the change in school was made as a result of an IEP team determination (Doc. q and review of the educational record).

### **Since the Start of the 2013-2014 School Year**

15. On October 30, 2013, the IEP team at the XXX convened and considered information from the student's teachers that he was refusing to engage in class work and was not making progress. The team also considered information from the school staff that the student leaves the classroom and the school without permission, and the student's mother's report that the student is "picked on" by the school staff (Doc. w).
16. At the October 30, 2013 IEP team meeting, the team also considered information from the complainant, the student's mother, and the student that he was uncomfortable receiving instruction with much younger students and concern from the school staff that he was exhibiting inappropriate behavior towards younger students. The team also considered information that the student was performing at the 8<sup>th</sup> grade level the previous school year. The team considered the option of placing the student in the AIM Program, a new program that was developed at the school to assist older students with catching up to their peers. However, the team decided that the student was performing too far behind his same age peers to be successful in the program. Instead, the team decided that the IEP would be implemented in a combination of general and separate special education classrooms with 7<sup>th</sup> and 8<sup>th</sup> graders in order to provide the student with additional structure and supports in an environment with older, but not same-aged students. The team also recommended that an educational assessment, including an observation be conducted because they were concerned that the student may not have been completely cooperative with the administration of the last educational assessment (Doc. w and interview with school staff).
17. On or about December 4, 2013, the student's mother and the school staff agreed that the special education instruction would be provided in the AIM Program on a trial basis in order to address the mother's continued concerns that the student be provided with instruction in a class with older students (Interview with school staff.).
18. The IEP team is scheduled to re-convene on January 29, 2014, to consider the results of the assessments that were recommended at the October 30, 2013 IEP team meeting (Docs. aa and interview with school staff).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1 IEP that Addresses the Student's Social, Emotional, and Behavioral Needs**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider



the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §§300.101, .320, and .324).

If a parent cannot attend the IEP meeting, then the public agency is required to use other methods to ensure parent participation, including individual or conference telephone calls or other alternative means, such as video conferences. The public agency may hold an IEP meeting without the parent in attendance only if the public agency has been unable to convince the parent to attend and has documented all such attempts to do so (34 CFR §300.322 and .328).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual IEP goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress towards 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).

#### November 2012 to the end of the 2012-2013 school year

Based on the Findings of Facts #1 - #6, the MSDE finds that when developing the IEP in effect from November 7, 2012 until May 2, 2013, the IEP team considered information from the parent, reports from the student's teachers and evaluation data, and based on this information, developed the annual goals, and determined the special education instruction, and the supports needed to address the student's identified social and emotional needs, consistent with that data.

However, based on the Findings of Facts #7 - #11, the MSDE finds that the BCPS did not ensure that the student's mother was provided with the opportunity to participate, during the reevaluation conducted on May 2, 2013. Further, based on the Finding of Fact#12 and #13, the MSDE finds that the IEP team did not consider positive behavior interventions to address the student's refusal to return school during the Spring of 2013. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

#### 2013-2014 School Year

Based on the Finding of Fact #15, the MSDE finds that the IEP team convened to address the student's lack of expected progress. Based on the Findings of Facts #16 and #17, the MSDE finds that the IEP team considered information from the student's mother, the student, the reports from the student's teachers and evaluation data, and based on this information, determined that additional data was necessary. Based on the Finding of Fact #18, the MSDE finds the IEP team determined to reconvene to review and revise the IEP, if necessary upon review of the additional data. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

#### **Allegation #2                      Educational Placement Decision for the 2013-2014 School Year**

When determining the educational placement of a student with a disability, the public agency must ensure that the placement determined by the IEP team is as close as possible to the school the student would attend if not disabled, and that consideration is given to any potential harmful

effect on the student or the quality of services the student receives. The public agency must also ensure that student is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education classroom (34 CFR §300.116).

In this case, the complainant alleges that the IEP team did not consider the distance the student would have to travel to attend the XXX. In addition, the complainant alleges that the student has not been provided with an appropriate placement because he is not receiving instruction with same aged peers.

Based on the Finding of Fact #14, the MSDE finds that the decision for the student to attend the XXX was made unilaterally by the student's mother, who exercised her right to choose to have the student attend the school. Therefore, this office does not find that a violation occurred with respect to educational placement decisions made at the XXXXXXXXXXXXXXXXXXXXXXXX.

Based on the Findings of Facts #15 and #16, the MSDE finds that the IEP team at the XXX has considered the student's levels of performance and the mother's concerns and the negative impact of the student's receiving instruction with younger peers when making the placement determination. Based on the Findings of Facts #17 and #18, the MSDE also finds that the IEP team has continued to consider the supports needed to provide instruction to the student with older peers. Therefore, this office does not find that a violation has occurred with respect to this allegation.

**ALLEGATION #3: ACCESS TO THE EDUCATIONAL RECORD**

**FINDINGS OF FACTS:**

19. Neither the XXXXXXXXXXXXXXXXXXXXXXXX office staff who handles records requests nor the student's XXXXX teacher report having received a request from the complainant or the student's mother to inspect and review documentation in the student's educational record about the student's performance in his XXXXX class (Interviews with school staff).
20. XXXXXXXXXXXXXXXXXXXXXXXX visitor's log does not indicate that the complainant or the student's mother came to the school and requested to review the student's educational record (Review of the visitor's log).
21. The XXX Registrar, who handles records requests, reports that she did not receive a request to review the educational record from either the complainant or the student's mother (Interview with school staff).
22. Neither the XXX visitor's log nor the communication log indicate that the complainant or the student's mother came to the school and requested to review the student's educational record (Review of the visitor's and communication logs).

**DISCUSSION/CONCLUSIONS:**

The public agency must permit parents to inspect and review the education records of their children. The public agency must comply with a parent's request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing, and in no case more than forty-five (45) days after the request has been made (34 CFR §300.613).

In this case, the complainant alleges that the student's mother made a request to inspect the documentation of the provision of XXXXX services to the student, but the XXXXXXXXXXXX XXXXXX staff would not permit her to see the documentation. Based on the Findings of Facts #19 and #20, the MSDE finds that there is no documentation that a request was made to inspect the student's record. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant also alleges that at the start of the 2013-2014 school year the student's mother made a request to review the student's educational record at the XXX, but access was not provided prior to an October 30, 2013 IEP team meeting because the record had not been transmitted from the student's previous school. Based on the Findings of Facts #21 and #22, the MSDE finds that there is no documentation of a request to inspect the student's record prior to October 30, 2013. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

**ALLEGATIONS #4 AND #5:           WRITTEN INVITATION TO AN AUGUST 13, 2013  
IEP TEAM MEETING AND PRIOR WRITTEN  
NOTICE OF THE DECISIONS MADE BY THE IEP  
TEAM ON AUGUST 13, 2013**

**FINDINGS OF FACTS:**

23. There is no documentation that an IEP team convened on August 13, 2013 (Review of the educational record).
24. On August 13, 2013, the XXX staff amended the IEP to reflect the change in the student's school. At that time, the student's mother's address was also changed, without explanation, back to an old address that was on file (Doc. s).
25. There is no information or documentation of the basis for amending the address nor is there documentation the student's mother agreed to an amendment of the IEP without convening the IEP team (review of the educational record).

**DISCUSSION/CONCLUSIONS:**

**Allegation #4                      Written Invitation to an August 13, 2013 IEP Team Meeting**

The public agency is required to take steps to ensure that a parent has the opportunity to participate in IEP team meetings. To ensure that parents are afforded an opportunity to participate in IEP team meetings, parents must be provided with written notice of the meetings.

In Maryland, a written invitation must be sent to the parents at least ten (10) days in advance of the meeting, unless an expedited meeting is being conducted to address urgent needs of the student to ensure the provision of FAPE (34 CFR § 300.322; COMAR 13A.05.01.07D).

Based on the Findings of Facts #23 and #24, the MSDE finds that there is no documentation that the IEP team convened on August 13, 2013. Therefore, this office finds that the requirements do not apply and does not find that a violation occurred with respect to this allegation.

**Allegation #5                      Prior Written Notice of the Decisions Made by the IEP Team  
on August 13, 2013**

Written notice must be provided to parents before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a FAPE to the student. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

Based on the Findings of Facts #23 - #25, the MSDE finds that there is no documentation that the IEP team convened on August 13, 2013. Therefore, this office finds that the requirements do not apply and does not find that a violation occurred with respect to this allegation.

**Additional Issue:            Proper Procedures for Amending the IEP without a Meeting**

After the annual IEP team meeting for a school year, the parent of a student with a disability and the public agency may agree not to convene an IEP team meeting for the purpose of amending or modifying the student's current IEP, and instead may develop a written document to amend or modify the child's current IEP. Following an amendment of the IEP, the public agency must ensure that all members of the IEP team are informed of the changes. Upon request, a parent must be provided with a revised copy of the IEP with the amendment incorporated (34 CFR §300.324).

Based on the Findings of Facts #23 - #25, the MSDE finds that there is no documentation that the student's mother agreed to an amendment of the IEP nor is there documentation that she was informed of the changes. Therefore, the MSDE finds a violation occurred with regard to this additional issue.

**ALLEGATION #6                      PROVISION OF SPECIAL EDUCATION INSTRUCTION  
AND RELATED SERVICES UNTIL OCTOBER 30, 2013**

**FINDINGS OF FACTS:**

**2012-2013 School Year**

26. The IEP required that the student be provided with special education instruction from both special and general education teachers (Docs. c, h, and m).
27. There is no documentation that the IEP required the provision of XXXXX services (Docs. c, h, m, and review of the educational record).
28. The XXXXXXXXXXXXXXXXXXXXXXX staff report that when a student arrives at school without wearing a proper uniform, the school staff are required to contact the student's mother and to require that the student serve detention after school (Interview with school staff).
29. While there is no information or documentation that the school administration requires that students be sent home if they do not come to school wearing an appropriate uniform, there is information that one of the hall monitors required the student to leave school because he was not wearing an appropriate uniform (Interview with school staff).

**2013-2014 School Year**

30. At the start of the 2013-2014 school year, the student took language arts, math, Spanish, engineering, science and geography (Doc. z).
31. While a written copy of the student's educational record was not transferred from the XXXXXXXXXXXXXXXXXXXXXXX to the XXX until October 13, 2013, there is documentation that the XXX staff accessed the IEP electronically on August 13, 2013 (Docs. s, t, and review of The Maryland Online IEP access log).
32. The XXX IEP Chairperson and the student's general education language arts and science teachers signed a log indicating receipt of the student's IEP, on August 26, 2013. However, progress reports completed by the Math, Engineering, and Science teachers on October 11, 2013 indicate that they provided the student with supports required by the IEP during the first quarter of the 2013-2014 school year (Docs. t and u).
33. There is documentation that, on October 31, 2013, following the October 30, 2013 IEP team meeting, the new special education and math teachers signed a log indicating receipt of the IEP. On December 4, 2013, the science teacher signed the log. However, there is no documentation that the geography teacher received the IEP (Docs. t and review of the educational record).

**DISCUSSION/CONCLUSIONS:**

The public agency must ensure that special education and related services are available to each student in accordance with the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that at the XXXXXXXXXXXXXXXXXXXXXXXX, the student was not provided with the services of the XXXXX Program. She also alleges that the student was not provided with the amount of special education instruction required by the IEP because he was sent home early for not wearing an appropriate school uniform.

Based on the Findings of Facts #26 and #27, the MSDE finds that the IEP did not require that the student be provided with the XXXXX services. However, based on the Findings of Facts #28 and #29, the MSDE finds that the student was required to leave school on days on which he did not arrive wearing a proper uniform, and was not provided with the special education instruction required on those days. Therefore, this office finds that a violation occurred with respect to the implementation of the IEP at the XXXXXXXXXXXXXXXXXXXXXXXX.

In addition, the complainant alleges that the individuals responsible for implementing the IEP at the XXX were not informed of the requirements of the IEP at the start of the 2013-2014 school year because of a delay in the transmittal of the written educational record from his previous school. Based on the Finding of Fact #31, the MSDE finds that the XXX staff had electronic access to the student's IEP prior to the transmittal of the record from his previous school.

However, based on the Findings of Facts #30 - #33, the MSDE finds that while there is documentation that the student has been provided with supports from some teachers since the start of the school year, there is no documentation that all of the student's teachers received copies of the student's IEP or otherwise informed of their roles in implementing the IEP until December 4, 2013. Therefore, the MSDE finds that violation occurred from the start of the school year until December 4, 2013.

**ALLEGATION #7:                   DISCIPLINE PROCEDURES DURING  
THE 2013-2014 SCHOOL YEAR**

**FINDINGS OF FACTS:**

34.     There is no documentation that the student was disciplinarily removed from school during the 2013-2014 school year (Review of the educational record).
35.     The NAF early dismissal log reflects that the student was dismissed early on only one day, November 4, 2013. The log indicates that the student's mother picked him up early on his birthday (Review of the dismissal log.).

**DISCUSSION/CONCLUSIONS:**

The IDEA provides specific protections to students who are disciplinarily removed from school in excess of ten (10) school days during the school year (34 CFR § 300.530(d)(3)). In order to

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ensure that students are provided with services in accordance with the requirements of IDEA, such as the disciplinary procedural protections, each public agency must accurately record information, including student attendance and disciplinary removals, as specified in the Maryland Student Records System Manual (COMAR 13A.08.02.04).

Based on the Findings of Facts #34 and #35, the MSDE finds that there is no documentation that the student has been disciplinarily removed from school since attending the NAF. Therefore, the MSDE finds no violation occurred with respect to this aspect of the allegation.

However, as indicated in Allegation #6, the MSDE finds that while there is no documentation that the XXXXXXXXXXXXXXXXXXXXXXX administration was aware of it, a school staff member required the student to leave school early when he did not wear an appropriate uniform, thus disciplinarily removing him from school. Based on the Findings of Facts #29, #34, and #35, the MSDE finds that these removals were not accurately recorded and therefore, in addition to not being provided with the amount of instruction required, the student would not have been provided with procedural protections for any removals that exceeded ten (10) school days in the school year.

**ALLEGATION #8: CONFIDENTIALITY OF THE EDUCATIONAL RECORD**

**FINDINGS OF FACTS:**

36. The NAF school staff report that a parent-teacher meeting was convened on October 10, 2013, and that interpretation services have been utilized to communicate with the student's mother. However, there is no information or documentation about the individual who served as the interpreter for the student's mother at the meeting (Interview with school staff and review of the educational record).

**DISCUSSION/CONCLUSIONS:**

The IDEA requires that the public agency take whatever action is necessary to ensure that parents understand the proceedings of an IEP team meeting, including arranging for an interpreter when the parent's native language is XXX XXXXXX (34 CFR §300.322). In addition, Section 504 of the Rehabilitation Act of 1973 requires equal access to parents to communication or participation during other activities, such as parent-teacher conferences. This can include requiring that the parent be provided with the service of an interpreter at such meetings (Mt. Diablo (CA) Unified Sch. Dist., 44 IDELR 261 (United States Department of Education, Office for Civil Rights, 2005)).

There is no requirement that a public agency provide a parent with the services of a "certified" or "independent" interpreter. The public agency can utilize a staff member to provide these services (Escondido (CA) Union Elem. Sch. Dist., 17IDELR 767 (United States Department of Education, Office for Civil Rights, 1991)).

However, the public agency is also required to protect the confidentiality of personally-identifiable information regarding students. Parental consent must be obtained before

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personally-identifiable information is released, with specific exceptions. One such exception is when the information is released to school officials who have a legitimate educational interest in the information. Each public agency must have a policy regarding the use of the information that includes a definition of who constitutes school officials with a legitimate interest in the information, which is provided to parents annually, and those school officials must receive appropriate training or instruction (34 CFR §§99.7, .31, §§300.610 - .612, .622, and .623).

In this case, the student's mother alleges that a parent-teacher meeting was held on October 10, 2013, and that a member of the school's housekeeping staff served as an interpreter during the meeting without consent from the student's mother to release personally-identifiable information about the student to this staff member. Based on the Findings of Facts #36, the MSDE finds that there is no information or documentation that this individual constituted a school official with a legitimate educational interest in the student's information. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATIONS #9, #10, AND #11: PARTICIPANTS IN THE OCTOBER 30, 2013 IEP TEAM MEETING; WRITTEN NOTICE OF THE OCTOBER 30, 2013 IEP TEAM MEETING; AND PROVISION OF DOCUMENTS FIVE (5) BUSINESS DAYS PRIOR TO THE OCTOBER 30, 2013 IEP TEAM MEETING**

**FINDINGS OF FACTS:**

37. An IEP team meeting was held on October 30, 2013 at the XXX. Because the IEP team meeting was scheduled with the student's mother, she was aware of, and participated in, the meeting (Doc. w).
38. While the student's mother participated in the October 30, 2013 IEP team meeting, there is documentation, that because the IEP was amended on August 13, 2013 to reflect an incorrect address for the student's mother, the written invitation to the meeting and the documents considered by the team at the meeting were not provided to the student's mother prior to the meeting (Docs. a and s).
39. An individual who would be serving as the student's special education teacher and who was serving as the IEP Chairperson participated on the October 30, 2013 IEP team (Doc. w and audio recording of the IEP team meeting).
40. The student's general education math teacher participated in the October 30, 2013 IEP team meeting, but left before the meeting was complete. There is no information or documentation that the student's mother was in agreement for the teacher to be excused from the meeting (Docs. a, w and audio recording of the IEP team meeting).



**DISCUSSION/CONCLUSIONS:**

**Allegation #9                      Participants at the October 30, 2013 IEP Team Meeting**

The IEP team must include at least one (1) special education teacher of the student and not less than one (1) regular education teacher of the student if the student is, or may be, participating in the general education environment (34 CFR §300.321). The United States Department of Education, Office of Special Education Programs (OSEP) emphasizes that it is the public agency that determines the specific personnel to fill the roles for the public agency's required participants at an IEP team meeting. The only direction the OSEP gives is that this individual must be someone who "is or may be responsible for implementing a portion of the IEP so that the teacher can participate in discussions about how best to instruction the child" (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, pp.46674-5, August 14, 2006).

A member of the IEP team is not required to attend an IEP team meeting, in whole or in part, if the parent and the public agency agree, in writing, that the attendance of that member will not be necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting. A member of the IEP team may be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the parent, in writing, and the public agency consent to the excusal and the member submits written input to the parent and the public agency prior to the meeting (34 CFR §300.321).

Based on the Finding of Fact #39, the MSDE finds that a special education teacher who would be teaching the student participated in the October 30, 2013 IEP team meeting. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #40, the MSDE finds that a general education teacher of the student attended the October 30, 2013 IEP team meeting, but did not participate in the entire meeting. Based on the Finding of Fact #40, the MSDE further finds that there is no documentation that the student's mother agreed to the excusal of the general education teacher from the meeting. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

**Allegation #10                      Written Invitation to the October 30, 2013 IEP Team Meeting**

As stated above, the public agency is required to take steps to ensure that a parent has the opportunity to participate in IEP team meetings. To ensure that parents are afforded an opportunity to participate in IEP team meetings, parents must be provided with written notice of the meetings. In Maryland, a written invitation must be sent to the parents at least ten (10) days in advance of the meeting, unless an expedited meeting is being conducted to address urgent

needs of the student to ensure the provision of FAPE (34 CFR § 300.322; COMAR 13A.05.01.07D).

Based on the Finding of Fact #38, the MSDE finds that the student's mother was not provided with a written invitation to the October 30, 2013 IEP team meeting because it was sent to the wrong address. Therefore, this office finds that a violation occurred with respect to the allegation. However, based on the Findings of Facts #37, the MSDE finds that the student's mother was aware of the meeting and participated in it. Therefore, notwithstanding the violation, this office finds that there was no impact on her ability to participate in the IEP team meeting.

**Allegation #11      Provision of Documents Five (5) Days Before the  
October 30, 2013 IEP Team Meeting**

In order to ensure that parents are provided with the opportunity to prepare for the discussions that take place 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 (Md. Code Ann., Educ., §8-405 (2010), COMAR 13A.05.01.07D(3), and the MSDE's *Technical Assistance Bulletin #20*, dated September 2012). 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 FAPE (Md. Code Ann., Educ., §8-405 (2010), COMAR 13A.05.01.07D(3), and MSDE's *Technical Assistance Bulletin #20*, dated September 2012).

Based on the Finding of Fact #37, the MSDE finds that documents to be considered by the IEP team were not provided to the parent prior to the October 30, 2013 IEP team meeting because they were mailed to an incorrect address. Therefore, this office finds that a violation occurred with respect to this allegation. Notwithstanding the violation, this office finds because the it did not result in a denial of a FAPE, no student-specific corrective action is required.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires that the BCPS provide documentation by March 1, 2014 that the IEP team, including student's mother, has completed the reevaluation and determined the *compensatory services*<sup>3</sup> or other remedy needed for the violations identified during this investigation.

The BCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting including a written explanation of the basis for the determinations, in

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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).

her native language of Spanish, 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 IDEA.

**School-Based**

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The MSDE requires that BCPS provide documentation by April 1, 2014 of the steps taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern at the schools involved in this investigation. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if proper procedures are being followed related to the development and implementation of the IEP. The BCPS must provide documentation of the results of these reviews to the MSDE.

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The MSDE requires that BCPS provide documentation by April 1, 2014 of the steps taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern at the schools involved in this investigation. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if proper procedures are being followed related to the development and implementation of the IEP and maintenance of confidentiality of the students' educational record. The BCPS must provide documentation of the results of these reviews to the MSDE.

If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report. If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur.

The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

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

Documentation of all corrective actions taken is to be submitted to this office to: 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.

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Please be advised that the BCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary.

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

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The student's mother 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/km

cc : XXXXXXXXXXXX  
Tisha Edwards  
Charles Brooks  
Nancy Ruley  
Darnell Henderson  
XXXXXXXXXX  
XXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Koliwe Moyo  
Martha J. Arthur