



May 9, 2014

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Ms. Debra Y. Brooks
Executive Director of Special Education
Baltimore County Public Schools
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #14-074

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 March 10, 2014, the MSDE received a complaint from Ms. XXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegations listed below:

1. The BCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his reading, handwriting, cognitive, and sensory needs since March 10, 2013,¹ in accordance with 34 CFR §§300.320 and .324.
2. The BCPS has not ensured that the student’s IEP addresses his social, emotional, and behavioral needs since March 10, 2013,¹ in accordance with 34 CFR §§300.320 and .324.
3. The BCPS has not ensured that the student’s IEP addresses his need for one-to-one dedicated adult support since the start of the 2013-2014 school year, in accordance with 34 CFR §§300.320 and .324.

¹ While the complainant alleged violations that occurred more than one (1) year ago, she was informed, in writing, that the MSDE has authority to investigate allegations of violations that occurred no more than one (1) year from the date the complaint was received (34 CFR §300.153(c)).

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4. The BCPS has not ensured that the student's Behavioral Intervention Plan (BIP) has been implemented in non-academic classes since the start of the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323.
5. The BCPS has not followed proper procedures in responding to the complainant's request for an amendment of the student's educational record since March 10, 2013,¹ in accordance with 34 CFR §§300.618 - .620.
6. The BCPS has not ensured that the IEP team meetings convened since March 10, 2013¹ have included a public agency representative who is knowledgeable about the available resources, in accordance with 34 CFR §300.321.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 18, 2014, the MSDE sent a copy of the complaint, via facsimile, to Ms. Debra Y. Brooks, Executive Director of Special Education, BCPS; Mr. Stephen Cowles, Associate General Counsel, Special Education Compliance, BCPS; and Ms. Denise Mabry, Coordinator of Compliance and Related Services, BCPS.
3. On March 24, 25, and 26, 2014, Ms. Hartman conducted telephone interviews with the complainant to clarify the allegations to be investigated.
4. On March 25, 26, and 27, 2014, and April 7 and 8, 2014, the MSDE received documentation and information from the complainant regarding the allegations contained in the complaint, via electronic mail (email).
5. On March 26, 2014, 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 the BCPS of the allegations and requested that the BCPS review the alleged violations.
6. On March 28, 2014, the MSDE received documentation from the BCPS regarding the allegations contained in the complaint, via hand-delivery.
7. On March 31, 2014, April 1, 3, 4, 9, and 30, 2014, and May 1, 2014, the MSDE received additional information and documentation from the BCPS regarding the allegations contained in the complaint, via email.
8. On April 2, 2014, Ms. Hartman and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:

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- a. Mrs. XXXXXXXXXXXX, Assistant Principal and IEP Chairperson;
- b. Mrs. XXXXXX, Principal; and
- c. Mrs. XXXXXXXXXXXXXXXX (XXXXXX), the student's Special Education teacher during the 2012-2013 school year.

Ms. Mabry and Ms. Maureen Hartlieb, Compliance Resource Teacher, BCPS, attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed.

9. 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 March 10, 2014;
 - b. IEP, dated June 4, 2012;
 - c. IEP, dated November 27, 2012, and IEP team meeting summary, dated December 4, 2012;
 - d. IEP team meeting summary, dated May 21, 2013, and revised IEP team summary, dated June 13, 2013;
 - e. Behavior Intervention Plans, dated May 5, 2010, February 10, 2012; May 14, 2013; and November 26, 2013;
 - f. IEP team meeting summary, dated September 19, 2013;
 - g. Consent for Assessments, dated September 19, 2013;
 - h. IEP team meeting summary, dated October 31, 2013;
 - i. IEP, dated November 26, 2013, and IEP team meeting summary, dated December 3, 2013;
 - j. IEP team meeting summary, dated January 28, 2014, and documentation that the student's teachers were provided with a copy of the student's current IEP, dated January 28, 2014;
 - k. Functional Behavioral Assessment, dated October 15, 2013;
 - l. Report of educational assessment, dated October 16, 2013;
 - m. Report of classroom observation, dated September 24, 2013;
 - n. Report of occupational assessment, dated October 3, 2013;
 - o. Report of speech and language assessment, dated October 15, 2013;
 - p. Report of psychological assessment, dated October 14, 2013;
 - q. Daily parent/teacher communication log concerning the student's behaviors during the 2013-2014 school year;
 - r. Daily behavior sheets for the student from March 4, 2013 to the end of the 2012-2013 school year;
 - s. Occupational Therapist's service provider logs for the 2013-2014 school year;
 - t. Privately obtained neuropsychological assessment report, dated November 10, 2010;
 - u. Privately obtained neuropsychological assessment report, dated November 18, 2013;
 - v. Summary of School Social Work Services, dated November 13, 2012; and

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- w. Email correspondences between the BCPS and the complainant, dated June 5, 2013, August 20, 2013, September 17, 2013, October 10, 2013, November 24 and 27, 2013; January 10, 15, 16, and 27, 2014, and March 6 and 7, 2014.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with Autism under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX, where he receives special education and related services. During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a-w).

ALLEGATIONS #1 - #3: IEP THAT ADDRESSES THE STUDENTS READING, HANDWRITING, COGNITIVE, SENSORY, AND SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS SINCE MARCH 10, 2013,¹ AND NEED FOR ONE-TO-ONE DEDICATED ADULT SUPPORT SINCE THE START OF THE 2013-2014 SCHOOL YEAR

FINDINGS OF FACTS:

Reading Needs

1. There is documentation that the IEP in effect during the time period covered by this investigation was developed on November 27, 2012, and revised on November 26, 2013. There is documentation that, at each meeting, the IEP team determined the student's levels of performance in reading and identified needs in the areas of phonics and reading comprehension, consistent with assessment data and information about the student's classroom performance. The documentation reflects that, at each meeting, the IEP team determined the annual goals for the student to improve his phonics and reading comprehension skills based on that data, as well as information regarding the student's progress towards achievement of the annual IEP goals (Docs. b-d, f-i, and l)..

Handwriting Needs

2. The November 27, 2012 IEP identified that the student has needs related to maintaining consistent spacing between words. It contained a written language goal that included an objective for the student to increase his handwriting skills, and required occupational therapy as a related service to assist him in achieving the goal. However, the IEP also indicates that, because the student's ability to respond in writing is "considerably below grade level," the supplementary service of a scribe was needed to assist him in completing written assignments (Doc. c).
3. On May 14, 2013, the complainant expressed concern that the student's handwriting was getting worse because the school staff were scribing too frequently for him, and requested

that staff scribe less frequently for the student. While the IEP team considered information that the student was making progress on the writing goal, the team agreed that the student would write more of his own work and gradually work toward independence in handwriting (Doc. d).

4. On September 17, 2013, in order to plan for the student's triennial re-evaluation, the IEP team recommended that an educational assessment be conducted in order to get updated information regarding the student's present level of academic and functional performance in reading (Doc. f and g).
5. On November 26, 2013, the IEP team convened and reviewed the completed occupational therapy assessment report, as well as the student's progress related to his handwriting skills. The documentation indicates that the student's fine motor skills related to writing are functional for school performance, but that his handwriting is impacted by his inability to remain focused, and he requires verbal reminders to put space in between words. The evaluator recommended that occupational therapy services be integrated into the student's classroom to work on strategies to maximize the production of legible written work (Doc. i and n).
6. The IEP team decided to decrease the amount of direct occupational therapy services and require that the occupational therapist provide consultative services to the student's teachers in order to integrate the services into the classroom instruction (Doc. i).
7. Notes contained in the occupational therapist's service provider logs since the November 26, 2013 IEP team meeting indicate that the student has been using "good form" and writing in a "legible" manner (Docs. i, n, and s).

Cognitive Needs

8. On November 27, 2012, the IEP team considered information contained in a report of a neuropsychological assessment obtained privately by the complainant. That report indicated the student has a "significant neurodevelopmental disorder", displays symptoms of an autism spectrum disorder, and has an overall cognitive ability of "mildly deficient" (Docs. c and t).
9. The IEP team also considered information from classroom-based assessments that the student was functioning at the first to second grade level in all academic areas, was behind his peers in communication skills, and required modified instruction in all academic and non-academic classes. The data indicated that the student had functional needs in reading, mathematics, writing, and communication skills. The documentation reflects that the IEP team developed annual goals for the student to increase his functional level of performance in these areas, and required that the student receive special education instruction and related services in both the general and special education classrooms, in order to assist him in achieving the goals. The IEP also required that the student be provided with supplementary aids and services designed to assist him

- in achieving the annual goals. The documentation reflects that the student receives instruction in the school's functional life skills program (Doc. c).
10. On September 17, 2013, in order to plan for the student's triennial re-evaluation, the IEP team recommended that a psychological assessment be conducted in order to get updated information regarding the student's present level of academic and functional performance with regard to cognition (Doc. f and g)
 11. On October 29, 2013, the IEP team reviewed the results of the completed assessment, which indicated that the student performed in the "low average" range for working memory, the "borderline" range for verbal comprehension, and the "extremely low" range for perceptual reasoning and processing speed. The IEP team decided that it would reconvene to review the student's IEP (Docs. f-h).
 12. On November 26, 2013, the IEP team convened and considered information from the student's teachers about his progress toward achievement of the annual goals and revised the goals based on the student's progress (Doc. i).
 13. On January 28, 2014, the IEP team convened to review the results of a neuropsychological assessment obtained privately by the complainant. The report documents the student's medical diagnoses of Autism Spectrum Disorder and "mild intellectual disability." It states that the student exhibits a "slower pace of intellectual growth," and that his intellectual skills "are estimated to fall in the impaired range" for his age. The report contains a recommendation that the student receive training on adaptive skills "to promote the development of self-care and home-living skills and independence" (Docs. j and t).
 14. The documentation reflects that, based on the student's medical diagnosis, the complainant requested that the student's identification be changed to Intellectual Disability. In response, the school-based members of the IEP team explained that, for purposes of identifying a student with an educational disability, the standards are different than those for diagnosing a medical condition. The school-based members of the team also explained that, regardless of the identified disability, the IEP still has to address the student's needs. The IEP team rejected the complainant's request to change the student's identification from Autism to Intellectual Disability based on its decision that, while the student has needs in the area of cognition, his education is primarily impacted by Autism (Doc. j).
 15. The complainant expressed concern about the student's transition to middle school next year and questioned how he will be able to navigate middle school and requested that the team consider moving him to a school that can provide him with the type of adaptive skills training he will need to transition to middle school. The team discussed the functional life skills program available in middle school, and rejected the request based on the school staff's report that any benefit would be outweighed by the difficulty the student would have transitioning to another school and then having to transition to a middle school soon afterward (Doc. j).

Sensory Needs

16. The evaluation data identifies needs for the student related to hypersensitivity to loud noise and impulsivity resulting from a desire for sensory stimulation (Docs. t and u).
17. During the time period covered by this investigation, the IEP has required that the student be provided with sensory items and activities as well as frequent breaks, changes in activity, and opportunities for movement to address his sensory needs (Docs. c and i).
18. There is no documentation that the strategies being utilized are not sufficiently addressing the student's sensory needs (Review of the student's educational record).

Social, Emotional, and Behavioral Needs

19. At the November 27, 2012 IEP team meeting, the student was identified with "significant behavioral issues" related to frustration management, work avoidance, and compliance with authority. In order to address these needs, the student was to be provided with rewards for appropriate behavior and visual cues to remind him of consequences for inappropriate behavior. The student was also given the opportunity to go to the school office to calm down if needed. In addition, the school social worker was to share strategies with the school staff for working with the student (Doc. c).
20. On May 14, 2013, the IEP team added strategies to address the student's interfering behavior, including engaging him in discussions related to what he could have done differently and what he might do the next time a difficult situation arises (Doc. e).
21. On November 26, 2013, the IEP was revised to include annual goals for the student to manage his emotions with the provision of social skills training and direct instruction in personal space/safety of others in different environments. It was also decided that the student would be provided with advance preparation for schedule changes or with discussion to help the student cope with changes (Doc. i).
22. On February 3, 2014, a report of the student's progress indicated that the student was not making sufficient progress to achieve the annual goals to improve his behavior. However, there is no documentation that the IEP team has convened to address the lack of expected progress (Doc. i, and review of the student's educational record).

Need for One-to-One Dedicated Adult Support

23. The November 27, 2012 IEP, which was the IEP in effect at the start of the 2013-2014 school year, indicates that the student "at times . . . will need additional adult assistance to help sustain his focus and work during instruction and the completion of independent activities." The documentation does not indicate that the IEP required the student to receive the services of a dedicated aide to work exclusively with the student; however, the parties agree that, during the 2012-2013 school year, a staff member had to work

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exclusively with the student to keep him focused on his work (Doc. c and interviews with the BCPS staff and the complainant).

24. At the November 26, 2013 IEP team meeting, the complainant expressed concern that the adult assistant assigned to the student's class was no longer working with him exclusively, but with other students as well. She expressed that, during lunch and recess, the additional adult assistant was not able to sufficiently monitor the class to ensure that the student did not get picked on or get in trouble, and requested that the student be provided with a one-to-adult assistance during this time period. In response, the IEP team agreed to arrange for more adult support during lunch and recess "to reduce teasing and to encourage social behavior" (Doc. i).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that all students with disabilities residing in the jurisdiction of the public agency are identified, located, and evaluated, and offered a Free Appropriate Public Education (FAPE) through an IEP that addresses the students' needs. In order to identify a student with a disability under the IDEA, the student must meet the criteria for one a list of disabilities, and must be determined to require special education and related services as a result of that disability (34 CFR §§300.8 and .111). However, The IDEA does not require the public agency to classify a student by disability in order to ensure that this obligation is met (20 U.S.C. §1412 (a)(3)(B)). When conducting an evaluation, the public agency must ensure that it is comprehensive enough to identify all of the student's special education and related services needs, whether or not commonly linked to any disability category in which the student may be classified (34 CFR §300.304).

It is the responsibility of the local school system to offer a FAPE to all students with disabilities within its jurisdiction. In order to offer a FAPE, the public agency is required to develop an IEP that includes special education services designed to address the needs that arise from the student's disability. In the case of a student whose behavior impedes his or her learning or that of others, the IEP must also include strategies to address that behavior (34 CFR §§300.34, .101, .320, .323 and .324).

The needs that arise from the student's disability are identified through information obtained about the student's present levels of academic and functional performance. The public agency must ensure that a variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the student. In making its determination about the student's identified, the IEP team must consider assessment data, information from the student's teachers about the student's classroom performance, and the concerns of the student's parents (34 CFR §§300.304, .305, and .324).

Allegation #1: **IEP that Addresses the Students Reading, Handwriting, Cognitive, and Sensory Needs Since March 10, 2013¹**

Reading Needs

In this case, the complainant asserts that school staff reported that it was difficult to obtain valid information about the student's present levels of performance from assessment data due to the interfering behaviors exhibited by the student during administration of assessments. Based on this assertion, the complainant alleges that the school system has not properly identified and addressed the student's reading needs (Doc. a).

Based on the Finding of Fact #1, the MSDE finds that there is documentation that the IEP team determined the student's present level of performance in reading, identified the student's needs, and developed annual IEP goals to address those needs, consistent with the data. Therefore, the MSDE does not find a violation has occurred with regard to this aspect of the allegation.

Handwriting Needs

In this case, the complainant asserts that the BCPS has not addressed the student's handwriting needs. The basis for her assertion is that, when she expressed concerns that the student's handwriting skills had decreased, the IEP team recommended keyboarding rather than developing strategies to improve his handwriting (Doc. a).

Based on the Findings of Facts #2 - #6, the MSDE finds that, during the time period covered by this investigation, there is documentation that the student's IEP identified the student's needs related to handwriting, and that, in developing the IEP, the IEP team has considered the evaluation data, reports of the student's performance, and concerns of the complainant to address that need. Further, based on the Finding of Fact #7, the MSDE finds that the student continues to make progress related to his handwriting skills. Therefore, the MSDE does not find that a violation has occurred with regard to this aspect of the allegation.

Cognitive Needs

In this case, the complainant asserts that, because the IEP team did not change the student's identified disability from Autism to Intellectual Disability after reviewing the student's medical diagnosis of Intellectual Disability, the IEP does not address the student's cognitive needs (Doc. a).

Based on the Findings of Facts #8 - #15, the MSDE finds that the IEP team considered the evaluation data and the complainant's request for the student to be placed at a school where he can be provided with functional life skills training to prepare him to transition to middle school, and rejected the request based on information from the school staff about the student's need to avoid transitions. Based on the same Findings of Facts, the MSDE finds that the student's cognitive needs are addressed by the annual goals for the student to improve his functional academic skills, and by the special education instruction and supplementary services designed to

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assist the student in achieving those goals. Therefore, the MSDE does not find that a violation has occurred with regard to this aspect of the allegation.

Sensory Needs

In this case, the complainant asserts that the student experiences sensory overload when exposed to loud noises, which results in his display of inappropriate behaviors. The complainant alleges that the only action that has been taken to address these needs has been the provision of headphones and ear plugs in the cafeteria, but that this has not been sufficient to address the student's needs.

Based on the Findings of Facts #16 and #17, MSDE finds that there is documentation that the IEP has included strategies to address the student's sensory needs in addition to blocking noise in the cafeteria. Based on the Finding of Fact #18, MSDE finds that there is no documentation to support the allegation that these strategies are not sufficiently addressing the student's sensory needs. Therefore, this office does not find that a violation occurred.

Allegation #2: IEP that Addresses the Student's Social, Emotional, and Behavioral Needs Since March 10, 2013¹

In this case, the complainant alleges that the student's interfering behaviors have increased and that the IEP team has not considered positive behavioral interventions to address them. The complainant specifically alleges that the student has kicked school staff, punched and jabbed a pencil into a computer screen, and drawn on the floor of the classroom, and that he has received a disciplinary referral as a result.

Based on the Findings of Facts #19 - #22, the MSDE finds that the BCPS has not ensured that the IEP team has considered positive behavior interventions to address the lack of expected progress toward achievement of the annual goals to improve behavior. Therefore, this office finds that a violation has occurred.

Allegation #3: IEP that Addresses the Student's Need for One-To-One Dedicated Adult Support Since the Start of the 2013-2014 School Year

In this case, the complainant asserts that the IEP had previously required that the student receive the services of a dedicated aide, but that the requirement of a dedicated aide had been removed from the IEP without her knowledge. She further asserts that the IEP team has not addressed her concerns that the student requires the services of a dedicated aide in order to receive a FAPE.

Based on the Findings of Facts #23 and #24, the MSDE finds that, during the time period covered by this investigation, there is no documentation that the IEP has required the student receive the services of a dedicated aide. Based on the Finding of Fact #24, the MSDE further finds that there is documentation that the IEP team addressed the complainant's concerns related to lack of sufficient adult support for the student during lunch and recess. Therefore, the MSDE does not find that a violation has occurred with regard to this allegation.

ALLEGATION #4: IMPLEMENTATION OF THE STUDENT'S BEHAVIORAL INTERVENTION PLAN (BIP) IN NON-ACADEMIC CLASSES SINCE THE START OF THE 2013-2014 SCHOOL YEAR

FINDINGS OF FACTS:

25. The BCPS acknowledges, and there is documentation to support, that, on two (2) occasions in November 2013, the school staff in the student's non-academic classes requested that the complainant intervene with regard to the student's behaviors, rather than providing the student with the supports required by the BIP (Docs. j and w and interviews with the BCPS staff and the complainant).
26. There is no documentation that the school staff were informed of their responsibilities in implementing the BIP from the start of the 2013-2014 school year until January 28, 2014 (Doc. j and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education instruction and related services required by the IEP. In order to ensure that the student is provided with the special education instruction and related services required by the IEP, the public agency is required to ensure that each teacher or provider of the student is informed of their specific responsibilities related to implementing the IEP, including the specific accommodations, modifications, and supports that must be provided (34 CFR §§300.101 and .323).

In this case, the complainant asserts that the student's BIP was not consistently implemented in the student's non-academic classes because the school staff contacted her to intervene with the student when he was exhibiting interfering behaviors, rather than providing the student with the supports required by the BIP (Doc. a).

Based on the Finding of Fact #25, the MSDE finds that there is no documentation that the student's teachers were informed of their responsibilities with regard to the provision of behavioral supports required by the BIP from the start of the 2013-2014 school year until January 28, 2014. Based on the Finding of Fact #26, the MSDE finds that there is documentation that the BIP was not consistently implemented. Therefore, the MSDE finds that a violation has occurred.

ALLEGATION #5: RESPONDING TO THE COMPLAINANT'S REQUESTS TO AMEND THE STUDENT'S EDUCATIONAL RECORD SINCE MARCH 10, 2013¹

FINDINGS OF FACTS:

27. There is documentation that, on June 5, 2013, the complainant requested that the BCPS amend the summary of the May 14, 2013 IEP team meeting to include a list of statements she had made during the meeting. There is documentation that the BCPS amended the

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document, pursuant to the complainant's request, but added additional statements of its own to the document. On August 20, 2013, the complainant objected to the additional statements included by the BCPS, and the BCPS asked that she put the basis of her objection in writing so that school staff could determine whether the amendments would be made. There is no documentation that the complainant ever provided the BCPS with a written statement outlining her reasons for requesting that statements be removed from the document (Docs. d and w, and review of the student's educational record).

28. On January 15, 2014, the complainant informed the BCPS staff that she believed the summary of the November 26, 2013 IEP team meeting did not accurately reflect the discussion that occurred at the meeting, and requested that it be amended. In response, the BCPS requested that she put the proposed amendment in writing so that the school system could determine whether the amendment would be made. However, on January 27, 2014, the complainant informed the BCPS staff that she was withdrawing her request for an amendment of the November 26, 2013 IEP team meeting summary, and that she would raise the concerns she wished to have documented at the next scheduled IEP team meeting, since it would be audio recorded (Doc. w).

DISCUSSION/CONCLUSIONS:

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

In this case, the complainant asserts that the school staff did not follow proper procedures in responding to her requests to amend the summaries of the IEP team meetings which occurred on May 14, 2013 and November 26, 2013 (Doc. a).

Based on the Finding of Fact #27, the MSDE finds that the BCPS agreed to the complainant's June 5, 2013 request to amend the summary of the May 14, 2013 IEP team meeting. Based on the Findings of Facts #27 and #28, the MSDE finds that there is no documentation that the complainant provided the school staff with information that she wished to have amended on August 20, 2013 and January 15, 2014. Thus, the BCPS was unable to make amendments. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION #6: PARTICIPATION IN IEP TEAM MEETINGS BY AN AGENCY REPRESENTATIVE WHO IS KNOWLEDGEABLE ABOUT THE AVAILABLE RESOURCES SINCE MARCH 10, 2013¹

FINDINGS OF FACTS:

29. There is documentation that each IEP team meeting convened since March 10, 2013 included both a school administrator and a special education teacher (Docs. d, f, and h-j).
30. There is no documentation that the school administrator who served as the public agency's representative was unable to address questions about available resources such as consultation with an Autism specialist (Docs. d, f, and h-j).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP team for each child with a disability includes an agency representative who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about the available resources of the public agency (34 CFR §300.321(a)(4)(iii)). However, the public agency may determine which specific staff member will serve as the agency representative in a particular IEP Team meeting, so long as the individual meets these requirements (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46670, August 14, 2006).

In this case, the complainant asserts that the school's assistant principal served as the IEP team chairperson, rather than a special education teacher, and that she was not knowledgeable about available resources such as consulting with an Autism specialist (Doc. a). Based on the Findings of Facts #29 and #30, the MSDE finds that a special education teacher participated in each IEP team meeting and that there is no documentation to support the allegation that the IEP team was unable to make decisions due to lack of knowledge of available resources. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation, by June 1, 2014, that the IEP has been reviewed and revised to address the lack of progress toward achievement of the behavioral goals.

The BCPS must also provide documentation that the IEP team has made the following determinations based on the evaluation data:

1. the student's current levels of academic and functional performance;

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2. the levels of academic and functional performance that were expected to be achieved by that time;
3. the amount and nature of services needed to compensate the student for the violations identified, based upon any identified discrepancy between the student's expected and actual levels of performance; and
4. a plan for how and when the services are to be provided within a year of the date of this Letter of Findings.

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, 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 order to resolve the dispute, in accordance with IDEA.

School-Based

The MSDE requires the BCPS to provide documentation, by the start of the 2014-2015 school year, of the steps it has taken to ensure compliance by XXXXXXXXXXXXXXXXXXXX staff with the IDEA and related State requirements listed below.

1. That each IEP is reviewed and revised to address lack of expected progress towards achievement of the annual IEP goals, in accordance with 34 CFR §300.324.
2. That all teachers and service providers are informed of their specific responsibilities related to implementing the IEP in order to ensure that students are provided with the special education instruction and related services required by the IEP, in accordance with 34 CFR §§300.101 and .323

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

TECHNICAL ASSISTANCE:

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

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

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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 a due process complaint.

Sincerely,

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

MEF/ch

c: S. Dallas Dance
Stephen Cowles
Denise T. Mabry
XXXXXX

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